City Council Meeting
Tuesday, May 22, 2012
Supplemental to Attachment XXII – Correspondence in Opposition of Walmart Project
(10 in Opposition)

m | r | wolfe
& associates, p.c.
attorneys-at-law

May 21, 2012

By E-Mail
Acknowledgement of Receipt Requested

Mayor Michael Sweeney
Members of the City Council
c/o City Clerk
City of Hayward
777 B Street
Hayward, CA 94541
Email: CityClerk@hayward-ca.gov; List-Mayor-Council@hayward-ca.gov

Re: Appeal of Planning Commission Action Overturning Planning Director's Determination – Walmart Neighborhood Market at 2480 Whipple Road (CUP No. PL-2004-0039)

Dear Mayor Sweeney and members of the City Council:

On behalf of the original appellants Desirae Schmidt and UFCW Local 5 and its members who live and/or work in Hayward, we write to urge the City Council to AFFIRM the Planning Commission's April 5, 2012 action overturning the Planning Director's January 19, 2012 determination that a proposed 34,000 square foot Walmart Neighborhood Market occupying the former Circuit City building at 2480 Whipple Road is consistent with governing provisions of the Hayward Zoning Ordinance and conditions contained in CUP No. PL-2004-0039. As explained further below, this relatively small grocery store is an unambiguously local, neighborhood-serving use, and is therefore inconsistent with the Zoning Ordinance and the CUP, both of which mandate that any commercial use at this location serve a regional or sub-regional market base. The Planning Director's determination was therefore erroneous. In addition, the proposed supermarket will have new and more intense environmental impacts in the areas of traffic and air quality than the Circuit City had, also contrary to the Planning Director's finding.

I. Introduction And Summary.

As a majority of the Planning Commission agreed, the Planning Director's consistency determination finds no basis in the pain language of the Hayward Zoning Ordinance, the use permit conditions, nor common sense. The proposed 34,000 s.f. supermarket is simply not a region or sub-region-serving commercial retail use by any reasonable measure. In terms of its size and product mix, it bears all the hallmarks of a typical neighborhood or community-serving grocery store. Indeed, Walmart itself has explicitly promoted this retail format nationwide as "Neighborhood Markets," describing

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it as offering a "quick and convenient shopping experience." (*See* www.walmartstores.com/ about us). To conclude that customers will travel from across the Bay Area region or the East Bay sub-region to patronize a 32,000 s.f. supermarket – smaller than an average Safeway – is patently unreasonable.

Moreover, contrary to the Planning Director's conclusions, a new supermarket at this location will in fact generate new or more severe environmental impacts than the closed Circuit City. A supermarket generates more daily and peak-hour vehicle trips from customers than does an electronics store (needless to say, consumers shop for groceries far more frequently than for home electronics), and significantly more deliveries by heavy-duty diesel trucks. The proposed Neighborhood Market may aggravate traffic congestion in the area, while increasing noise levels and emissions of air pollutants, including particulate matter from diesel exhaust, potentially impacting citizens living in the nearby residential area in Union City. These impacts were neither fully evaluated nor mitigated in the 2004 negative declaration originally approved for the original shopping center project's CUP. Further environmental review in the context of a rezone or variance application is therefore warranted.

Finally, the fact that the Circuit City building has been vacant since 2009 by itself suggests that a new CUP is required under Section 10-1.3270, which provides that any use that ceases operation for more than six consecutive months must be deemed "discontinued."

Each of these points is elaborated upon further below.

II. The Proposed Neighborhood Market Will Not Serve a Regional or Sub-Regional Marketing Base.

The Planning Director's determination that the proposed "Neighborhood Market" will serve a regional or sub-regional market is based on three premises, all of which are faulty.

First, the Planning Director concludes that "the proposed Walmart Market store will provide a full range of grocery products, as well as pharmaceutical and general merchandise products, which will serve not only the immediate surrounding neighborhood in Hayward and Union City, but also customers in the general area and those commuting along Interstate 880." This incorrectly suggests that the range of products offered at the market somehow determines the size of the trade area. By this logic, any grocery store regardless of size would, by definition, serve a regional or sub-regional market simply by virtue of offering a "full range" of groceries, pharmaceuticals, and general merchandise. All existing supermarkets in Hayward – and potentially even some larger convenience stores - would thus become regional or sub-regional commercial uses under this definition.

Importantly, the Zoning Ordinance itself recognizes that supermarkets are neighborhood-serving and not region-serving commercial uses. The Zoning Ordinance identifies "Supermarket" as a "primary" land use only in the Neighborhood Commercial (CN) Zoning District (§ 10-1.815(a)(5)(ee)), and nowhere else. By contrast, "Supermarket" is permissible in the Regional Commercial (CR) District (§10-1.1400(b)(1)(e)), only if it is ancillary and secondary to a primary commercial use defined as a "major retail anchor" of at least 100,000 square feet. Thus, the Zoning Ordinance clearly considers supermarkets as neighborhood-serving, and by no means regional or sub-regional commercial uses.

The Planning Director also cites the Neighborhood Market's "site to store" program as evidence that it will serve a regional/sub-regional market base. There is no indication of how or why this program, which allows shoppers to order products online and pick them up at the store (much like the average take-out restaurant) would necessarily broaden a small supermarket's trade area. The implication that shoppers will be wiling to drive longer distances from throughout the region or sub-region simply because they can pre-order items online again lacks any factual or analytic basis.

The third basis for the Planning Director's consistency determination is the existing CUP's incorporation by reference of a list of uses permissible in the Central Business District (CBD) per the Zoning Ordinance. As stated in the Director's letter, the conditions of approval for Use Permit No. PL-2004-0039 include the following:

> "The uses permitted in the 'Shops' buildings shall be limited to those Retail Commercial Uses that have a regional/sub-regional marketing base and are listed in Section 10-1.1315(a)(5) (Central Business District – Retail Commercial Uses)[.]" emphasis added.

The list of uses in the referenced section 10-1.1315(a)(5) includes "supermarkets." From this language, the Planning Director concludes:

> "Given the condition language that identifies such listed uses, including supermarkets by reference to the Central Business District, as being considered as having a regional or sub-regional marketing base, it is appropriate to consider the proposed 34,000 square foot market store and business model as also serving a regional or sub-regional marketing base." In other words, the Planning Director has determined that because "supermarket" is included in the list of uses permitted in the CBD by Section 10-1.1315(a)(5), it must therefore necessarily have a regional or sub-regional marketing base.

This conclusion, too, is also patently erroneous. First, as a threshold matter, the condition on its face applies only to the "shops," *i.e.,* the two secondary retail buildings of 5,100 and 6,000 square feet that are ancillary components of the shopping center. It does not apply to the separately identified "34,000 square-foot regional retail building." See Condition 1 of "Conditions of Approval" for Use Permit No. PL-2004-0039.

Second, the condition clearly states that in order for a use to be permissible in the shopping center must not only be included in the list of permissible uses in the CBD contained in Section 10-1.1315(a)(5), but must also, as a separate condition, serve a regional/sub-regional marketing base.

Finally, a simple examination of the uses listed in Section 10-1.1315(a)(5) reveals the fallacy of the Planning Director's conclusion. Among the uses included in that list are the following: "Antique store," "Art and art supplies store," "Bakery," "Bicycle Shop," "Bookstore," "Card shops," "Delicatessen," "Floral shop," "Locksmith," etc., etc. By the Planning Director's logic, all of these uses would be deemed to have a regional/sub-regional marketing bases simply by virtue of being included in the list of permissible CBD uses contained in Section 10-1.1315(a)(5). Obviously this is not the case.

We submit that the Planning Director's interpretation of both the CUP and this provision of the Zoning Ordinance is patently erroneous and must be overturned.

III. The City's Traffic Analyses Reflect Staff's Own Assumption That the Walmart Will Be A Local And Not A Regional Use.

The Planning Director found that the proposed Walmart Neighborhood Market is consistent with the original CUP because a grocery store would have similar environmental impacts as the closed Circuit City electronics store, primarily in terms of traffic impacts, and that "the proposed change in the type of use would not cause any environmental impact requiring additional CEQA review." Again, this conclusion is unsupported by logic or evidence.

We asked Tom Brohard, P.E., a traffic engineer with over 40 years of experience, to evaluate traffic impacts associated with the Neighborhood Market use. Mr. Brohard's attached comments show that when City staff evaluated traffic impacts associated with the Walmart use, they assumed that the Walmart project would have a significantly different trip distribution than the permitted Circuit City use. In particular, City staff assumed that 80 percent of the Walmart trips would be local trips coming from the east, whereas the Circuit City traffic analysis assumed that only 13 percent would come from the east on Whipple Road. The bulk of the Circuit City trips, 60 percent, were projected to come from I-880, and these trips are clearly regional. However, only 5 percent or 10 percent of the Walmart trips are assumed to come from I-880. Clearly, the City staff members evaluating traffic impacts do not believe the Walmart traffic distribution reflects a regional or sub-regional marketing base.

The difference in the trip distribution assumptions between the Walmart and the Circuit City use was critical to the City staff's conclusion that Walmart traffic impacts would not be more severe or significant. The original traffic study performed for the Circuit City assumed only 13 percent of trips generated would originate locally from points east along Whipple Road (with 60 percent originating from I-880). *See* "Trip

Distribution" Table from "Revised Draft Traffic Impact Study," March 3, 2004, excerpts attached to Mr. Brohard's letter. When the City's Transportation Manager first evaluated potential impacts from the Neighborhood Market, he concluded that the increase in peak hour trips "is significant and . . . would likely require a traffic study to determine, among other impacts, the impact to the northbound off ramp to determine whether there will be queuing back onto the freeway." Don Frascinella, e-mail to David Temkin, January 3, 2012 (copy attached).

Later, on request, the Transportation Manager revised the trip distribution assumptions so that **80 percent** of trips would originate locally from the east, concluding that that the impact to the Whipple Road/I-880 Northbound Ramp intersection would not be significant. Don Frascinella, e-mail to David Temkin, January 4, 2012 (copy also attached). Moreover, during the April 5, 2012 hearing before the Planning Commission, the Transportation Manager c repeatedly that staff's traffic analysis had assumed that all or nearly all of the traffic generated by the Neighborhood Market would be local

In other words, if the Neighborhood Market is assumed to be a regional use with trip distribution patterns similar to the Circuit City (and therefore permissible under the Zoning Ordinance), then the traffic impacts at nearby intersections will be significant and a new traffic study would be required per City staff's own conclusion. Only if the Market is assumed to be a local use (and thus impermissible under the Zoning Ordinance), with 80 percent of trips originating local from the east on Whipple Road as opposed to 13 percent, can the conclusion be reached that traffic impacts will not be significant and that no further study or mitigation is required.

In sum, it is clear from the City's own evaluation of traffic impacts that the Walmart use would be local, not regional or sub-regional. The City cannot consistently maintain that the use is regional, but that it would not cause traffic impacts because traffic would originate locally.

IV. The Neighborhood Market Will Have New and More Severe Traffic Impacts

As noted, we asked Tom Brohard to evaluate traffic impacts from the proposed Walmart use. Mr. Brohard's attached comments shows that the new supermarket use would more than double daily and peak hour trips. Mr. Brohard also shows that the City has not adequately evaluated traffic impacts. City staff admits that the one-page analysis is "rudimentary." No documentation was generated to evaluate existing conditions and levels of service. No calculations were provided to justify trip generation and trip distribution assumptions or to determine intersection level of service or queuing impacts. Even though staff determined that trips would come predominately from the east instead of from I-880, there was no analysis of impacts to intersections to the east.

Furthermore, as Mr. Brohard also explains, the addition of peak hour trips to the Whipple Road/I-880 Northbound Ramp intersection will in fact contribute considerably to a cumulatively significant impact at that intersection. Mr. Brohard's analysis is based

on data contained in the City's General Plan. Thus, the contention that the Walmart use would not result in new or more severe significant impacts is incorrect.

V. A Supermarket Will Have New And More Severe Air Quality Impacts Compared To The Originally Permitted Circuit City Store.

There is no evidence that the City has considered other types of impacts from the proposed Neighborhood Market, including impacts to air quality. We asked Greg Gilbert of Autumn Wind Associates to evaluate the proposed new use. Mr. Gilbert is an air quality expert with over 22 years of experience.

Unlike the Circuit City, the Neighborhood Market would require large numbers of diesel delivery vehicles, of which as many as half would include diesel-powered Transport Refrigeration Unites ("TRUs"), both of which would generate Toxic Air Contaminants ("TACs") that would affect adjacent residential uses. In addition, the Neighborhood Market would more than double customer trips, of which some portion is made in diesel vehicles.

Mr. Gilbert's attached comments demonstrate that TACs from the Walmart use may, by themselves, exceed the Bay Area Air Quality Management District's ("BAAQMD's") threshold for significant project-specific TAC impacts. Mr. Gilbert also demonstrates, based on data from BAAQMD and the California Air Resources Board, that the neighbors adjacent to the proposed Walmart use are <u>already</u> subject to a significant cumulative TAC impact from I-880. Thus, even if the Neighborhood Market's TAC emissions were not individually significant, they would represent a considerable contribution to the existing significant cumulative impact. This impact would be substantially more severe than any TAC impact from the Circuit City use.

Mr. Gilbert also shows that the greenhouse gas impact of the proposed Walmart use would be substantially greater than the Circuit City use, because it generates more than twice the vehicle trips and because it would use energy, water, and packaging more intensively. Based on screening and modeling tools recommended by BAAQMD, Mr. Gilbert determined that the Neighborhood Market use would have significant greenhouse gas impacts.

For these reasons, as well as for those discussed regarding traffic impacts, above, the proposed new use does not qualify for the CEQA exemption for Existing Facilities, (Section 15301 of the CEQA Guidelines), since there will be a substantial expansion of <u>use</u> beyond that existing at the time of the 2004 approval. Even if the Market nominally qualified for this exemption, it would still be subject to environmental review under the Section 15300.2 (exceptions to exemptions when new significant impacts are present).

VI. A New CUP Is Required Because The Site Has Been Vacant For More Than Six Consecutive Months.

According to the Planning Director, the Circuit City closed in 2009 and the building has remained vacant ever since. Under these circumstances, and given that commercial uses in the Industrial Zoning District are only conditionally permitted, a new CUP is required.

Section 10-1.3270 of the Zoning Ordinance, titled "Discontinued Uses," states:

> "All uses that cease operation for a period of more than six consecutive months shall be deemed to be discontinued, and the use permit establishing said use shall become null and void. Reestablishment of said use shall only be permitted upon obtaining a new use permit."

The Circuit City was the primary commercial use authorized by CUP No. PL-2004-0039. It clearly constitutes a "discontinued use" under the unambiguous provisions of the Section 10-1.3270. Reestablishment of a new commercial use at this industrially zoned location therefore requires a new conditional use permit.

Requiring the applicant to obtain a new use permit is sound policy, given that it would trigger at least some form of additional environmental review. Thus, any new or more severe environmental impacts in the areas of traffic, noise, or air quality could be evaluated and mitigated as necessary within that context.

VII. Conclusion.

For all the foregoing reasons, the Planning Director's January 19, 2012 consistency determination is clearly erroneous. The Planning Commission should therefore uphold the appeal and overturn that decision.

Thank you for your consideration of these points.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.

Mark R. Wolfe

MRW:am
attachments

Circuit City
New

Electronic Superstore and Retail Center City of Hayward, CA

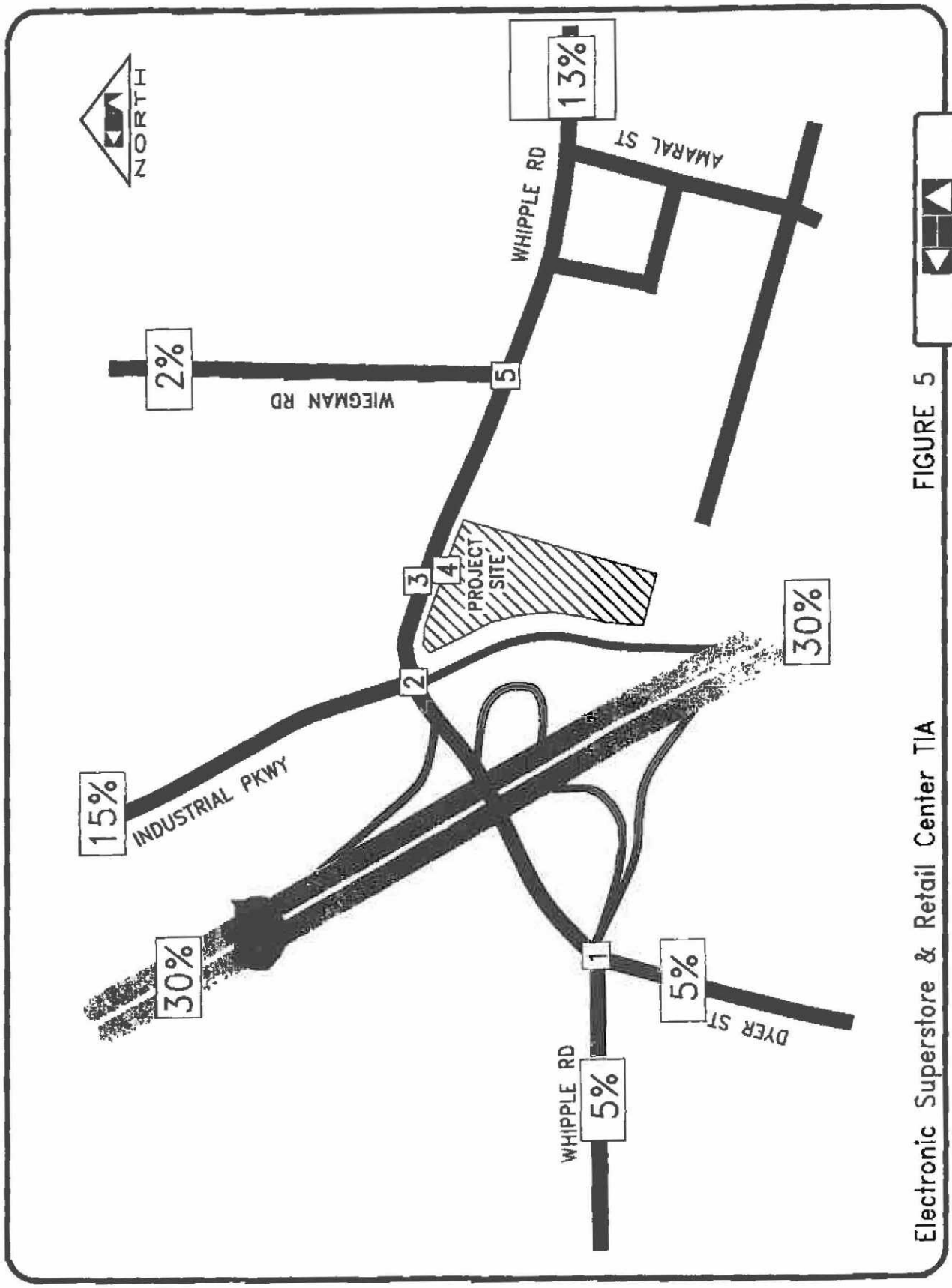
Revised Draft Traffic Impact Study

Prepared for: Batavia Holdings, L.L.C.

Prepared by:

Kimley-Horn and Associates, Inc.
Tel No: 925-543-0840
Fax No: 925-543-0839

March 3, 2004



Kimley-Horn and Associates, Inc.

FIGURE 5

Electronic Superstore & Retail Center TIA

PROJECT TRIP DISTRIBUTION

Maureen Conneely

From: Don Frascinella
Sent: Tuesday, January 03, 2012 11:17 AM
To: David Rizk
Cc: Morad Fakhrai
Subject: RE: TRIP GENERATION - CIRCUIT CITY SITE

Please see below

Don Frascinella
Transportation Manager
City of Hayward
(510) 583-4781
(510) 583-3620 (fax)
don.frascinella@hayward-ca.gov

From: David Rizk
Sent: Tuesday, January 03, 2012 10:56 AM
To: Don Frascinella
Cc: Morad Fakhrai
Subject: RE: TRIP GENERATION - CIRCUIT CITY SITE

Close, but the proposed use is a freestanding grocery store, not a "discount superstore with a grocery", as you indicate below. Can you revise accordingly? Thanks.

From: Don Frascinella
Sent: Tuesday, January 03, 2012 10:53 AM
To: David Rizk
Cc: Morad Fakhrai
Subject: RE: TRIP GENERATION - CIRCUIT CITY SITE

David, please let me know if this is what you are looking for:

Using the trip generation rates provided in the ITE Trip Generation Manual, staff compared the trip generation rates for an electronics superstore (Circuit City, the prior use) and a supermarket (the proposed use).

The trip generation rates for the PM peak hour (the most critical time) showed a significant difference between the two uses. The electronics superstore has a rate of 4.50 trips per thousand square feet and the supermarket has a rate of 11.85 per thousand square feet. This is a difference of 222 trips which is significant and which would likely require a traffic study to determine, among other impacts, the impact to the northbound off ramp to determine whether there will be queuing back onto the freeway. Even if the proposed use was classified as a discount supermarket, the trip generation rate would still be almost double that of the electronics superstore (8.9 trips per thousand square feet for the proposed use vs. 4.50 trips per thousand for the former use.

Don Frascinella
Transportation Manager
City of Hayward

Maureen Conneely

From: Don Frascinella
Sent: Wednesday, January 04, 2012 4:18 PM
To: David Rizk
Cc: Morad Fakhrai
Subject: RE: TRIP GENERATION - CIRCUIT CITY SITE

Importance: High

Sai has analyzed the impact of the proposed grocery store on three intersections on Whipple Road – Industrial Parkway SW/I-880, Target and Wiegman – for the PM peak hour.

Using the old Circuit City traffic study as a guide, she factored in the difference in trip generation which was about 213 trips. Using a trip distribution of 80% from the east and 5% elsewhere she was able to determine that the maximum increase in delay was 0.6 seconds at the Target traffic signal and 4.2 seconds at the Industrial/I-880 signal. There was no change in delay at Wiegman.

Consequently none of the intersections fell below an LOS D with the grocery store so we can conclude that the grocery store as proposed will not cause traffic to increase to any extent that would warrant additional study.

Don Frascinella
Transportation Manager
City of Hayward
(510) 583-4781
(510) 583-3620 (fax)
don.frascinella@hayward-ca.gov

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Cc: Morad Fakhrai
Subject: RE: TRIP GENERATION - CIRCUIT CITY SITE

David, please let me know if this is what you are looking for:

Using the trip generation rates provided in the ITE Trip Generation Manual, staff compared the trip generation rates for an electronics superstore (Circuit City, the prior use) and a free standing discount superstore with a grocery (the proposed use).

Tom Brohard and Associates

May 15, 2012

Mr. John H. Farrow, Attorney at Law
M. R. Wolfe & Associates, P.C.
1 Sutter Street, Suite 300
San Francisco, California 94104

SUBJECT: Wal-Mart Traffic Impacts at Circuit City Site, 2480 Whipple Road, Hayward

Dear Mr. Farrow:

At your request, I have reviewed the traffic impacts related to the proposed use of a Wal-Mart Market in the vacant 34,000 SF Circuit City building at 2480 Whipple Road in the City of Hayward. I have reviewed a number of documents including the following:

- March 5, 2004 Mitigated Negative Declaration for the Circuit City Use Permit (PL-2004-0039);
- March 3, 2004 Kimley-Horn Revised Draft Traffic Impact Study for Circuit City;
- Use Permit PL-2004-0039;
- Email correspondence between Hayward City staff related to the Wal-Mart traffic impacts in April 2011, December 2011, and January 2012;
- January 6, 2012 memorandum from Hayward Public Works staff to David Rizk, Director of Development Services;
- December 14, 2011 letter from Judy Davidoff to David Rizk;
- January 19, 2012 letter from David Rizk to Daniel Temkin; and
- Circulation Element and Appendix G of the 2002 City of Hayward General Plan.

Education and Experience

Since receiving a Bachelor of Science in Engineering from Duke University in Durham, North Carolina in 1969, I have gained over 40 years of professional engineering experience. I am licensed as a Professional Civil Engineer both in California and Hawaii, and as a Professional Traffic Engineer in California. I formed Tom Brohard and Associates in 2000 and now serve as the City Traffic Engineer for the City of Indio and as Consulting Transportation Engineer for the City of Big Bear Lake and the City of San Fernando. I have extensive experience in traffic engineering and transportation planning. During my career in both the public and private sectors, I have reviewed numerous environmental documents and traffic studies for various projects. Several recent assignments are highlighted in my resume which is enclosed.

81905 Mountain View Lane, La Quinta, California 92253-7611
Phone (760) 398-8885 Fax (760) 398-8897
Email tbrohard@earthlink.net

Mr. John H. Farrow
Wal-Mart Traffic Impacts at Circuit City site, 2480 Whipple Road, Hayward
May 15, 2012

Traffic Impact Issues

A Wal-Mart Market is proposed for the 34,000 SF former Circuit City store building for which a use permit was granted in 2004. To compare the number of daily and PM peak hour trips between these different uses during weekdays, I used Trip Generation, 8th Edition published by the Institute of Transportation Engineers, the industry standard reference source for trip generation rates. For this comparison, I classified the Wal-Mart Market as a "Supermarket" (ITE Land Use Code 850) and Circuit City as an "Electronics Superstore" (ITE Land Use Code 863) as was used in the 2004 traffic study prepared to support the issuance of the use permit. As shown in the table below, the Wal-Mart Market will generate substantially more daily trips and more PM peak hour trips on weekdays than the Circuit City store as follows:

ITE		Average Daily Trips		PM Peak Hour Trips	
Code	Land Use	Rate*	Trips**	Rate*	Trips**
850	Wal-Mart	102.24	3,476	10.50	357
863	Circuit City	45.04	1,531	4.50	153
Increase in Trips			+1,945		+204

* Rate is based on trips per 1,000 square feet
** Trips are based on 34,000 square feet

In his January 19, 2012 letter to David Temkin, the City's Planning Director Rizk states that 1) the Wal-Mart project is consistent with the existing use permit for the Circuit City "in terms of impacts," and 2) even though the Wal-Mart will generate 213 PM peak trips more than the Circuit City use, the incremental delay from these additional trips will not cause LOS to drop below D. These conclusions are based on a one page January 6, 2012 memorandum from Hayward Public Works staff reporting a "rudimentary traffic analysis." I understand that no additional documentation of that analysis was provided in response to your request, other than an exchange of e-mails by City staff in April 2011, December 2011, and January 2012.

As discussed below, the conclusions that the Wal-Mart Market is consistent with Circuit City in terms of impacts and will not cause or contribute to significant impacts is not founded on an adequate analysis, is contradicted by City staff e-mails, and is inconsistent with analysis performed for the Hayward General Plan. In fact, the Wal-Mart Market would generate much more intensive traffic and would considerably aggravate the projected significant cumulative impact at the I-880/ Whipple Road intersection.

Mr. John H. Farrow
Wal-Mart Traffic Impacts at Circuit City site, 2480 Whipple Road, Hayward
May 15, 2012

1) Inadequate Analysis

a) LACK OF DOCUMENTATION: You have explained that you requested all documentation related to the conclusions in the Planning Director's January 19, 2012 letter and received only the documents referenced above. The City has not provided adequate documentation for its conclusions, including the documentation normally prepared for a traffic study. In particular, the City has not provided data regarding existing conditions and levels of service, calculations of trip generation, trip distribution diagrams, or intersection Level of Service (LOS) calculations. Indeed, the Public Works staff characterized the analysis as "rudimentary." Without adequate documentation, there is no basis to understand or rely on the conclusions.

b) ANALYSIS CONTRADICTED BY STAFF: The analysis provided by the City's Transportation Manager in his January 6, 2012 memorandum is directly contradicted by the analysis he provided just three days earlier in a January 3, 2012 e-mail. In that email, Transportation Manager Don Frascinella concluded that the difference in trips between Circuit City and Wal-Mart was in fact significant, because the trip rate for stand-alone supermarkets is more than twice as high as for an electronics superstore as follows:

> "David, please let me know if this is what you are looking for:
>
> Using the trip generation rates provided in the ITE Trip Generation Manual, staff compared the trip generation rates for an electronics superstore (Circuit City, the prior use) and a supermarket (the proposed use).
>
> The trip generation rates for the PM peak hour (the most critical time) showed a significant difference between the two uses. The electronics superstore has a rate of 4.50 trips per thousand square feet and the supermarket has a rate of 11.85 per thousand square feet. This is a difference of 222 trips which is significant and which would likely require a traffic study to determine, among other impacts, the impact to the northbound off ramp to determine whether there will be queuing back onto the freeway. Even if the proposed use was classified as a discount supermarket, the trip generation rate would still be almost double that of the electronics superstore (8.9 trips per thousand square feet for the proposed use vs. 4.50 trips per thousand for the former use." (Emphasis added.)

The January 3 conclusion that the difference of 222 peak hour trips "is significant" and "would likely require a traffic study" to evaluate queuing

impacts is clearly inconsistent with the January 6 conclusion that a difference of 213 trips "will not cause traffic to increase to any extent that would warrant an additional study." (The trivial difference between 213 and 222 extra trips cannot explain the completely different conclusions in the January 3 e-mail and January 6 memorandum.)

c) UNSUPPORTED AND INCONSISTENT CHANGES TO TRIP DISTRIBUTION: In his January 4 email, the Transportation Manager provided a different analysis to the Planning Director, concluding that the difference in uses would not result in large intersection delay increases and therefore did not warrant further study. It is this analysis that was memorialized in his January 6, 2012 memorandum. The apparent, but undocumented, basis of the change in the Transportation Manager's conclusions between January 3 and 4 was the change in the trip distribution assumptions made in the analysis by City staff.

Figure 5 in the 2004 traffic analysis for the Circuit City use shows that 60% of the Circuit City trips were assumed to come from I-880 (north and south), 10% from the west on Whipple and Dyer, 17% from the north on Industrial Parkway and Wegman, and only 13% from the east on Whipple. In his January 4 e-mail and January 6 memorandum, the Transportation Manager assumed instead that 80% of the trips would come from the east. No basis was provided for that change in assumptions about the nature of the use. However, the change is not consistent with the applicant's representations about the source of Wal-Mart customers.

On Page 3 of her December 14, 2011 letter, the applicant's counsel advised the Planning Director that the proposed use would be regional or sub-regional rather than local. In support of this claim, she explained that the site could only serve a regional or sub-regional marketing base because of its trade area and its location on I-880. However, the Transportation Manager's assumption that 80% of the traffic will come from the east is inconsistent with the claim that the proposed use is regional rather than local, and that the supermarket would primarily be accessed by I-880.

d) FAILURE TO CONSIDER ALL AFFECTED LOCAL INTERSECTIONS: The rudimentary analysis offered by the Transportation Manager considered only three intersections in the immediate vicinity of the project. The choice of intersections for analysis of level of service impacts must be guided by the expected number of increased trips at those intersections. In view of the significant change in the assumed trip distribution, orienting the bulk of the assumed trips to the east of the project, it is likely that additional intersections to the east would require analysis. This was not done.

e) FAILURE TO ASSESS CURRENT CONDITIONS: The Transportation Manager provided no assessment of current traffic conditions, so the actual intersection service levels are unknown. There is evidence that conditions are worse than the levels assumed in the 2004 traffic analysis. As discussed below, the 2002 Hayward General Plan projects that the key study intersection at Whipple/I-880 NB will operate at LOS E by 2025, which indicates that conditions are projected to deteriorate over time.

In sum, in view of the fundamental change to the nature of the project, its trip generation, the unexplained changes to trip distribution, and the lack of information regarding current conditions, there is no consistent or documented explanation of the Transportation Manager's conclusions regarding traffic impacts. A traffic analysis must be prepared to support any such conclusion.

2) Impacts to the I-880 NB Ramp/Whipple Road intersection

The addition of over 200 PM peak hour trips created by the Wal-Mart Market is likely to substantially aggravate the projected unacceptable service level at the Whipple/I-880 NB intersection.

Page 3-7 of the Circulation Element of the 2002 City of Hayward General Plan explains that intersection level of service was projected for 2025 conditions for various intersections in Appendix G. Tables 4 and 5 of Appendix G show that the intersection of NB-880 Ramp and Whipple Road is projected to operate an unacceptable LOS E under 2025 conditions. Because the City's Level of Service standard is LOS D, this is recognized as a significant cumulative impact.

The proposed Wal-Mart Market PM peak hour trips represent a considerable contribution to this level of congestion, particularly since that use is more intensive than the regional use that was assumed in making the 2025 projections. Thus, contrary to the conclusion in the Planning Director's January 19, 2012 letter to the applicant, the Wal-Mart Market would in fact contribute to a significant impact at the site, and would substantially aggravate that impact beyond the level of the Circuit City use.

3) Conclusions

The City should prepare a traffic analysis providing documented assumptions for trip generation and distribution, existing and projected service levels, and analysis of intersection levels of service. Even without such analysis, however, common sense indicates that the addition of over 200 PM peak hour trips, more than twice the level of peak hour trips projected for the Circuit City use, is not consistent in terms of impacts. Even if levels of service did not

immediately degrade below LOS D, traffic will clearly be more intense. Furthermore, significant impacts to the I-880 NB Ramps/Whipple Road intersection are in fact projected, and the proposed use will considerably aggravate that congestion.

If you should have any questions regarding these findings, please contact me at your convenience.

Respectfully submitted,

Tom Brohard and Associates

Tom Brohard

Tom Brohard, PE
Principal

Enclosure

Tom Brohard, PE

Licenses:	1975 / Professional Engineer / California – Civil, No. 24577 1977 / Professional Engineer / California – Traffic, No. 724 2006 / Professional Engineer / Hawaii – Civil, No. 12321
Education:	1969 / BSE / Civil Engineering / Duke University
Experience:	40+ Years
Memberships:	1977 / Institute of Transportation Engineers – Fellow, Life 1978 / Orange County Traffic Engineers Council - Chair 1982-1983 1981 / American Public Works Association – Life Member

Tom is a recognized expert in the field of traffic engineering and transportation planning. His background also includes responsibility for leading and managing the delivery of various contract services to numerous cities in Southern California.

Tom has extensive experience in providing transportation planning and traffic engineering services to public agencies. Since May 2005, he has served as Consulting City Traffic Engineer for the City of Indio. He also currently provides "on call" Traffic and Transportation Engineer services to the Cities of Big Bear Lake, Mission Viejo, and San Fernando. In addition to conducting traffic engineering investigations for Los Angeles County from 1972 to 1978, he has previously served as City Traffic Engineer in the following communities:

- Bellflower ..... 1997 - 1998
- Bell Gardens ..... 1982 - 1995
- Huntington Beach ..... 1998 - 2004
- Lawndale ..... 1973 - 1978
- Los Alamitos ..... 1981 - 1982
- Oceanside ..... 1981 - 1982
- Paramount ..... 1982 - 1988
- Rancho Palos Verdes ..... 1973 - 1978
- Rolling Hills ..... 1973 - 1978, 1985 - 1993
- Rolling Hills Estates ..... 1973 - 1978, 1984 - 1991
- San Marcos 1981
- Santa Ana ..... 1978 - 1981
- Westlake Village ..... 1983 - 1994

During these assignments, Tom has supervised City staff and directed other consultants including traffic engineers and transportation planners, traffic signal and street lighting personnel, and signing, striping, and marking crews. He has secured over $5 million in grant funding for various improvements. He has managed and directed many traffic and transportation studies and projects. While serving these communities, he has personally conducted investigations of hundreds of citizen requests for various traffic control devices. Tom has also successfully presented numerous engineering reports at City Council, Planning Commission, and Traffic Commission meetings in these and other municipalities.

In his service to the City of Indio since May 2005, Tom has accomplished the following:

- Oversaw preparation and adoption of the Circulation Element Update of the General Plan including development of Year 2035 buildout traffic volumes, revised and simplified arterial roadway cross sections, and reduction in acceptable Level of Service criteria under certain constraints. Reviewed Riverside County's updated traffic model for consistency with the adopted City of Indio Circulation Plan.

- Oversaw preparation of fact sheets/design exceptions to reduce shoulder widths on Jackson Street over I-10 as well as justifications for protected-permissive left turn phasing at I-10 on-ramps, the first such installation in Caltrans District 8 in Riverside County; reviewed plans and provided assistance during construction of a $1.5 million project to install traffic signals and widen three of four ramps at the I-10/Jackson Street Interchange under a Caltrans encroachment permit.

- Oversaw preparation of fact sheets/design exceptions to reduce shoulder widths on Monroe Street over I-10 as well as striping plans to install left turn lanes on Monroe Street at the I-10 Interchange under a Caltrans encroachment permit; reviewed plans to install traffic signals and widen three of four ramps at the I-10/Monroe Street Interchange.

- Reviewed traffic impact analyses for Project Study Reports evaluating different alternatives for buildout improvement of the I-10 Interchanges at Jefferson Street, Monroe Street, Jackson Street and Golf Center Parkway.

- Oversaw preparation of plans, specifications, and contract documents and provided construction assistance for over 40 traffic signal installations and modifications.

- Reviewed and approved over 600 work area traffic control plans as well as signing and striping plans for all City and developer funded roadway improvement projects.

- Oversaw preparation of a City wide traffic safety study of conditions at all schools.

- Prepared over 500 work orders directing City forces to install, modify, and/or remove traffic signs, pavement and curb markings, and roadway striping.

- Oversaw preparation of engineering and traffic surveys to establish enforceable speed limits on over 200 street segments.

- Reviewed and approved traffic impact studies for more than 25 major developments.

- Developed the Golf Cart Transportation Program and administrative procedures; implemented routes forming the initial baseline system.

Since forming Tom Brohard and Associates in 2000, Tom has reviewed many traffic impact reports and environmental documents for various development projects. He has provided expert witness services and also prepared traffic studies for public agencies and private sector clients.

Tom Brohard and Associates

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

18 May 2012

Mr. John Farrow
M.R. Wolfe & Associates
49 Geary Street, Suite 200
San Francisco CA 94108

RE: Proposed Walmart Market at 2480 Whipple Road, Hayward

Dear Mr. Farrow:

At your request Autumn Wind Associates, Inc. has reviewed the air quality impacts related to the proposal to locate a Walmart Market at 2480 Whipple Road in Hayward. We understand that the proposed project would be a supermarket of approximately 34,000 square feet, located in a building previously permitted for use by a Circuit City.

No CEQA review has been undertaken of the current Walmart proposal, although the City of Hayward did adopt a mitigated negative declaration in 2004 when it granted a conditional use permit to the Circuit City use.

The City of Hayward's Development Services Director David Rizk explained in a January 19, 2012 letter that the proposed Walmart use was consistent with the conditional use permit granted to the Circuit City in 2004. This conclusion was based in part on the assumption that the Walmart use is consistent with the Circuit City use in terms of environmental impacts and that it would not cause any impacts warranting additional CEQA review. Mr. Rizk's letter discussed the differences in traffic impacts attributable to the Circuit City use and the Walmart use. However, the letter did not discuss air quality impacts.

In fact, the air quality impacts associated with the Walmart use would be much more intense than the impacts associated with the Circuit City use. The Walmart use would clearly make a considerable contribution to two cumulatively significant impacts, which were not identified in

the Circuit City mitigated negative declaration. First, the Walmart use would generate substantial levels of toxic air contaminants from delivery trucks, transport refrigeration units, and customer diesel vehicles. These levels would be much higher than the levels associated with the Circuit City use because of the greater volumes of delivery and customer traffic. Second, the Walmart use would generate substantial levels of greenhouse gas, which again would be much higher than the levels associated with the Circuit City use and for the same reasons.

I. Project-Specific Impacts From Toxic Air Contaminants

Diesel emissions are emitted by large heavy-duty diesel truck engines and trailer refrigeration units (TRU) that would daily serve or visit the Walmart project, along with Walmart customers' diesel vehicles; these emissions contain toxic air contaminants and would add to already higher-than average ambient concentrations of inhalable carcinogens in the area of the project (discussed below). Diesel particulate matter contains a wide array of carcinogenic substances and was declared a toxic air contaminant (TAC) by the California Air Resources Board (CARB) in 1998. Diesel emissions represent ~78% of the total inhalable cancer risk in outdoor air from all hazardous air pollutants combined, based on U.S. Environmental Protection Agency (EPA) data.[1] Diesel particulate matter (DPM) has been calculated to represent more than 70% of all ambient air-related cancer risk in California.[2] The California Air Resources Board (CARB) identified diesel exhaust particulate matter (PM) as a toxic air contaminant based on its potential to cause cancer, premature death, and other health problems.

Air toxic control measures developed by CARB have been and continue to be difficult and expensive to implement, costing tens of millions of dollars to protect public health. EPA estimates that a $100 million voluntary diesel retrofit program would create $2 billion in health benefits from reduced premature deaths, hospital visits, and other costs associated with diesel emissions exposure.[3] For Californians, attaining the standards for PM in California would annually prevent about 6,500 premature deaths, or 3 percent of all deaths. These premature

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1 Environmental Defense Fund; "Diesel Cancer Risk Dwarfs All Other Air Toxics Combined"; July 2001; http://www.edf.org/news/diesel-cancer-risk-dwarfs-all-other-air-toxics-combined.

2 MATES-II Study, SCAQMD; http://www.aqmd.gov/news1/2005/MATESIIIFactSheet.html.

3 West Coast Collaborative website: FAQs http://www.westcoastcollaborative.org/faq.htm.

deaths shorten lives by an average of 14 years, roughly equivalent to the same number of deaths (4,200 – 7,400) linked to second-hand smoke in the year 2000.[4]

In addition to diesel emissions from delivery trucks and customer diesel vehicles, the Walmart project would generate diesel emissions from transport refrigeration units (TRUs). TRUs are diesel-powered units mounted on delivery trucks serving grocery stores. Grocery operations would typically require that at least half of the delivery trucks employ TRUs.[5] Emissions from these units are substantial because they tend to operate either intermittently or continuously during the entire time that a delivery vehicle is on site. A health risk analysis of TACs from TRUs may typically assume that the units run 50% of the time.[6] Delivery trucks may dwell on-site from 90 to 120 minutes to unload.[7]

Emissions from TRUs may be a more significant source of TAC emissions than the engines from the delivery trucks themselves. For example, in a Walmart project in Porterville diesel particulate emissions from TRUs exceeds the emissions from delivery vehicles – even though the grocery sales component of the project is only a portion of the overall project.[8] Non-delivery truck trips to the project, e.g., customer diesel vehicles, are also a source of TAC emissions. Data on diesel-powered vehicle emissions can be obtained through URBEMIS, the emissions evaluation software tool used to evaluate the project's air quality impacts.

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4 "Recent Research Findings: Health Effects of Particulate Matter and Ozone Air Pollution," Air Resources Board and American Lung Association, January 2004, http://www.arb.ca.gov/research/health/fs/PM-03fs.pdf.

5 See, e.g., City of Porterville, Riverwalk Marketplace II Revised Draft EIR, February 2011, Appendix 5.1(c), Health Risk Assessment, pg. 9, available at http://www.ci.porterville.ca.us/depts/CommunityDevelopment/RiverwalkMarketplacePhaseIIDraftEIR.cfm. Note that the Riverwalk Marketplace project is for a 161,602 square foot Walmart project that would include only a 24,964 square foot grocery store component with a 9,289 sq. ft. grocery support area. Id. at ES-3. Since the general merchandise sale area would not require TRU deliveries, the fact that half of the total deliveries are assumed to require TRUs indicates that a grocery-only business would likely employ an even greater proportion of TRU deliveries.

6 Id., Appendix 5.1(c), Health Risk Assessment, pg. 9.

7 See City of Vallejo, Vallejo Winco Foods project EIR, March 2011, p. 190, available at http://www.ci.vallejo.ca.us/GovSite/default.asp?serviceID1=842&Frame=L1.

8 Id., pg. 12, Table 3.

The Bay Area Air Quality Management District (BAAQMD) has provided guidance for assessing the health risk from TACs.[9] BAAQMD, like many other California air districts, has adopted a threshold of significance for project-related TAC emissions of 10 incremental cancers per one million persons.[10] Toxic air emissions from the Walmart use from these three sources – delivery trucks, TRUs, and customer diesel vehicles – may cause incremental cancers in excess of that threshold.

The 2004 mitigated negative declaration did not evaluate health risks from the TACs attributable to the Circuit City use. Given the relatively small volume of traffic and delivery trucks from the Circuit City use, this omission may not have failed to disclose a significant impact. However, the Walmart use would materially increase diesel emissions over the levels generated by the Circuit City use for three reasons. First, the number of weekly truck deliveries would substantially increase due to the higher turnover in supermarket merchandise than electronics merchandise. Truck deliveries to support a 34,000 square foot supermarket may be approximately 75 per week.[11] Second, the Walmart use would include TRUs, which would not have been used by Circuit City because it did not sell perishables. Third, Walmart customer diesel trips would increase in proportion to customer trips. We understand that Walmart would more than double customer trips, increasing average daily trips from 1,531 to 3,476.[12] For these reasons, a health risk assessment is warranted to determine if the project, by itself, would cause a significant impact from TACs.

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9 BAAQMD, CEQA Guidelines, May 2011, pp. 5-7 to 5-8, available at http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines%20May%202011.ashx?la=en.

10 Id., p. 5-3.

11 This estimate is based on the proposed Walmart supermarket's 34,000 square foot floor space compared to the 71,393 square foot Vallejo Winco project, which would require 150 to 160 deliveries per week. See City of Vallejo, Vallejo Winco Foods project EIR, March 2011, p. 190, available at http://www.ci.vallejo.ca.us/GovSite/default.asp?serviceID1=842&Frame=L1.

12 Tom Brohard, letter to John Farrow, Walmart Traffic Impacts at Circuit City Site, 2480 Whipple Road, Hayward, April 30, 2012.

II. Cumulative Toxic Air Contaminant Impacts

CEQA calls for a cumulative impact assessment where there is a potential that impacts that are not individually significant may nonetheless constitute a considerable contribution to a significant cumulative impact. CEQA recognizes that individually minor project-specific impacts may represent considerable contributions to significant cumulative impacts, and thus warrant mitigation. BAAQMD CEQA guidance provides that cumulative TAC impacts are significant when the cancer risk from combined sources within 1,000 feet of a proposed project exceeds 100 excess cancers in one million persons.[13] Here, the cumulative effects of the I-880 freeway and the proposed Walmart use on sensitive residential receptors adjacent to the project are clearly significant. This cumulative impact was not identified in the Circuit City mitigated negative declaration.

BAAQMD CEQA guidance identifies a data source and software for determining cancer risks for Bay Area major roadways, including the I-880 freeway.[14] Cancer risks at progressively greater distances from TAC-emitting major roadways and stationary sources are made available by the District.[15] The I-880 freeway is located less than 140 feet from the proposed Walmart building. Residential receptors on Mifflin Avenue directly south of the proposed Walmart building are as close as 25 feet from the I-880 freeway and vary from 285 feet to 491 feet from the proposed Walmart building.

Based on the BAAQMD data sets, the incremental cancer risk from I-880 for the receptor closest to the freeway is 137 excess cancers per one million persons, which is cumulatively significant. The Walmart use would contribute to an increased cumulatively significant risk because its TAC emissions would accumulate with those from I-880. Even if the project-specific Walmart TAC risk were individually minor (not individually significant because its health risk estimate would be below 10 excess cancers per million), it would appear to represent a considerable contribution

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13 BAAQMD, CEQA Guidelines, May 2011, p. 5-15, available at http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines%20May%202011.ashx?la=en

14 Id., p. pg. 5-12.

15 BAAQMD, "Highway Screening Analysis Tool". See "Alameda-6ft" file; http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES/Tools-and-Methodology.aspx

to the significant cumulative risk for residents located at the southwestern terminus of Mifflin Avenue. Cancer risks for the other houses on Mifflin attributable to the I-880 freeway would be somewhat reduced as they grow progressively further in distance from I-880. However, these houses would be closer to the Walmart project, which would correspondingly increase cumulatively considerable TAC health risks attributable to the Walmart project.

We note that TAC impacts have been a recognized community health issue,[16] with unusually high health risks to those along the I-880 corridor in Hayward. For example, the California Air Resources Board mapping data indicates that the 2010 excess cancer risk from airborne toxics in Hayward along the I-880 corridor is between 250 and 500 per one million.[17] This mapping data includes area sources in addition to the I-880 TACs. Furthermore, in its CARE program, BAAQMD has identified five Bay Area communities that are subject to severe TAC risk levels. The proposed Walmart site is just south of the boundaries of the Western Alameda County Impacted Community identified by BAAQMD.[18] BAAQMD's CARE program mapping data indicates that the I-880 corridor in the Hayward area experiences excess cancers due to TACs of from 600-800 in one million.[19]

In view of the substantially elevated cumulative TAC levels, the proposed Walmart project's incremental TAC emissions must be recognized as a considerable contribution to a significant cumulative impact. Again, Walmart's TAC impact is substantially greater than that of the Circuit City use.

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16 See BAAQMD CEQA Guidance issued December 1999, p. 47; "high volume highway" identified as a source of significant diesel emissions

17 CARB, San Jose-South Bay Region 2010 Cancer Risk Per Million for Northern California; Diesel and Non-Diesel Toxic Air Contaminants; "Cancer Inhalation Risk: Local Trend Maps," available at http://www.arb.ca.gov/ch/communities/hlthrisk/cncrinhl/rskmapvwtrend.htm

18 BAAQMD, CEQA Guidelines, May 2011, p. 5-4, available at http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines%20May%202011.ashx?la=enId.

19 BAAQMD, Applied Method for Developing Polygon Boundaries for CARE Impacted Communities, Technical Memorandum, December 2009, p. 4, available at http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CARE%20Program/Documents/ImpactedCommunitiesMethodsMemo.ashx

III. Greenhouse Gases

Greenhouse gas (GHG) emissions contribute to global climate change, which is a cumulative impact of undoubted significance. Both AB 97 and CEQA Guidelines mandate that agencies determine the extent and significance of project GHG emissions. The proposed Walmart use would generate GHG emissions primarily through mobile sources, but also as a result of electrical generation, solid waste management, and water conveyance. It would also generate substantially more mobile source emissions than the Circuit City use since it would generate more than twice as many trips, use more electrical energy (e.g., for refrigeration), require more water (e.g., for produce processing, cooking, cleaning, etc.) and generate more solid waste (e.g., packaging). No information is found in the WalMart's documents for hours of operation; however, a 24-hour/day operation would increase GHGs considerably beyond those expected from the Circuit City land use operating less hours per day.

Although the 2004 mitigated negative declaration did not find that Circuit City GHG emissions would be significant, the GHG emissions associated with the Walmart use would be significant. Under the BAAQMD CEQA guidance, GHG emissions from a supermarket use should be evaluated for significance if that use exceeds 8,000 square feet screening guideline.[20] At 34,000 square feet, the proposed Walmart use easily exceeds this significance screening level.

BAAQMD guidance has determined a threshold of significance for GHG impacts based on a sophisticated "gap analysis." In this analysis, BAAQMD has calculated the necessary fair share of emission reductions that must be attained by land use projects, in addition to the reductions from anticipated regulations under AB 32. BAAQMD conducted an extensive analysis of the gap between state actions to reduce emissions identified in the AB 32 Scoping Plan and the need for local government to further reduce emissions from land use driven sectors in order to meet AB 32 goals.[21] Critically, this analysis determines what additional reductions are necessary from local the land use permitting in addition to reductions from anticipated AB 32 regulations – all in order to ensure that AB 32 goals are met. BAAQMD then applied this gap percentage to emissions

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[20] BAAQMD, CEQA Guidelines, May 2011, p. 3-2, available at http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines%20May%202011.ashx?la=en.

[21] Id., Appendix D, pp. D13-29, and Exhibit G.

projected from land use driven sectors in the region to determine the additional tons of emission reductions that must be attained through mitigation conditions on land use projects. Finally, BAAQMD determined a threshold of significance that would ensure that these reductions are attained: a bright-line numeric threshold of 1,100 metric ons per year.[22]

Because the City has not provided estimates or an evaluation of the significance of potential CO2e emissions for the WalMart project, we calculated them using both the URBEMIS modeling software and the more refined BAAQMD's BMG CO2e calculator. Based on the model outputs we have determined that the Walmart project would generate well in excess of the 1,100 tons per year threshold. Calculations were performed using the standard ITE trip rate for a supermarket land use, with a store size of 34,000 square feet. URBEMIS returned an estimate of 4315.54 tons of CO2 per year. The BAAQMD's BMG program more accurately estimates a prospective land use's CO2e emissions than the older, less sophisticated URBEMIS program. Use of the same inputs noted above in the BMG program yielded an annual estimate of 4692 tons. While the City has provided no information on pass-by trip rate reductions for the project, use of the BMG's default pass-by rate resulted in an estimate of 2938 CO2e tons per year. In either case, and regardless of which model was used, our estimates reflect the GHG emissions from the proposed Walmart use would be significant.

In sum, the Walmart use would involve substantially more diesel delivery trucks, many with TRUs, and would more than double customer trips compared to the Circuit City use. Accordingly, the Walmart use would make a considerable contribution to cumulatively significant TAC and GHG impacts. In addition, project-specific TAC emissions from the Walmart use may be significant by themselves. These impacts would be substantially more severe than the impacts from the Circuit City use.

If you have any questions regarding these comments, please feel free to contact me.

Sincerely,

Greg Gilbert

22 Id., p. 2-2.

Professional History

Greg Gilbert has consulted on air quality land use planning and mobile source issues and projects to private and public clients since forming Autumn Wind Associates in 2001. Previously, he was marketing director for a specialty emissions catalyst manufacturer.

Between 1990 and 2000 Mr. Gilbert worked in two California air agencies, most recently as project manager in the Mobile Source Division of the Sacramento Metropolitan Air Quality Management District. While at the SMAQMD, Mr. Gilbert was responsible for implementing the District's heavy-duty vehicle low-emission incentive program that would later serve as a model for creation of the statewide Moyer Program. Air agency experience included evaluating land use-related air quality emission impacts and control strategies, developing CEQA mitigations and updating CEQA guidance, and creation of the first in-lieu air quality CEQA mitigation fee program.

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

Assistant Opened Project is Hayward WM grocery

File

Output for Operational Annual Unmitigated

1 of 2 100% Find Next

Page: 1

5/8/2012 7:18:13 PM

Urbemis 2007 Version 9.2.4

Detail Report for Annual Operational Unmitigated Emissions (Tons/Year)

File Name: C:\Users\Greg\AppData\Roaming\Urbemis\Version9a\Projects\WM grocery Hayward 2012.urb924

Project Name: Hayward WM grocery

Project Location: Bay Area Air District

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

Off-Road Vehicle Emissions Based on: OFFROAD2007

OPERATIONAL EMISSION ESTIMATES (Annual Tons Per Year, Unmitigated)

Source	ROG	NOX	CO	SO2	PM10	PM25	CO2
Supermarket	3.58	5.12	45.55	0.04	0.40	0.24	4,315.54
TOTALS (tons/year, unmitigated)	3.58	5.12	45.55	0.04	0.40	0.24	4,315.54

Does not include correction for passby trips

Does not include double counting adjustment for internal trips

Analysis Year: 2012 Season: Annual

Emfac: Version : Emfac2007 V2.3 Nov 1 2006

Summary of Land Uses

Land Use Type	Acreage	Trip Rate	Unit Type	No. Units	Total Trips	Total VMT
Supermarket		102.24	1000 sq ft	34.00	3,476.16	25,699.25
					3,476.16	25,699.25

From: Katy Ramirez
Sent: Tuesday, May 22, 2012 2:22 PM
To: Richard Patenaude (City of Hayward)
Subject: FW: NO ON WALMART

Hi Richard,

I interpreted the voice mail message received and will add to the incoming correspondence in opposition of the project.

Hi, Jerry Becker here; I want to vote a no on this Walmart mess. I don't know how you go about getting this vote wherever it needs to go but would appreciate it. Thank you.

From: Richard Patenaude
Sent: Tuesday, May 22, 2012 1:47 PM
To: David Rizk
Cc: Katy Ramirez
Subject: NO ON WALMART

From: Microsoft Exchange **On Behalf Of** xxxxxxxxxx
Sent: Tuesday, May 22, 2012 1:45 PM
To: Richard Patenaude
Subject: Voice Mail from xxxxxxxxxx (17 seconds)

You received a voice mail from xxxxxxxxxx

From: [redacted]
Sent: Tuesday, May 22, 2012 2:04 PM
To: CityClerk
Subject: Wal-Mart

We would like to enter 2 NO votes to planned Wal-Mart on Whipple Road.

thank
you,

Jerry Becker and Valdea Becker

Your Senior Hayward Neighbors seek your support and your help:

To ask the Hayward City Council to approve the Walmart Market at the closed Circuit City on Whipple Ave. at Industrial Pkwy. in Hayward

Lucky
Safeway
Food Max
Fresh + Easy
Walmart
Costco
Smart + Final
Target
Food Source
Sherez Mkt
Mi Pueblo

Tuesday
May 22, 2012
7:00 p.m.

City Council Chambers
777 B Street, 2nd Floor

Need a ride, have questions?
Call Jerry (510) 783-5780

Please attend

Spanish Ranch 1, Hayward, CA 94545

PRSRT STD
U.S. POSTAGE
PAID
HAYWARD, CA
PERMIT NO. 2

Why?! when we have so many markets to choose from! should we choose to have 1 more -!! - it doesn't make sense to have so many mkts in this area!!

*********************AUTO**5-DIGIT 94544
Spanish Ranch 2 Neighbors
[redacted]

Sorry but I can not support another Market - There are at least 10-12 in my area alone!

Printed on Recycled Paper

Your participation is vital for the seniors to have this new economical shopping source

How to Support Hayward Walmart Market 05/22/12 12:12 CK

- **Send an Email** – Email the city at List-Mayor-Council@hayward-ca.gov

- **Send a Letter** – Write your Mayor & City Council at City of Hayward, City Hall Building, 777 B Street, Hayward, CA 94541

- **Attend the Council Hearing**
  Fill out a speaker card and speak *in favor* of the proposed Walmart Market.
  Hearing is Tuesday, May 22nd at 7 p.m.
  City Hall in the Council Chambers, 777 B Street in Hayward, 2nd Floor.

- **Talk to friends and neighbors**, encourage them, do all of the above!

Need a ride on Tuesday night? Call (510) 783-5780

Each citizen, and especially senior citizens on a fixed income, should be entitled to and able to shop where they desire for their best bargains without the interference or dictation of another, especially their elected officials. Denying this use is such interference.

Please attend

05/22/2012 10:51 AM

May 21,2012
Mayor Sweeny
City Council

Dear Mayor and City Council,

I am encouraging you to vote no on the proposed Walmart Grocery Pharmacy store at the vacant Circuit City facility. Since there is a Walmart Grocery Pharmacy around the corner on Dyer St this will cause more congestion to an already heavy congested Whipple Rd. There are several grocery stores in the area ,including Target, which has a Pharmacy.
Thank you for your attention to this matter.

Sincerely,
Tony Francek
[redacted]
Continental Mobile Home Park

cc: Mayor, City Council,
City Manager, and
Dept. _____
Rec'd: 5/21/12 mi

05/21/12 10:[illegible]

Mayor Mike Sweeny
Hayward City Council
777 B St.
Hayward , Ca. 94541

Dear Mayor Sweeny and City council :

In Reply to the post card I received regarding the hearing about Hayward Walmart Market,. on Tuesday May 22nd at 7:00 PM. I am sorry I cannot attend. . I would like to say I do not approve of a Walmart Market going into that vacant facility. I would like to address my concerns and will list them below.

#1-There is a Walmart with groceries and a pharmacy around the corner on Dyer St.
#2-There is a Food Maxx Complete Grocery Store on Industrial Blvd. and they have very reasonable price s.
#3-Smart & Final and Lucky's both, complete groceries are on DyerSt.
#4 -Target is across the street from the Circuit City vacant lot and they have groceries and a pharmacy.
#5-Congestion is already bad on Whipple Road and you can imagine how this will add to the ongoing problem.
#6-Walmart, has a poor pay and benefit program.
#7-The owner of the vacant facility lives in Seattle and is not concerned about Hayward.
#8-I have not found Walmart to be more reasonable on some of their products than other grocery stores.
#9-I do not see that elected officials are interfering or dictating to people where they may shop as the the post card indicated. The people have several desirable places to choose from as listed.

Thank you for your attention to my concerns.
Sincerely,

Twanna Rogers

Twanna Rogers

[redacted]

P.S. Martha Grace ask that I include her in my concerns. Martha also lives in the Continental Mobile Home Park.

Martha Grace

CC Hayward City Council

From: [redacted]
Sent: Monday, May 21, 2012 11:48 AM
To: List-Mayor-Council
Subject: Proposed WalMart Market

As a registered voter in this area, and having been requested to voice my opinion on the proposed Walmart Market in the old Circuit City store, I am so doing at this time:

I am opposed to ANY MORE WALMARTS anywhere in Hayward and/or Union City and/or anywhere else for that matter. One Walmart is one too many ... any more is an outrage. How about a Trader Joe's next to the COSTCO on that lovely empty lot? Now THAT would give us all access to healthier and fresher food than another store full of pre-packaged and unhealthy foods for "seniors". I'm sure my opinion will be cast aside as it is not apparently what Walmart wants to hear, but we need to start classing **up** the area ... and this isn't the direction to take to achieve that goal.

Sandi Halberstadt
New England Village Resident (i.e., seniors!!)
Democrat

From: Patricia Little [redacted]
Sent: Monday, May 21, 2012 11:28 AM
To: List-Mayor-Council
Subject: Wal-Mart food store

Dear Honorable Mayor and City Council Members
I am writing to ask you to please not allow the development of a Wal-Mart store in the old Circuit building on Whipple ave. We need a store to upgrade Hayward not down grade. A Wal-Mart food store will bring a certain class of people from other cities and more crime. I think a Trader Joes , Crete and Barrel , Big lots or whole foods would be a better choice. We have

enough Wal-marts in the area. We need a good business that will better Hayward. Please stick to your original decision to ban this project and vote no . Thank you

Patty Little

From: Access Hayward [mailto:noreply@user.govoutreach.com]
Sent: Monday, May 21, 2012 8:07 AM
To: Cecelia Cooke
Subject: City of Hayward: You have been assigned a new Request #: 32190

Request # 32190 from the Government Outreach System has been assigned to you.

Request type: Question

Request area: Send a Comment to the Mayor and City Council

Citizen name: Judy Allen-Rodgers

Description: Dear Honorable Mayor and City Council Members,
I am sure you have received many requests, both for and against the proposal to allow the development of a Walmart Food store in the old Circuit City building on Whipple Ave here in Hayward. I strongly feel that it is a bad idea. The traffic in that area, (already very congested), would be horrendous if a large "super-Walmart" were put in there. Personally I do not like Walmart companies for their unfair employee policies and imported goods from China and elsewhere. Also, I come from a strong "pro-union" family, as my father worked for many years in the grocery business, and when he died unexpectedly, the Union took very good care of his widow, my mother! Walmart does not adhere to a Union, as far as I know. I am not
opposed to another, smaller, community-friendly grocery store, because Hayward, and especially this part of Hayward, needs a good grocery store! A Trader Joe's, or Fresh & Easy, or better yet, my favorite, Whole Foods store would be a better match for this area. We need to "upgrade" this part of Hayward! A cheap Walmart store selling cheap food, imported from Asia, with employees making minimal wages is not what this city needs! I am all for more jobs in Hayward, by Hayward citizens! I am afraid that Walmart will employ from within its own ranks and bar the nearby residents who badly need local jobs during this economy! We NEED good businesses that really care and will help the Community of Hayward!
Thank you for reviewing my suggestion on this matter, and I just want to say that I am very, very proud of this current Council working for improving the City of Hayward, and especially the Honorable Mayor!
Thank you for all you do!
South Hayward Resident
Judy Allen-Rodgers

Expected Close Date: 06/05/2012

May 18, 2012

To: Hayward City Council
City Council Chambers
777 "B" Street 2nd floor
Hayward, Ca
94541

M. Gomez
[redacted]
Senior citizen
taxpayer

cc: Mayor, City Council,
City Manager and
Dept. _____
Fwd: 5/21/2012 ml

05/21/12 10:12 AM

City Council:

This short letter is to ask that you DO NOT approve the WALMART MARKET at the closed CIRCUIT CITY on Whipple Ave. at Industrial Pkwy in Hayward.

Why a WALMART grocery? why not a smaller, unknown (non-corporate) type market? with fresher, locally grown (California) produce, deli, bakery, meat/fish products???

There are already enough WALMART sites in our general area.

Thank you,
M. Gomez