

# Johnson & Sedlack

A T T O R N E Y S at L A W

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Planning Commission  
c/o City Clerk  
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## VIA US MAIL AND EMAIL

**RE: Wildomar Walmart Project (Planning Application No. 13-0086), EIR (SCH # 2014011014), Agenda Item No. 2.1**

To the Planning Commission of the City of Wildomar:

The following comments are submitted on behalf of local residents opposing certification of the Final Environmental Impact Report for, and approval of, the Wildomar Wal-Mart project located south of Bundy Canyon Road and west of Monte Vista Drive in the City of Wildomar. We submitted comments previously on the Draft EIR, and re-state those comments as if set forth in full herein.

In addition, we submit that additional analysis and mitigation is required under the California Environmental Quality Act (CEQA), for the following reasons, and ask that the Planning Commission recommend denial of this Project.

## FAILURE TO RESPOND TO COMMENTS AND REVISE THE EIR

CEQA requires that the final EIR provide a good faith, reasoned analysis in response to comments made on the draft EIR raising environmental issues. (Guidelines § 15088 (c).) The Response may take the form of revisions to the draft EIR, making changes to the text of the draft, and/or be provided in a separate section of the final EIR. (Guidelines § 15088(d))

The Final EIR here fails to adequately respond to comments made or make a single revision to the draft EIR in response to comments. Several letters were received commenting on the substance of the draft EIR and raising concerns. These concerns were not addressed in good faith. Specific instances are addressed below.

The Final EIR states that changes have been made to the project, but fails to disclose the changes in the Final EIR Section 2 "Revisions and Errata Corrections". For instance, at p. 3-25 the Final EIR states, "Since the time that the Draft EIR was circulated for public review, the Applicant has

added a bus stop/turn-out on the Project site.” This information was not included in an updated project description or traffic portion of the EIR.

## **AIR QUALITY**

The EIR found that operational and cumulative air quality impacts would result from the Project. CEQA requires that all feasible mitigation be adopted to reduce the significant effects of a project. In our comments on the DEIR, we recommended some thirty (30) mitigation measures to reduce these air quality impacts, yet the responses to comments show none of these mitigation measures was considered or adopted. The Response instead cites the ruling in *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4<sup>th</sup> 1042 (“*SCOPE*”) to claim it need not consider this mitigation because of the large number of measures. The *SCOPE* case is, however, not on point where the letter from this firm recommended each of the mitigation measures and *did not state*, as in *SCOPE* that “not all measures would be appropriate for every project.” To the extent there is any question on this point, to reiterate: each of the mitigation measures recommended in our prior letter on the Draft EIR should be adopted for this Project.

The Responses claim no mitigation is available to reduce air quality impacts from mobile sources from Project customers. Not so. The City should require the Project install EV Fast/Quick Charge stations for 10% of its parking area provide preferential parking for carpools/vanpools for another 10% of the parking area in areas closest to Project entrances in order to encourage the use of zero emissions vehicles and carpooling. The Project could also be designed to be more pedestrian and bicycle friendly by providing clearly marked connections to surrounding areas and adjacent development and end of trip facilities for employees (e.g. bike lockers, showers). There should also be a clear and convenient pedestrian path from the store to the newly added bus stop. The Project can also work to off-set the emissions of mobile sources by installing sufficiently sized photovoltaic panels.

## **TRAFFIC**

Regarding traffic mitigation, our prior comments noted that traffic mitigation is uncertain and improperly deferred in violation of CEQA because the EIR provides new “fair share” programs will be established in the event that a particular measure does not fall under an existing fee-based program (see, DEIR p. 4.2-59). This represents uncertain mitigation. There is mention of the City’s DIF Program and the TUMF program, but no disclosure of which needed improvements will be covered by these programs.

The Response to Comments fails to either provide adequate mitigation, provide greater detail and disclosure in the EIR, or in good faith respond to the comment made. (Response JS-9) Our prior comment did not state that a fair share fee payment program *could not be* adequate mitigation, just that it *was not adequate here* where no there is no existing fair share program for some roadways, and where it is not shown that the TUMF or DIF programs will mitigate (and timely mitigate) for impacts to other impacted roadways. An assessment of fees is appropriate when linked to a specific mitigation program. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4<sup>th</sup> 1173, *Save our Peninsula Comm. v. Monterey County Bd. Of Supers.* (2001) 87

Cal.App.4<sup>th</sup> 99, 141.) Payment of fees is not adequate where there is no evidence mitigation will actually result. (*Gray v. County of Madera* (2008) 167 Cal.App.4<sup>th</sup> 1099,1122.) The assessment of fees here is inadequate as there is no evidence mitigation will actually result.

Commenter Paul Colmer expressed concerns that the Project would develop a raised median on Bundy Canyon Road which would prevent left turns from Cherry Street and Canyon Ranch Road onto Bundy Canyon. The Response states only that the “raised median” would not alter turns from these streets, but with no response as to why or how installing a raised median would not prevent these lefts. (Response PC-2) Absent something more, the response defies logic.

Mr. Colmer also commented that there may be traffic impacts development near the “Farm” begins. The Responses do not address cumulative impacts from construction of the Farm and this Project.

## **NOISE**

As previously commented, as to noise impacts, the analysis (Table 4.4-9) assumes that the “proposed” eight-foot high screen wall will be constructed. This wall must be made a mandatory requirement of the project in order to rely upon it in the calculation of noise impacts.

Noise also must be deemed significant during nighttime hours where Table 4.4-8 states that receptor R4 will experience nighttime noise at 47.8 dbA due to the project, and where this exceeds the adopted threshold of significance 45 dbA. As commented in our prior letter and also in comments received from Beryl Yasinovsky, mitigation for such impacts may include restricting project hours or at least truck/delivery hours.

## **HYDROLOGY/WATER QUALITY**

This is natural drainage occurring on the site. There is concern that with the project the drainage plan is incomplete or dependent on the development of the residential tract so that drainage issues have not been fully addressed for the project.

## **ALTERNATIVES**

The alternatives analysis fails to satisfy CEQA’s requirements. CEQA requires an EIR consider a “reasonable range” of project alternatives. The DEIR considers only one alternative beyond CEQA’s mandatory “no project” alternative. The evaluation of only one alternative apart from the no-project alternative is not a “reasonable” range of alternatives.

The no-project alternative does not meet the requirements for description and analysis of a “no project” alternative pursuant to CEQA Guidelines § 15162.2(e)(3)(B). The purpose of a “no project” alternative is to provide the circumstance under which the project does not proceed. (CEQA Guidelines § 15162.2(e)(3)(B).) Consideration of a “build” alternative in lieu of a “no build” alternative is improper unless the failure to proceed with the project will not result in preservation of existing environmental conditions. There is no evidence this is the case here, yet the EIR assumes the development of the site.

Moreover, the EIR does not assume “no project” would develop the site in keeping with the existing environmental setting, here with a zoning designation of Rural-Residential (R-R). (CEQA Guidelines § 15162.2(e)(3)(B).) Instead, the EIR assumes the site would be developed with residential uses and supporting amenities “not exceeding those permitted under the City’s R-2 Zone district.” The R-2 zone is much denser, multi-family residential uses not permitted in the R-R designation. (Compare, Wildomar Municipal Code §§ 17.16 and 17.36) The EIR thus violates CEQA by creating and analyzing a set of artificial assumptions, and not evaluating a practical or reasonable “no project alternative” describing what would happen under existing conditions if the project were not to proceed.

The Reduced Density Alternative does not actually reduce the density of the Wal-Mart but only the outparcel. An alternative that reduces the size or scope of the Wal-Mart store should be considered where it would reduce traffic, air quality, and noise impacts. The elimination of some element of the Wal-Mart, such as the grocery store component, may reduce traffic and mobile emissions while still meeting project objectives.

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

The statement of overriding considerations is unsupported by substantial evidence where there is no evidence the Project will have the benefits set out in the findings. Development of the Project and accomplishment of Project objectives are not in and of themselves “project benefits.”

The “project benefits” stated are self-serving, repetitive, and basically state that a Wal-Mart will be built near the freeway, providing jobs and tax revenue. The Findings and Statement of Overriding Considerations fail to show how the project will “achieve several benefits with regard to the goals and objectives of the City General Plan and to what extent Walmart will increase sales tax revenue for the City. There is no evidence supporting these claims.

There is also no evidence “The Project will be an asset to the local economy, providing job opportunities to Wildomar residents currently working in the relatively lower paying retail trade and hospitality industries.” Will the Project pay more than these other jobs?

#### **CONCLUSION**

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond W. Johnson", with a horizontal line extending to the right.

Raymond W. Johnson  
JOHNSON & SEDLACK