Attached is additional information (revised attachment to staff report) that was provided after the City Council Agenda Packets were distributed. This information pertains to:

<table>
<thead>
<tr>
<th>Agenda Item Number:</th>
<th>B-1 (Del Rio Road Commercial Area Specific Plan)</th>
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<tbody>
<tr>
<td>Description:</td>
<td>Attachment 22 – Comments submitted to City Council</td>
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<tr>
<td></td>
<td>1. 6/11/12 - Julie Clark letter</td>
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<td></td>
<td>2. 6/19/12 - Regina Crippen email</td>
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<td>3. 6/20/12 - David Broadwater letter</td>
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<td>5. 6/23/12 - Len Colamarino email</td>
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<td>6. 6/23/12 - John Daly email</td>
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<td>7. 6/24/12 - John Goers email</td>
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<tr>
<td></td>
<td>8. 6/25/12 - Hardy Nielsen letter</td>
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City Council Meeting Date: June 26, 2011
The following letters were submitted to the City of Atascadero prior to the City Council hearing on June 26, 2012. Although the California Environmental Quality Act (CEQA) does not require written responses for comments received after the close of the EIR’s public comment period, the City has taken an additional measure to provide the following written responses to the comments as time permitted:

<table>
<thead>
<tr>
<th>Comment Author</th>
<th>Response Provided:</th>
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<tbody>
<tr>
<td>1. 6/11/12 - Julie Clark letter</td>
<td>Attached</td>
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<tr>
<td>2. 6/19/12 – Regina Crippen email</td>
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<tr>
<td>5. 6/23/12 – Len Colamarino email</td>
<td>Attached</td>
</tr>
<tr>
<td>6. 6/23/12 – John Daly email</td>
<td>Comments noted – no response</td>
</tr>
<tr>
<td>7. 6/24/12 – John Goers email</td>
<td>Attached</td>
</tr>
<tr>
<td>8. 6/25/12 – Hardy Nielsen letter</td>
<td>Attached</td>
</tr>
</tbody>
</table>
Julie Clark  
8795 San Gabriel Rd  
Atascadero, CA  93422  
805/466-7749  

June 11, 2012  

RE: Del Rio Road Commercial Area Specific Plan  

Atascadero City Council  
6907 El Camino Real  
Atascadero, CA  93422  

Members of the Atascadero City Council:

I attended the Atascadero Planning Commission Meeting of June 5, 2012, and read the following statement to the Commission during the Public Hearing of the Del Rio Road Commercial Area Specific Plan:

"I object to the revision of the Capitol Improvement Plan to benefit this project. The Santa Barbara Road interchange is dangerous and has been the site of many accidents. It is an immediate safety concern and should be immediately improved. The Santa Rosa Road interchange is insufficient to support existing usage by existing businesses and school traffic.

Do not revise the Capitol Improvement Plan and allocate resources to this project to the detriment of needed improvement to the dangerous Santa Barbara Road interchange and the excessively used Santa Rosa Road interchanges.

The Environmental Impact Report does not adequately address the impact to the community due to delaying improvements to Santa /Barbara Road and Santa Rosa Road interchanges. I urge the Commission to reject staff recommendations 1 and 12."

Council Members, the improvements to the Santa Barbara Road and the Santa Rosa Road interchanges are needed now. The improvements to the Del Rio and San Anselmo interchanges are wanted now. It is imperative that the City address its "needed" list before its "wanted" list. This would be true in any budget year, but is especially true when funds are limited.

I am not sure the City can legally borrow money from our wastewater treatment development fund to complete the improvements to the Del Rio Road and San Anselmo Road interchanges. But, if it can borrow the money for the improvements to the Del Rio Road and San Anselmo Road interchanges, then the borrowed money would better serve the people of Atascadero by improving the dangerous Santa Barbara Road and the over-capacity use of the Santa Rosa Road interchanges. Do not allow the existing dangerous conditions at Santa Barbara Road to remain unimproved in order to benefit new development at Del Rio Road.

Respectfully submitted,

[Signature]

Julie Clark  

CC: Atascadero Planning Commission
Memo

Date: June 25, 2012
To: Warren Frace, Community Development Director, City of Atascadero
From: Jason Brandman and Grant Gruber, Michael Brandman Associates
Subject: Del Rio Road Commercial Area Specific Plan – Clark Comments

Michael Brandman Associates (MBA) prepared this memo to address comments submitted by Julie Clark to the City of Atascadero on June 15, 2012 concerning the Del Rio Road Commercial Area Specific Plan.

Summary of Comments: Ms. Clark reiterated her oral testimony from the June 5 Planning Commission meeting in which she objected to revising the Capital Improvement Program to prioritize improvements at the US 101 / Del Rio Road interchange. She stated that the US 101 / Santa Barbara Road interchange is dangerous and the site of many accidents. Ms. Clark also stated that the US 101 / Santa Rosa Road interchange is insufficient to support existing business and school traffic. She stated that the Del Rio Road Commercial Area Specific Plan Environmental Impact Report (EIR) does not adequately address the impact at these two locations that would result from delaying the improvement.

Response: The California Environmental Quality Act (CEQA) requires that environmental documents evaluate the physical impact on the environment that would result from implementation of a project. The proposed project requires improvements to the US 101 / Del Rio Road interchange and, thus, the EIR evaluates the environmental impacts of those changes. The proposed project does not contemplate any changes to the US 101 / Santa Barbara Road or US 101 / Santa Rosa Road interchanges and, thus, there is no basis for the EIR to evaluate changes at those locations. Moreover, because both interchanges are located 5 miles to the south of the project site, the proposed project would not have any significant effects on operations or safety at either location. Thus, both interchanges are outside of the scope of the EIR’s analysis.

Regarding Ms. Clark’s claims that the EIR should have evaluated the impact of delaying improvements at those locations, CEQA Guidelines Section 15125 establishes that the “baseline” for evaluating environmental impacts are the physical conditions that exist at the time of Notice of Preparation (NOP) issuance. Thus, the baseline for evaluating changes to the environment is what actually exists on the ground; not a hypothetical condition of what might occur in the future without the project. Additionally, attempting to predict what improvements might be installed in the absence of the proposed project is inherently speculative and, thus, not appropriate pursuant to CEQA Guidelines Section 15145.

Finally, as noted on page 3.11-26 of the Partially Recirculated Draft EIR, the US 101 / Santa Barbara Road interchange improvements rank third on the list of priorities, while
the US 101 / Santa Rosa Road interchange improvements rank seventh (last). For comparison purposes, the US 101 / Del Rio Road interchange improvements rank fourth, just behind Santa Barbara and ahead of Santa Rosa. Thus, reprioritizing the Del Rio Road interchange improvements to rank first would only affect the Santa Barbara Road interchange; it would not alter the Santa Rosa Road interchange ranking. Regardless, the reprioritizing reflects the nexus between the proposed project and the need for the US 101 / Del Rio Road interchange improvements. Likewise, by not reprioritizing improvements, significant traffic impacts at the US 101 / Del Rio Road interchange may go unmitigated, which is contrary to CEQA principles.
Ms. Crippen,

The EIR for the project included the entire project as proposed by the applicant, which includes the housing. The traffic impact of the housing has been analyzed. The project actually reduces the amount of land zoned for residential. Overall, the project results in a reduction in the total number of allowable housing units in Atascadero.

Please let me know if you have any additional questions.

Marcia McClure Torgerson, C.M.C. | Assistant to the City Manager/City Clerk
6907 El Camino Real, Atascadero, CA 93422 | 805-470-3400 | FAX-805-470-3455
www.atascadero.org

From: Regina Crippen [mailto:rc1954@live.com]
Sent: Tuesday, June 19, 2012 2:30 PM
To: Marcia Torgerson; heather@atascaderonews.com
Subject: Walmart and the EIR

I'm for having a Walmart in Atascadero, but I'm not sure I like the idea of building more housing in the area. Has anybody performed a separate EIR on the impact this extra housing will cause Atascadero? There's many homes in the area that have not been sold. I don't think the Walmart decision and the over development of Atascadero should be place in the same basket. These should be separate, distinctive issues. Why is the planning commission tying these two entities together?

Regina Crippen, Atascadero, CA
Atascadero City Council;
Please find attached to this email my comments on 6-26-12 City Council Agenda Item B-1 (Wal-Mart/Annex).
Please avail yourselves of this information prior to your 6-26-12 public hearing and deliberations on this matter, and consider the burdens potentially placed on our town's businesses, homeowners, ratepayers and residents.

Because this is a 14-page document, I include the outline below to its contents to ease information absorption.

- **Focus – Transportation - DR/101 Interchange**

  WRONG (WAL-MART-ONLY) REQUIREMENTS APPLIED to PROJECT (WAL-MART/ANNEX)
  - Cost Estimate of Del-Rio Road / US 101 Interchange Improvements Obsolete, Unrealistic and Unreliable (page 3)
  - Cost Overrun Provisions Inadequate, Unjustified & Unproportional (page 4)
  - Restricted Funds used to Compensate for Revenue Shortfall (page 5)
  - Annex Blocked Until Reconstruction of DR/101 Interchange (page 6)
  - Increased Citywide Fees to Compensate for Revenue Loss (page 6)
  - Increased Fees on Other Projects in the Vicinity (page 7)
  - Shutdown of DR/101 Interchange After Wal-Mart Opening (page 7)
  - Lowering the Priority of Other Road Improvements (page 8)
  - Mitigation Cost Burden Shift (page 8)
  - Mitigation Construction Burden Shift (page 11)
  - Mitigation Completion Timing Shift (page 12)

References: (page 13)

David Broadwater
to: Atascadero City Council
       (via email - acknowledgement of receipt requested)

re: Wal-Mart/ Annex Project DEIR, PRDEIR & FEIR (Del Rio Road
       Commercial Area Specific Plan)
       • Focus – Transportation - DR/101 Interchange

date: 6-26-12

City Council;

These comments are based on an extensive examination of transportation-
related DEIR, PRDEIR and FEIR documents and Staff Reports, participation in a 5-9-
12 meeting with the Community Development and Public Works Directors, City/Cal-
Trans communications, and publicly available reports.

These comments focus on the mechanics and ramifications of the shifts in Del
Rio Road / US 101 (DR/101) interchange improvement cost and responsibility
burdens from the applicants to the City’s businesses, homeowners and ratepayers.
They also contain recommendations for accomplishing Specific Plan objectives
without subjecting the City’s resources and residents to unnecessary, unknown and
possibly huge risks.

These comments are submitted to be included in the record of the 6-26-12 City
Council meeting.

Del-Rio Road / US 101 (DR/101) Interchange Improvements

WRONG (WAL-MART-ONLY) REQUIREMENTS
APPLIED to PROJECT (WAL-MART/ANNEX)

City Staff is strongly recommending approval of the Wal-Mart/Annex project, and
emphatically against approval of the Wal-Mart-Only alternative. Therefore, Wal-
Mart/Annex project mitigations, conditions and considerations should be applied to
an approval of the Wal-Mart/Annex project.

Yet, the Council is advised not to do so, and to apply Wal-Mart-Only
requirements to the proposed Wal-Mart/Annex project. This is tantamount to trying
to shove a square peg into a round hole.

The potential financial and infrastructural risks and consequences of trying to
shove Wal-Mart-Only requirements into a Wal-Mart/Annex project are widespread
and significant. They deserve the Council’s serious consideration.

The primary descriptions and distinctions are outlined below.

Wal-Mart/Annex Project (DEIR)
       EIR analyzing the Wal-Mart/Annex project (DEIR) requires the applicants to:
       • Fund 100% of the cost of improving the interchange up front (subject to
         reimbursement for costs in excess of their fair share),
• Construct the necessary improvements and obtain permits from Cal-Trans to do so,
• Complete them prior to opening for business,
• Complete them simultaneously with the Del Rio Road / El Camino Real intersection improvements.

Wal-Mart-Only alternative (PRDEIR)

EIR analyzing the Wal-Mart-Only alternative (PRDEIR) requires:
• Wal-Mart to pay $1.3 million maximum for DR/101 costs,
• The Annex to pay $1.1 million maximum for DR/101 costs,
The City to:
• Pay 53% of DR/101 improvement total costs,
• Construct the necessary improvements and obtain Cal-Trans permits,
• Allow Wal-Mart to open prior to DR/101 reconstruction completion.
• Block any Annex store opening until after DR/101 reconstruction,
• Abandon simultaneous reconstruction of DR/101 interchange and DR/ECR intersection.

Insufficient rationale exists to justify applying Wal-Mart-Only alternative mitigations, conditions and considerations to the recommended Wal-Mart/Annex project. Sufficient evidence supports applying Wal-Mart/Annex requirements to that recommended project, and that, failing to do so could expose the City to significant and long-term risks.

Please see expanded analyses under the heading “Mitigation Cost, Construction and Timing Shifts” below.

Recommendations

The City Council should approve applying Wal-Mart/Annex requirements to the recommended Wal-Mart/Annex project, as specified below.

1. All project property owners / applicants (Wal-Mart, Rottman Group and Montecito Bank & Trust) will fund 100% of Del Rio Road / US 101 interchange improvements up front, subject to reimbursement for costs above their proportional share as funds become available.
2. Applicants will fund 100% of DR/101 reconstruction cost overruns, subject to reimbursement as described.
3. Applicants will be responsible to construct DR/101 improvements, and obtain Cal-Trans permits.
4. Completion of DR/101 improvements will occur prior to opening of any Wal-Mart/Annex business.
5. Completion of DR/101 interchange and DR/ECR intersection improvements will occur simultaneously.
WEAK FOUNDATION / CITY-WIDE RISKS & CONSEQUENCES

WEAK FOUNDATION

The recommendation to approve the Wal-Mart/Annex project with Wal-Mart-Only mitigations, conditions and considerations is based on a faulty foundation.

- Cost Estimate of Del-Rio Road / US 101 Interchange Improvements Obsolete, Unrealistic and Unreliable

The DEIR, PRDEIR and the City have repeatedly asserted that the Del Rio Road / US 101 interchange improvements will cost an estimated $4.5 million. This is not supported by facts.

This cost estimate is derived from a five-year old (2007) study by W-Trans in which roundabouts were estimated at $4.5 million and bridge widening was estimated at $8 to $11 million (see Master Response To Comments, page 2-17). These estimates are obsolete.

The City asserts that Cal-Trans supports roundabouts at the Del Rio Road / US 101 interchange citing two comment letters submitted by Cal-Trans on 3-18-11 and 4-30-12 (see Response to Written Comments, page 3-307). Examination of those comments demonstrates this assertion to be false. In fact, Cal-Trans wrote the City as long ago as 2-16-11 that “although the roundabouts are on the table, there is no guarantee yet, implied or otherwise, that this is THE solution... Caltrans has yet to really look at the details...” (see Response to Written Comments, page 3-297). The City’s assertion that Cal-Trans supports roundabouts is unrealistic and unfounded.

The DEIR, PRDEIR and the City have consistently neglected to analyze mitigations for the Del Rio Road / US 101 interchange other than roundabouts. The City attempts to justify its refusal to analyze alternative mitigations (e.g., bridge widening) by stating that mitigations are not “project characteristics... nor project objectives”, i.e., that mitigation alternative analysis is not required by, and is inconsistent with, CEQA (see Master Response To Comments, page 2-18). Applying this “logic” consistently would eliminate any analysis of roundabouts as a mitigation measure, which, obviously, has not occurred. This renders estimations of the potential costs of improving the Del Rio Road / US 101 interchange completely unreliable.

Additional uncertainty as to costs of this mitigation has been introduced by the City’s refusal to initiate discussions/negotiations with Cal-Trans regarding what design of the Del Rio Road / US 101 interchange Cal-Trans may ultimately approve. Since 3-2-11, the City has refused to submit a Project Initiation Form to Cal-Trans, as requested (see Response to Written Comments, page 3-297). The City’s justification for its refusal to do so is irrelevant compared to the physical consequences and financial obligations which may ensue for residents, the business community and taxpayers: an unspecified deposit and commitment to build the improvements (which the City is already proposing to assume) (see Response to Written Comments, page 3-307).

The analysis by the DEIR and PRDEIR and actions of the City have resulted in ignorance among decision-makers and the public as to the financial consequences
of mitigating the Del Rio Road / US 101 interchange and the funding arrangements being proposed.

To date, the DEIR, PRDEIR and City have failed to ensure that decision-makers and the public possess all the necessary information required to make informed decisions as to the costs and consequences of implementing mitigations to the Del Rio Road / US 101 interchange.

**Recommendations**
The City Council should take the following actions:

2. Initiate an analysis of the feasibility and expense of all alternative mitigations to the Del Rio Road / US 101 interchange.
3. Submit a Project Initiation Form to Cal-Trans beginning discussions regarding potential mitigations for the Del Rio Road / US 101 interchange.
4. Refer the project back to Staff to acquire a current and credible cost estimation of all Del Rio Road / US 101 interchange mitigation alternatives.

- **Cost Overrun Provisions Inadequate, Unjustified & Unproportional**
  The PRDEIR and City propose limiting the Wal-Mart contribution for Del Rio Road / US 101 interchange mitigation to $1.3 million (28.7% of $4.5 million). Given the fact that the $4.5 million estimate is obsolete, unrealistic and unreliable, and may be as much as, or more than, $11 million, the $1.3 million contribution is unsubstantiated and inadequate.

  City Staff’s proposed provision that the Wal-Mart obligation to pay for any cost overruns on Del Rio Road / US 101 interchange improvements be limited to $200,000 is inadequate and unjustified. City Staff reports that “Walmart has agreed to contribute an addition [sic] $200,000 to cover potential cost overruns... [to] cover Walmart’s share of a $696,864 cost overrun.” (see Planning Commission Staff Report, page 66), and is recommending adopting this as a Condition of Approval (see Planning Commission Staff Report, page 212, 20. b).

  Given the fact that the ultimate cost of Del Rio Road / US 101 interchange improvements may equal or exceed $11 million (2.4 times and $9.7 million more than $4.5 million), a less than $700,000 contribution is not commensurate with Wal-Mart’s potential financial impact.

  This proposed provision and the equation presented in footnote #8 on page 66 of the Planning Commission Staff Report represent a backwards computation from Wal-Mart’s reported agreement, not a computation based on potential and real cost overruns. The correct computation would apply Wal-Mart’s proportional share (28.7%) to the actual and eventual total cost of the Del Rio Road / US 101 interchange improvements.

**Recommendations**
The City Council should:

1. Reject application of dollar amount limits on Wal-Mart’s, and any applicant’s,
obligations for mitigations based on reported cost estimates for Del Rio Road / US 101 interchange improvements.

2. Apply all applicants’ proportional share percentages (not dollar amounts) to actual and eventual cost of the Del Rio Road / US 101 interchange improvements.

3. Modify Project Conditions to implement the above project mitigations and conditions of approval for the Del Rio Road / US 101 interchange, or refer the project back to Staff to acquire more information regarding the above mitigations and conditions of approval.

CITY-WIDE RISKS & CONSEQUENCES

- **Restricted Funds used to Compensate for Revenue Shortfall**

  The City first notified the public of its intent to use restricted funds for financing the Del Rio Road / US 101 interchange improvements (due to the lack of Wal-Mart funding) by informing the Chamber of Commerce on 4-17-12 that, “One option would be to borrow internally from another restricted City account that has a surplus.” (see Chamber of Commerce Business Reporter, May 2012, page 2, and 4-17-12 City letter to Chamber, page 8 [available from author of this letter]).

  The plan to use restricted sewer funds is further described in the Planning Commission Staff Report (see page 65, *emphasis* added):

  5. *City Funding Obligation*

     ... Del Rio Road / US 101 interchange...

     If the City encountered a funding *shortfall* due to the project phasing, the City could borrow from another City fund.

     The *Wastewater Fund* (Fund)... may be *available for loans*. ... cash that can be loaned... City’s *Circulation Impact Fee Fund* could *internally borrow* from the Wastewater Fund *cash account*....

  This indicates that the City is prepared to raid &/or encumber City accounts dedicated to crucial infrastructure necessities to compensate for revenue shortfalls for the Del Rio Road / US 101 interchange improvements. This increases the vulnerability of all City funds, whether the General Fund or restricted accounts, to unnecessary financial stress due to attempts to compensate for project mitigations and conditions of approval relieving applicants of the responsibility to fund Del Rio Road / US 101 interchange improvements.

  Furthermore, given current economic conditions with resulting slow downs in water supply and sewage connections and in commercial and residential building permits and traffic impact fees, the ability of the City to finance such internal loans is significantly restricted. Such arrangements could leave the City exposed to unwarranted risks.

  Finally, the money in the restricted sewer fund is rate-payer money, contributed by those connecting to the sewer system, and is exclusively dedicated to capital investment in that system for anticipated and unanticipated costs. The money in
other restricted funds is also publicly sourced and dedicated.

**Recommendations**

The City Council should:
1. Reject using the sewer, and any other, restricted fund to finance the Del Rio Road / UA 101 interchange improvements.
2. Require Wal-Mart/Annex project applicants to fully fund those improvements up front, subject to subsequent reimbursement.
3. Require that rate-payers of any restricted fund potentially used for this purpose be notified directly in writing of any such proposal prior to any decision to use such funds, providing the opportunity to comment, should the City elect to use any restricted fund for this purpose.

- **Annex Blocked Until Reconstruction of DR/101 Interchange**

Transportation mitigation measures MMTrans-1d and 1e specify that the northbound and southbound ramps of the Del Rio Road / US 101 interchange will be converted into roundabouts which “shall be in place no later than the issuance of the first certificate of occupancy for the Annex commercial uses.” (see, e.g., Statement of Overriding Considerations, page A-27).

This condition/mitigation means that no business at the Annex can open until after the Del Rio Road / US 101 interchange improvements are built. While this condition applied to the entire Wal-Mart/Annex project in the DEIR pertaining to that project, it only applies to the Annex in the proposed Staff recommendation. This would significantly hinder business development in the area defined as the Del Rio Road Commercial Area Specific Plan.

Due to the extended time period required to obtain Cal-Trans approval for, and to construct, the Del Rio Road / US 101 interchange improvements, this prohibition would likely greatly delay the sales and property tax revenue benefits expected from the Wal-Mart/Annex project.

Furthermore, it appears to place an unfair burden on the Annex exclusive of the Wal-Mart and other projects in the vicinity which are relieved of any such burden.

**Recommendations**

The City Council should:
1. Apply Wal-Mart/Annex mitigations and conditions equally on all project applicants and property owners.
2. Require Wal-Mart/Annex project applicants to fully fund the Del Rio Road / US 101 interchange improvements up front, subject to subsequent reimbursement, and complete construction prior to opening for business.

- **Increased Citywide Fees to Compensate for Revenue Loss**

The City asserts that the lack of funding from Wal-Mart for the Del Rio Road / US 101 Interchange improvements can be recouped by amending the citywide traffic impact fee program, stating that “the TIF program can be amended to account for increases in costs.” (see Master Response to Comments, page 2-17).
This would displace the burden of financing the Del Rio Road / US 101 interchange improvements from Wal-Mart/Annex property owners onto all businesses and homeowners in Atascadero. This would hinder the development of commercial and residential properties in the city, unnecessarily hindering the City Council’s strategic objective of economic development.

**Recommendations**
The City Council should:
1. Reject the possibility of increasing city-wide TIF program fees to finance Del Rio Road / US 101 interchange improvements.
2. Require Wal-Mart/Annex project applicants to fully fund the Del Rio Road / US 101 interchange improvements up front, subject to subsequent reimbursement, and complete construction prior to opening for business.

- **Increased Fees on Other Projects in the Vicinity**
The City asserts that the lack of funding from Wal-Mart for Del Rio Road / US 101 interchange improvements could be placed on “other planned and approved projects in the project vicinity... requires this as mitigation” (see Master Response to Comments, page 2-11).
   This would displace the financial burden of financing the Del Rio Road / US 101 interchange improvements onto commercial and residential projects in an undefined geographical area (“vicinity”) vaguely related to the Wal-Mart/Annex project.

**Recommendations**
The City Council should:
1. Reject the possibility of increasing vicinity-wide TIF program fees to finance Del Rio Road / US 101 interchange improvements.
2. Require Wal-Mart/Annex project applicants to fully fund the Del Rio Road / US 101 interchange improvements up front, subject to subsequent reimbursement, and complete construction prior to opening for business.

- **Shutdown of DR/101 Interchange After Wal-Mart Opening**
The estimated 1-year shutdown of the Del Rio Road / US 101 interchange for reconstruction will cause major impacts on traffic flow, whether completed prior to the opening of the Wal-Mart Supercenter or afterward. The PRDEIR is rather explicit as to the severity of the congestion and diversion of traffic to adjacent freeway interchanges, intersections and roads. It is readily apparent that reconstructing the Del Rio Road / US 101 interchange after the opening of the Wal-Mart Supercenter will cause much more massive and negative impacts to traffic flow than would rebuilding it prior to the opening of the Wal-Mart Supercenter.
   None of the mitigations to either the San Anselmo / US 101 or San Ramon / US 101 interchanges require the applicants to pay for them, displacing the costs onto the City.
Recommendations
The City Council should:
1. Reject shutting down the Del Rio Road / US 101 interchange after Wal-Mart traffic has been added to the volume.
2. Require Wal-Mart/Annex project applicants to fully fund the Del Rio Road / US 101 interchange improvements up front, subject to subsequent reimbursement, and complete construction prior to opening for business.

- Lowering the Priority of Other Road Improvements
  City Staff is proposing raising the Del Rio Road / US 101 interchange reconstruction to the top of the City’s list of Capital Improvement Plan projects, moving others further down. The first indication of this was in the aforementioned 4-17-12 City response to the Chamber of Commerce (available on request, emphasis added):
  “the City Council may consider amending the CIP to move the Del Rio Road / US 101 interchange up on the priority list. The priority of other projects on the list would be lowered as a result.”

The prioritization of the DR/101 interchange is further explained in the Planning Commission. The Del Rio Road and San Anselmo interchanges are proposed to be moved from #4 and #5 on the list to #1 and #2. The Traffic Way, Curbaril, Santa Barbara Road and Santa Rosa Road improvements are moved to a lower priority (see Planning Commission, page 63, 3. Capital Improvement Project Planning, and page 67, E. Update of the Five-Year Capital Improvement Plan, 2. Prioritization of the Del Rio Road / US 101 Interchange Project).
This reduces the ability of the City to improve levels of service on four major US 101 interchanges used by local residents. The delay of these improvements, due to the failure to require Wal-Mart/Annex applicants to pay for Del Rio Road / US 101 interchange improvements, unnecessarily burdens local residents with congestion and delay.

Recommendations
The City Council should:
1. Reject delaying crucial road infrastructure improvements to finance the Del Rio Road / US 101 interchange improvements.
2. Require Wal-Mart/Annex project applicants to fully fund the Del Rio Road / US 101 interchange improvements up front, subject to subsequent reimbursement, and complete construction prior to opening for business.

MITIGATION COST, CONSTRUCTION AND TIMING SHIFTS
The following comments are transcribed from the comments on the PRDEIR I submitted on 4-30-12, the recommendations are amended to incorporate information referenced above and included in FEIR-related documents.

- Mitigation Cost Burden Shift
History:
For years, Atascadero City officials and the general public have been assured that project applicants would fund the construction of two roundabouts at the Del Rio Road / US 101 interchange.

In 2005, City Manager Wade McKinney informed council member George Luna that, “Walmart is expecting to deal with the Del Rio interchange and pay impact fees.” in response to Luna’s question, “What will be the impact fees charged Walmart to upgrade the Del Rio interchange?” McKinney also wrote, “we are far short of the funds for an interchange” and that another SLO County city was likely to forego a road project, “freeing up another $17 million in COG money. We are going to be ready to vie for some of that.” (1)

In 2007, Wal-Mart attorney Ellen Berkowitz informed the council and public that project applicants would pay for the roundabouts in a power-point display stating, “Mitigation measures... will be funded by Applicant... traffic upgrades.” (2)

At the 6-14-11 City Council meeting, however, Wal-Mart switched its position. Wal-Mart attorney Berkowitz stated they would only pay a “fair share” of the costs ($1.7 million of an estimated $4.5 million) because corporate “finances are extremely tight”. (3)

DEIR – PRDEIR Changes:
The 2-2-11 DEIR assigns full responsibility to the project applicant to fund the Del Rio Road / US 101 roundabouts, and gives the City full discretion as to the applicant’s financial obligation for this mitigation (emphasis added) (4):
Del Rio Road/US 101 Northbound Ramps... Del Rio Road/US 101 Southbound Ramps

... the project applicant shall be responsible for funding these improvements. The City shall have the final determination of financial obligation in considering the traffic impact fees to be generated by the project and the cost of the improvements.

The 3-15-12 PRDEIR describes the scope and intensity of the project’s effects on local traffic as “significant and unavoidable”, cites applicant fees as a source of funding mitigations, uncertainties about implementing mitigation measures some of which are unavailable, and places the burden on the City to mitigate temporary congestion and delays (emphasis added) (5):

Executive Summary ...
Significant Unavoidable Adverse Impacts ...
• Existing Plus Project Traffic... Baseline Plus Project Traffic... Future Plus Project Traffic: The proposed project would generate vehicle trips that would contribute to unacceptable intersection, roadway, and freeway operations, and queuing deficiencies... Mitigation is proposed that would require the applicant to contribute fees to fund necessary improvements; however, there is uncertainty regarding actual implementation of the improvements. As such, the residual significance of this impact is significant and unavoidable.
• Short-Term Construction Traffic and Road Closures: The proposed project would generate short-term construction traffic and result in temporary road closures that would cause congestion and delays on surface streets in the project vicinity. Mitigation is proposed that would require the City to implement temporary measures to alleviate congestion and delays; however, feasible improvements are not available for all affected locations. As such, the residual significance of this impact is significant and unavoidable.

The PRDEIR, in contrast with the DEIR which placed full financial responsibility on the applicant, reduces that obligation to a so-called “proportional share” of about $1.3 million of the estimated $4.5 million cost of the roundabouts. This shifts at least a $3.2 million burden onto Atascadero business people and taxpayers, as costs escalate over time. The following PRDEIR excerpts exclude mention of the Annex due to the fact that the property is in foreclosure and up for auction, and the Rottman Group is being sued by one of its creditors for $6.2 million, as cited above, making it extremely unlikely the Annex will be built (emphasis added) (6).

“The Del Rio Road/ US 101 interchange roundabout improvement project is estimated to cost approximately $4,500,000...”

The RCS analysis determined that the Walmart project’s proportional share of the cost to construct the contemplated roundabout improvements is 28.7 percent or estimated at $1,292,798. ...

The City is committed to obtaining the remaining funds for the interchange roundabout improvements as soon as reasonably possible through the continued imposition of the City’s CIP and TIF program previously described.

The PRDEIR makes clear the lack of City funding for the roundabouts, the burden that will be placed on future businesses, and the uncertainty of future funding (emphasis added) (7).

Del Rio Road/US 101 Northbound Ramps... Del Rio Road/US 101 Southbound Ramps

This interchange is part of the City’s TIF program, but it is not currently funded....

Furthermore, the City cannot guarantee with certainty when the remainder of the traffic impact fee funding paid by future developers will be available. ... there is a reasonable expectation that these impacts will be mitigated through the TIF program in the future.

Recommendations:
In light of the facts that:
• The City has discretion over the amount the Wal-Mart/Annex project will be required to pay for the DR/101 improvements; and
• For seven years, the applicants have told the City that the Wal-Mart/Annex project would fund the DR/101 improvements; and
• The City lacks the funds for the potential cost to construct the DR/101 improvements, and certainty about when and if it will acquire them; and
• The City has acquired no information from Cal-Trans as to what construction alternative Cal-Trans will approve or what the ultimate cost will be;
The City Council should:
  1. Reject the, at least $3.2 million and potentially $8.6 million shift of financial burden from the applicants to onto the City’s business community homeowners or taxpayers.
  2. Require Wal-Mart/Annex project applicants to fully fund the Del Rio Road / US 101 interchange improvements up front, subject to subsequent reimbursement, and complete construction prior to opening for business.

• Mitigation Construction Burden Shift
  For years, Atascadero City officials and the general public have been assured that Wal-Mart and other project applicants would be responsible for constructing the two roundabouts at the Del Rio Road / US 101 interchange. The PRDEIR shifts that responsibility from Wal-Mart to the City.
  The DEIR placed complete and exclusive responsibility on the applicant to construct these roundabouts (emphasis added) (4).

Del Rio Road/US 101 Northbound Ramps... Del Rio Road/US 101 Southbound Ramps
  To mitigate this impact, the applicant shall convert the intersection to a single-lane modern roundabout. ...
  To mitigate this impact, the applicant shall construct a five-legged, single-lane modern roundabout that incorporates Ramona Road as the fifth approach.

The PRDEIR, however, shifts the full burden for constructing the roundabouts onto the City (emphasis added) (6 & 7).
  the City will agree to construct the Del Rio/US 101 interchange roundabout improvements... (page 3.11-29)
  the City shall convert the intersection to a single-lane modern roundabout. ...
  The City will construct this regional improvement ... (page 3.11-54)
  the City shall construct a five-legged, single-lane modern roundabout that incorporates Ramona Road as the fifth approach. ... The City will construct this regional improvement... (page 3.11-55)

Additionally, the PRDEIR shifts the responsibility for obtaining approval from Cal-Trans for the roundabouts from the applicant to the City. The DEIR placed this burden strictly on the applicant (emphasis added) (4).
  Del Rio Road/US 101 Northbound Ramps... Del Rio Road/US 101 Southbound Ramps
  Because the improvements are within Caltrans’s right-of- way, the project applicant will need to coordinate with Caltrans to gain its approvals for final design and implementation of the roundabouts.
The PRDEIR, however, places this burden on the City (emphasis added) (8).

The City of Atascadero understands that it is responsible for the design, permitting and construction of the Del Rio Road/US 101 interchange project... is committed to moving expeditiously to obtain permits and a construction schedule from Caltrans.

Recommendations:
The City Council should:
1. Reject the shifts in construction and permitting burdens of the DR/101 improvements from the applicants to onto the City’s business community homeowners or taxpayers.
2. Require Wal-Mart/Annex project applicants to fully fund the Del Rio Road / US 101 interchange improvements up front, subject to subsequent reimbursement, and complete construction prior to opening for business.

- Mitigation Completion Timing Shift

The DEIR established that these roundabouts would be completed before Wal-Mart would be allowed to open its store for business, and that doing so would reduce impacts to less than significant. (emphasis added) (4).

Del Rio Road/US 101 Northbound Ramps... Del Rio Road/US 101 Southbound Ramps

As noted previously, the interchange improvements should be completed before opening of the Walmart store and/or any substantial piece of the project... The improvements should be in place before opening of any part of the project to allow for acceptable operating conditions and minimizing impacts to the San Anselmo Road interchange to the south.

Del Rio Road/US 101 Northbound Ramps... Del Rio Road/US 101 Southbound Ramps

These improvements... would result in acceptable LOS A or B operation during all peak hours analyzed, reducing the impact to a level of less than significant.

The PRDEIR, however, shifts the timing of roundabout completion to an undetermined time in the future, abandons finishing them prior to Wal-mart opening for business. Failing to construct the roundabouts results in significant and unavoidable impacts (emphasis added) (6 & 7).

Further, based on the need for the roundabout improvements identified in the EIR, the City Council will consider ranking the interchange roundabout improvement project to first priority in the CIP in order to advance the timing of the construction of the improvements. This ranking will help ensure that TIF funds become available so that the contemplated interchange roundabout improvements will be constructed as soon as is reasonably feasible.

Del Rio Road/US 101 Northbound Ramps... Del Rio Road/US 101 Southbound Ramps

the City cannot assure with certainty that improvements will be in place prior to the opening of the Walmart store.
Del Rio Road/US 101 Northbound Ramps... Del Rio Road/US 101 Southbound Ramps
the City cannot guarantee... funding... will be available... the City cannot assure... improvements will be in place prior to the opening of the Walmart store. ... In view of this uncertainty, this analysis considers these impacts to be significant and unavoidable.

Recommendations:
The City Council should:
1. Reject this shift in timing of completion of DR/101 improvement construction.
2. Require Wal-Mart/Annex project applicants to fully fund the Del Rio Road / US 101 interchange improvements up front, subject to subsequent reimbursement, and complete construction prior to opening for business.

References:
1. Councilmember/City Manager 2005 Emails (emphasis added)
   -----Original Message-----
   From: George Luna [mailto:luna@XXXX]
   Sent: Tuesday, September 06, 2005 9:19 PM
   To: Wade McKinney
   Subject: $$ for interchanges
   How much developer money have we collected through impact fees for the upgrade of the interchanges (For example, the Dove Creek project and the Santa Barbara interchange). Are we ready to go with funding for PSRs on any of the interchanges other than 41/101? What will be the impact fees charged Walmart to upgrade the Del Rio interchange?
   George

   From: "Wade McKinney" <wmckinney@atascadero.org>
   Date: September 7, 2005 7:52:50 AM PDT
   To: "George Luna" <luna@XXXX>
   Subject: RE: $$ for interchanges
   Hi George,
   I met with Greg Albright of Cal Trans trying to work out a better, cheaper, faster way to do the PSR's and we are working on it. I don't know how much has been collected in the impact fees, although I know we are far short of the funds for an interchange. Walmart is expecting to deal with the Del Rio interchange and pay impact fees. I suspect we will get some meaningful improvements in that area. At last weeks City Manager's meeting Pismo City Manager, Kevin Rice mentioned that he thought the Pismo Council was likely to turn down the Price Street project freeing up another $17 million in COG money. We are going to be ready to vie for some of that.
   Wade
2. City Council minutes 10-23-07 (emphasis added)
http://www.atascadero.org/media/council/ca74dbeA-1att-
CCDraftMinutes102307.pdf
ITEM NUMBER: A-1
DATE: 12/11/07
CITY OF ATASCADERO CITY COUNCIL DRAFT MINUTES Tuesday, October 23, 2007 – 7:00 P.M.
...
City Council Meeting
10-23-07
B. MANAGEMENT REPORTS: 1. Staff Authorization to Process General Plan
Amendment Applications for: Wal-Mart Supercenter PLN 2007-1245 / GPA 2007-
0020 (Wal-Mart Stores, Inc.) and The Annex Shopping Center PLN 2007-1246 / 
GPA 2007-0021 (Rottman Group / EDA)
Transcript by DEB from AGP Video (slo-span) – traffic mitigation funding
...
• Mitigation measures will be identified and will be funded by Applicant.
  - Public improvements and traffic upgrades.
3. 6-14-11 Atascadero City Council meeting video (http://www.slo-
span.org/atas/atasc_meeting1.html).
4. DEIR, Section 3-11 Transportation, pages 3.11-63 & 64
(http://www.atascadero.org/files/CD/WalMart_Annex/DelRio_EIR_PDFs/3622000
1%20Sec03-11%20Transportation.pdf).
5. PRDEIR Executive Summary, pages ES-2 & 3
(http://www.atascadero.org/files/CD/Walmart_PDEIR/36220003%20Sec00-
6. PRDEIR, Section 3.11 – Transportation, page 3.11-29
(http://www.atascadero.org/files/CD/Walmart_PDEIR/36220003%20Sec03-
11%20Transportation.pdf).
7. PRDEIR, Section 3.11 – Transportation, pages 3.11-54, 55 & 56
(http://www.atascadero.org/files/CD/Walmart_PDEIR/36220003%20Sec03-
11%20Transportation.pdf).
8. PRDEIR, Appendix O: Revised Transportation Impact Analysis, page 16
(http://www.atascadero.org/files/CD/Walmart_PDEIR/App%200%20-
%20Revised%20Transportation%20Impact%20Analysis.pdf)
Date: June 25, 2012

To: Warren Frace, Community Development Director, City of Atascadero

From: Jason Brandman and Grant Gruber, Michael Brandman Associates

Subject: Del Rio Road Commercial Area Specific Plan – Broadwater Comments

Michael Brandman Associates (MBA) prepared this memo to address comments submitted by David Broadwater to the City of Atascadero on June 22, 2012 concerning the Del Rio Road Commercial Area Specific Plan.

1a. Comment: “Wrong (Walmart Only) Requirements Applied to Project (Walmart / Annex).” Mr. Broadwater reiterated a prior comment he made in his comments on the Partially Recirculated Draft EIR (PRDEIR) regarding the City requiring the “Walmart Only” traffic mitigation measures for the combined Walmart/Annex projects, but not all of the traffic mitigation measures.

1b. Response: As indicated in the Final EIR on page 3-306, the PRDEIR ultimately identifies the same traffic improvements for both the “Walmart Only” and “Proposed Project” (Walmart and Annex), which are reflected in Mitigation Measures TRANS-1a through TRANS-a. Although the US 101 / Del Rio Road interchange improvements are not necessary for the Walmart component in the near-term, they do become warranted over time and, therefore, both Walmart and Annex are required to contribute proportionate share fees to fund these improvements. Thus, Mr. Boardwater’s claims in this regard are factually incorrect.

2a. Comment: “Cost Estimate of Del Rio Road / US 101 Interchange Improvements Obsolete, Unrealistic, and Unreliable.” Mr. Broadwater reiterated a prior comment he made in his comments on the PRDEIR regarding the reliability of cost estimates of the interchange improvements, as well as a desire to study alternatives to roundabouts.

2b. Response: As indicated in the Final EIR on pages 2-15 through 2-17, the interchange improvement costs (approximately $4.5 million) were calculated in accordance with Caltrans guidance and include a 30 percent contingency factor. The final cost of the interchange improvements will be determined once Caltrans has reviewed and approved the final design and the project has been put out to bid, a process that is expected to take several years to complete. In sum, the cost estimates for the roundabouts are based upon the best available information at the time of this writing and will be refined further as the planning and design process progresses, provided that the project is approved. As such, there is no basis to require more detailed study of the improvement cost prior to City Council consideration of the project.
Regarding alternatives to roundabouts, this comment was previously addressed in the Final EIR on pages 2-17 and 2-18. To summarize, bridge widening at the US 101 / Del Rio Road interchange was previously studied and found to be more costly than roundabouts. Thus, the City Council determined roundabouts to be the preferred interchange improvement, which is reflected in the PRDEIR’s analysis.

3a. Comment: “Cost Overrun Provisions Inadequate, Unjustified, & Unproportional [sic].” Mr. Broadwater disputed various statements from the June 5 Planning Commission meeting Staff Report about contingencies in the event of cost overruns for the interchange improvements. He disagreed with the amount Walmart would contribute for cost overruns and asserted that Walmart’s share of cost overrun should be the same as the proportionate cost of the improvement.

3b. Response: The Staff Report’s discussion of cost overruns was intended to outline a potential approach for how this issue could be addressed if it were to occur. At the time of this writing, the planning process for interchange improvements is in the preliminary stages. No cost overruns have occurred at the time of this writing and the potential for overruns to occur will not be known until the planning and design process is further along. Additionally, as noted previously, the cost estimates include a 30 percent contingency factor. Thus, it would be premature and speculative to assert that cost overruns are likely.

4a. Comment: “Restricted Funds Used to Compensate for Revenue Shortfall.” Mr. Broadwater objected to borrowing funds from another City account (e.g., sewer) to fund traffic improvements on the grounds that it could expose the City to unwarranted risks.

4b. Response: In the interests of informed decision-making, the June 5 Planning Commission meeting Staff Report identified borrowing funds from another restricted City account as one option for funding the balance of the US 101 / Del Rio Road interchange improvements. It is anticipated that City staff will engage in more detailed investigation of potential funding sources for the balance of interchange improvements, with these options being presented to the City Council for consideration as part of a public hearing process. In sum, no decisions have been made regarding funding for the balance of the interchange improvements and, thus, it is premature to make any statements in this regard. Additionally, identification of the account from which the City may borrow funds is not an environmental impact but a matter of City policy. The comment will be forwarded to the decision-makers for their consideration.

5a. Comment: “Annex Blocked Until Reconstruction of [Del Rio] 101 Interchange.” Mr. Broadwater noted that the revised text of Mitigation Measures TRANS-1d and TRANS-1e require the US 101 / Del Rio Road interchange improvements to be in place prior to issuance of the first certificate of occupancy for the Annex commercial uses and objected on the grounds that it would delay the accrual of tax revenues to the City of Atascadero.

5b. Response: In its comments on the PRDEIR, Caltrans requested that the interchange improvements be completed prior to opening of the Annex commercial uses. In response, the City revised Mitigation Measures TRANS-1d and TRANS-1e to fulfill this request; refer to Final EIR pages 2-9 and 2-10. The Draft EIR disclosed that
the Walmart commercial uses would likely be developed first, with the Annex commercial uses being developed later. However, in the interests of providing a conservative “worst case” analysis, the document evaluated the concurrent development of both components; refer to page 2-70. Thus, the possibility of the Annex commercial uses being developed after the opening of the Walmart commercial uses has been disclosed from the outset.

6a. Comment: “Increased Citywide Fees to Compensate for Revenue Loss.” Mr. Broadwater cited a statement from the Final EIR about the ability of the City’s Transportation Impact Fee (TIF) program to be amended to account for increases in cost and asserted that this would shift the burden of funding the interchange improvements from the project applicants to Atascadero businesses and homeowners.

6b. Response: The Final EIR statement cited by Mr. Broadwater does state or imply that the burden of funding the interchange improvements would be shifted from the project applicants to Atascadero businesses and homeowners. To the contrary, the Final EIR statement in question sought to address concerns raised by Mr. Broadwater and others regarding the potential for estimated improvement costs to change and noted that such costs changes can be accounted for by the TIF program.

More importantly, as discussed on pages 2-16 and 2-17 of the Final EIR, the TIF program collects fees from new development projects for the specific purpose of implementing traffic improvements. TIF funds are not a tax imposed on the general public and are held in a separate account from the City’s General Fund. Thus, neither the general public nor homeowners would bear the costs of any increases in interchange improvement costs.

7a. Comment: “Increased Fees on Other Projects in the Vicinity.” Similar to his prior comment, Mr. Broadwater claimed that the interchange improvements costs would be shifted to other commercial and residential projects “in an undefined geographic area” that are “vaguely related” to the proposed project.

7b. Response: As disclosed in the Final EIR on pages 2-8 and 2-9, Mitigation Measures TRANS-1d and TRANS-1e require the payment of a special TIF for the specific purpose of improving the US 101 / Del Rio Road interchange in addition to the standard TIF (i.e., two TIF fees would be imposed on the Walmart and Annex projects). In other words, this special TIF would apply only to the Walmart and the Annex properties and would be in addition to the standard TIF that applies to all development projects in Atascadero. As such, no other commercial and residential projects would be obligated to pay the special TIF; they would simply pay the standard TIF. Although TIF collected from other projects may be applied to the US 101 / Del Rio Road interchange improvements, this is permissible and consistent with the purpose and intent of the program, particularly for regional traffic improvements that will be used by the general public.

8a. Comment: “Shutdown of [Del Rio]/101 Interchange After Walmart Opening.” Mr. Broadwater stated that the estimated “1-year” shutdown of the US 101 / Del Rio Road interchange would have significant traffic congestion impacts on roadways in the vicinity of the project site. He also asserted that the applicant is not obligated to pay
for any of the required improvements at the US 101 / San Anselmo Road or US 101 / San Ramon Road interchanges, resulting in the costs of these improvements being shifted to the City.

8b. Response: The PRDEIR stated on page 3.11-125 that the US 101 / Del Rio Road interchange improvements would require a 6- to 12-month construction period. This is considered a “worst case” estimate and was the basis for evaluating traffic impacts during the interim closure of the interchange. Details about the duration of interchange closure will be further defined as the planning and design process progresses. Furthermore, to minimize disruptions to nearby businesses and residents, the City intends to explore the possibility of limiting interchange closure to off-peak times. Thus, a 12-month uninterrupted closure of the US 101 / Del Rio Road interchange would be unlikely.

Regarding Mr. Broadwater’s statements about the proposed project not contributing towards needed improvements at the US 101 / San Anselmo Road or US 101 / San Ramon Road interchanges, this is incorrect. As stated on PRDEIR page 3.11-112, the proposed project would contribute to unacceptable operations at the US 101 / San Anselmo Road and, therefore, is required to contribute proportionate share fees for traffic signal improvements. As for the US 101 / San Ramon Road Interchange, the project is not expected to contribute a significant percentage of trips to this facility because of the proximity of the US 101 / Del Rio Road interchange. Therefore, no significant impacts would occur at this location and no mitigation is necessary.

9a. Comment: “Lowering the Priority of Other Road Improvements.” Mr. Broadwater objected to reprioritizing the US 101 / Del Rio Road improvements to rank ahead of Traffic Way, Curbail Avenue, Santa Barbara Road, and Santa Rosa Road interchange improvements, asserting that this would unnecessarily burden local residents and businesses with congestion and delay.

9b. Response: Reprioritizing the US 101 / Del Rio Road improvements to rank ahead of the Traffic Way, Curbail Avenue, and Santa Barbara Road interchange improvements reflects the nexus between the proposed project and the need for the interchange improvements at this location. Likewise, by not reprioritizing improvements, significant traffic impacts at the US 101 / Del Rio Road interchange may go unmitigated, which is contrary to CEQA principles.

Note that the Del Rio Road interchange improvements currently rank ahead of the Santa Rosa Road interchange improvements, a condition that would remain unchanged by the reprioritization.

10a. Comment: “Mitigation Cost Burden Shift.” Mr. Broadwater reiterated a prior comment he made in his comments on the PRDEIR objecting to the project applicants’ obligation to provide their proportionate share for the US 101 / Del Rio Road interchange improvements. Mr. Broadwater restated his prior position that the project applicants should be required to pay the full cost of the improvements.

10b. Response: As stated in the Final EIR on pages 2-6 through 2-15, requiring the project applicants to provide their proportionate shares of the interchange


improvements reflects CEQA requirements that concern "rough proportionality" between the severity of impacts and the cost of mitigation. Moreover, the City cannot legally require the project applicants to provide the full cost of the improvements, as the cost is disproportionate to the severity of the impact caused by the proposed project.

11a. Comment: "Mitigation Construction Burden Shift." Mr. Broadwater reiterated a prior comment he made in his comments on the PRDEIR regarding the City of Atascadero being responsible for implementing the interchange improvements. Mr. Broadwater restated his prior position that the project applicants should be required to install the improvements.

11b. Response: As stated in the Final EIR on page 2-15, the City of Atascadero is the most appropriate entity to install the US 101 / Del Rio Road interchange improvements, as the project applicants would only be contributing proportionate shares for the cost of the improvements. Furthermore, given the extensive planning and coordination that will be required to undertake the improvements (e.g., securing of funds, coordination with Caltrans, coordination with surrounding property owners, etc.), the City of Atascadero is the most appropriate party to facilitate this process.

12a. Comment: "Mitigation Completion Timing Shift." Mr. Broadwater reiterated a prior comment he made in his comments on the PRDEIR regarding the timing of all three Del Rio Road roundabouts. Mr. Broadwater restated his prior position that all three roundabouts should be installed prior to opening of Walmart.

12b. Response: As stated in the Final EIR on page 2-18, the Del Rio Road / El Camino Real roundabout is a required opening day improvement for the Walmart store and, and therefore, will be place prior to store opening. The US 101 / Del Rio Road interchange roundabouts are not necessary to achieve acceptable levels of service on opening day and, thus, are not required to be installed at that time. During the interim period between Walmart store opening and completion of the US 101 / Del Rio Road interchange improvements, Del Rio Road between the interchange and El Camino Real is anticipated to operate at acceptable levels of service. Thus, there is no basis to require that all three roundabouts be installed prior to occupancy of the Walmart store.
June 22, 2012

Via Fax and E-mail
Acknowledgement of Receipt Requested

Mayor Bob Kelly and Members of the City Council
City of Atascadero
c/o City Clerk, Marcia McClure Torgerson
6907 El Camino Real
Atascadero, CA 93422
Email: mtorgerson@atascadero.org
Fax: (805) 470-3419

Re: Del Rio Road Commercial Area Specific Plan

Dear Mayor Kelly and Councilmembers:

This letter is submitted on behalf of client Save Atascadero, an unincorporated association of Atascadero citizens, property owners, and electors. Save Atascadero previously submitted comments on the Revised Draft EIR (“RDEIR”) for the above-referenced Wal-Mart Supercenter/Annex Shopping Center project (“Project”), as well as additional written comments to the Planning Commission via letter dated June 4, 2012. We incorporate the contents of those submittals by reference here. For the reasons that follow, we urge the City Council to take no action to certify the Final EIR (“FEIR”) and/or approve the Project until such time as the analytic deficiencies we have identified in the FEIR, as previously described and as summarized below, are corrected. As will be explained, the responses to our and others’ comments in the FEIR do not provide the requisite degree of information and analysis to constitute meaningful disclosure of the Project’s potentially significant environmental impacts under CEQA.

A. The City May Not Approve A General Plan Amendment With Significant Unavoidable Impacts

As you likely know, the Atascadero General Plan 2025 requires that the City find that any proposed General Plan amendment “will not create any new significant and unavoidable impacts to traffic, infrastructure, or public services.” General Plan, p. II-53. The Project here includes a General Plan amendment. The FEIR acknowledges that the Project will result in significant and unavoidable impacts to traffic at Del Rio Road between El Camino Real and Ramona Road (deficient segment level of service). FEIR, pp. 2-11 to 2-12, Table 2-3. The proposed CEQA Findings contained in the staff report acknowledge significant and unavoidable traffic impacts under baseline conditions, future
conditions, and cumulative conditions. Findings, pp. A-128, 129, 140, 141, 142. These include significant and unavoidable impacts to the San Anselmo Road/US 101 Northbound Ramps, the San Anselmo Road/US 101 Southbound Ramps, and the Del Rio Road segment between El Camino Real and Ramona.

The EIR and Findings both acknowledge several reasons for finding these impacts unavoidably significant. These include lack of jurisdiction to implement improvements, lack of available right of way, and the City’s inability to ensure that funding will be available for necessary improvements. Id.; RDEIR, pp. 3.11-90, 3.11-114. Although the EIR and Findings imply that the sole reason for finding impacts unavoidably significant is the uncertain \textit{timeliness} of the necessary improvements, the fact that the City lacks either the necessary jurisdiction or right of way creates a real possibility that these impacts will never be mitigated.\footnote{One reason that right of way may not be under the City’s control is that the City has chosen to substitute roundabouts for the previously planned roadway and bridge widening projects, which do not require as much space.}

Despite the General Plan’s express, mandatory requirement that the City find no new significant and unavoidable impacts in approving a General Plan amendment, the DEIR’s General Plan consistency analysis claims that the Project is consistent, arguing that impacts would be mitigated after the improvements were constructed. RDEIR, p. 3.8-28. The RDEIR states that the conclusion that impacts would be unavoidable was made from an “abundance of caution,” “which reflects the legal principles that underpin CEQA and not necessarily the traffic conditions that will occur in the future.” \textit{Id.}

The proposed General Plan Amendment resolution takes another tack, dismissing these acknowledged significant and unavoidable impacts “for the purpose of general plan consistency analysis” because “these are not considered new impacts.” City Council Staff Report, pp. 138-139. The proposed resolution claims the General Plan EIR found that the Project’s impacts would occur under 2025 conditions but that interchange improvements were available to fully mitigate these impacts.

We do not believe this claim is founded. Accordingly, we consulted Tom Brohard, P.E., a traffic engineer with decades of experience acting as the traffic engineer for several California cities, to review the 2025 General Plan, its associated EIR, and the Findings made for that EIR. Mr. Brohard’s review, which accompanies this letter, makes clear that the 2025 General Plan did \textit{not} identify significant and unavoidable impacts to the Del Rio Road segment between El Camino Real and Ramona Road. The General Plan EIR does project some deficient levels of service for roadway segments at US 101 interchanges by 2025, but these projections are for different interchanges (e.g., Traffic Way, Curbail Avenue). However, both the General Plan and the General Plan EIR specifically found that the Del Rio roadway segment would experience acceptable service levels (LOS A or B) in 2025 – without any mitigation at all. It is simply not true that the
General Plan EIR identified an unavoidably significant impact at the Del Rio Road segment at issue here.

Mr. Brohard also explains that the General Plan EIR and Findings conclude that feasible, adopted mitigation would reduce intersection level of service impacts due to projected traffic at San Anselmo Road and the US 101 Northbound and Southbound ramps to less-than-significant levels. Again, this finding is inconsistent with the claim that the impacts at issue here had been previously identified as unavoidably significant.

There accordingly is insufficient basis for the City to make a key finding necessary to approve a General Plan amendment, namely that the Project will not create any new unavoidably significant impacts.

B. The EIR Fails To Disclose The Uncertainty Of Traffic Mitigation And Improperly Assumes Delaying the Annex Resolves Any Uncertainty

The RDEIR acknowledges that impacts to the Del Rio/US 101 intersections would remain unavoidably significant for four reasons:

1. Lack of jurisdiction over these Caltrans intersections
2. Uncertainty regarding right-of-way acquisition from third parties
3. Fact that the necessary improvements are not programmed into an actual plan for mitigation
4. Fact that payment of fair share fees will not guarantee timely construction of the roundabouts. RDEIR, pp. 3.11-58, 90, 114.

The FEIR adds a condition to Mitigation Measures TRANS-1d and TRANS-1e that the Annex portion of the Project cannot be occupied until the roundabouts are built. Based on that condition alone, the FEIR alters the RDEIR’s conclusions, and finds that impacts will be less than significant. FEIR, pp. 2-12, 5-8 to 5-17. In effect, the FEIR pieces the Project into two separate projects, Walmart and the Annex, and then imposes a mitigation condition on the Annex portion, completion of the roundabouts, that the RDEIR found infeasible. On that basis it concludes that impacts are less than significant.

In sum, the RDEIR identifies four problems that require a finding that the Del Rio/US 101 impacts must be found unavoidably significant. The FEIR does not solve those problems. Instead, it simply assumes that some solution will be found before the Annex portion of the Project is constructed.

CEQA does not permit an approach to mitigation that simply conditions a project on finding some solution to an admittedly significant impact in the future. In *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 195 the lead agency identified as mitigation for a specific plan a requirement that construction beyond an initial increment could not proceed until a water supply had been provided. The court
rejected this piecemeal approach and held that “[i]t is not mitigation of a significant environmental impact to say that if the impact is not addressed then the project will not be built.” *Id.* at 205. Yet this is precisely what the EIR proposes here.

C. The EIR Does Not Provide An Analysis Of Cumulative Toxic Air Contaminants, And It Failed To Provide Adequate Responses To Requests For Information Related To This Issue

The RDEIR’s sole analysis of the potential human health impacts of toxic air contaminants (“TACs”) is the so-called “Type A” analysis, which purports to assess the effect of Project-related TACs on nearby residents. The RDEIR references, but does not provide, a “Type B” analysis, which is supposed to assess TAC impacts of bringing new receptors into contact with existing TAC sources. The referenced Type B analysis was reportedly prepared by the San Luis Obispo Air Pollution Control District to assess the effects of US 101, a gas station, and the Project-related TACs on the residential component of the Project. FEIR, comment APCD1.-24. Regardless, the RDEIR does not contain an analysis of the cumulative impacts of toxic air contaminants.

In our comments on the RDEIR, we requested that the City make the Air District’s Type B analysis available for public review. FEIR, comment Wolfe-11. We also objected that the EIR did not evaluate the cumulative effect of TACs on sensitive receptors in the Project vicinity. FEIR, comment Wolfe-12. In response, the FEIR reported that the missing Type B analysis itself constitutes the cumulative analysis, but then refused to provide it. We repeated our objection that the information had been withheld in our June 4, 2012 comments to the Planning Commission. Now, just a few days before the City Council hearing, the staff report finally includes a Type B analysis, although not the analysis cited by the Air District and the RDEIR.

Because the information related to cumulative TACs was withheld, we asked air quality specialist Greg Gilbert to review the EIR’s analysis of TACs. Mr. Gilbert is an air quality expert with over 20 years of experience with California air districts and air quality consulting. In the course of Mr. Gilbert’s review, the City Council staff report belatedly provided a Type B analysis. Mr. Gilbert’s enclosed comments explain that this Type B analysis is fundamentally flawed and, in any event, cannot substitute for an adequate analysis of cumulative impacts under CEQA. As he explains, the fundamental problems with calling the Type B analysis a cumulative impact analysis is that it ignores off-site receptors and off-site generation of TACs by project traffic. It also fails to include foreseeable future development other than the Project, which will generate additional TACs.

In addition to the defects identified by Mr. Gilbert, we note that the EIR does not identify or justify a geographic scope of analysis for a cumulative analysis of TACs. There can be no justification for limiting the scope of analysis to impacts to on-site Project residents or to limiting the sources of impacts to existing traffic on US 101 and on-site TAC emissions.
Furthermore, even if the belated Type B analysis did serve as an analysis of the Project’s cumulative TAC impacts – it does not – it was not included in the DEIR, the RDEIR, or the FEIR, despite repeated requests. The public was denied any meaningful opportunity to comment, and the FEIR failed to provide reasoned, good faith responses to our comments.

Mr. Gilbert explains that the cumulative TAC exposure levels experienced by residents located between the Project and US 101 exceed any reasonable threshold for significant cumulative impacts. His analysis is based on the data in the belated Type B analysis itself, which shows that receptors closer to roadways will experience elevated TACs compared to the receptors on the project site, who are located almost 1000 feet from US 101. His analysis also points out that the DEIR acknowledges that existing TAC emissions in Atascadero already exceed the threshold the Air District uses for its Type B analysis. Finally, Mr. Gilbert observes that since the Project contributes a major portion of the traffic on these roadways, and since it also contributes emissions from on-site vehicle use, it will make a considerable contribution to cumulatively significant TAC impacts.

Mr. Gilbert also explains that TACs from the operation of traffic roundabouts on Del Rio Road required by Mitigation Measures TRANS-1d and TRANS-1e would contribute to significant cumulative impacts. Since a major portion of the traffic on these roundabouts is Project-related, it is clear that the Project, through these roundabouts, will make a considerable contribution to the cumulatively significant TAC impact.

In addition, the EIR’s Type A analysis simply ignored the effects of off-site Project traffic. Since Project traffic will be concentrated at the roundabouts and other off-site roadways, this omission renders the Type A analysis inadequate as well. There can be no confidence that the Type A analysis identified the maximally exposed receptor since it did not look at off-site emissions.

In sum, the analysis of TACs must be revised to address these errors and the EIR must be recirculated for public review and comment.

D. Construction Noise Increases Will Be Significant

As Save Atascadero objected in a letter to the Planning Commission, the RDEIR identifies but does not apply two independent thresholds of significance for construction noise impacts. The RDEIR states that construction noise would be significant if either: (1) it exceeds an absolute threshold of 70 dBA Leq, or (2) it constitutes a substantial temporary increase in noise. The RDEIR concludes that there will be no significant impact because the noise is less than 70 dBA Leq, but simply does not consider whether the increase, which will exceed 24 dBA for some residents, is a significant increase.

Because our concerns were not addressed by the Planning Commission, we asked a credentialed noise expert, Derek Watry, to review this issue. Mr. Watry explains that a
noise increase of this magnitude is a substantial increase by any measure. The City Council staff report response is entirely disingenuous on this point. Essentially, the staff report says the increase is not significant because it does not exceed 70 dBA Leq and will not occur at night. This ignores the fact that an increase may be substantial even if it does not result in a threshold being exceeded and that the EIR announces that it will apply the substantial increase test as an independent criteria of significance.

E. The FEIR Misleadingly Responded To Comments Requesting Noise Data, And The Requested Data Demonstrate That The Project Causes Noise To Exceed The Stated 60 dBA Ldn/CNEL Threshold of Significance

The RDEIR states that noise impacts are significant if the Project causes noise to increase above 60 dBA Ldn/CNEL at outdoor activity areas. This significance criterion was based on General Plan standards. The RDEIR presents noise levels after mitigation in tabular form that identifies the noise level only for a single point for each residence. The RDEIR implies that this noise levels were determined at the façades of the houses rather than at the outdoor activity areas.

Because we were concerned that the RDEIR’s analysis failed to evaluate noise at outdoor activity areas and that noise levels at these areas were significant even after mitigation, we asked in comments on the RDEIR that the City provide graphic noise contour data for post-mitigation noise levels. We noted that graphic noise contour data was provided through the SoundPlan software that was used to model noise for other scenarios. The FEIR’s response to our request was to deny that the City was obliged to provide the requested data, citing the CEQA Guidelines. FEIR, p. 3-474, response to Wolfe-31. We reiterated our request for this data in our June 4, 2012 comments to the Planning Commission.

Finally, the City Council staff report acknowledged in a memo prepared by the EIR preparer that the data we had requested was actually contained in the RDEIR as Exhibits 3.9-7 and 3.9-8. Staff Report, p. LC-16. Thus, the FEIR response was disingenuous and misleading. It would have been a simple matter to explain that the information we sought was available in the RDEIR, instead of misleading us by denying that the City was obliged to provide it. And, as Mr. Watry explains, the information in Exhibits 3.9-7 and 3.9-8 does demonstrate that, after mitigation, the Project will cause noise levels above the threshold of significance for the outdoor activity area of at least one affected residence. The FEIR’s misleading response obscured this fact.

Both the FEIR response and the staff report claim that SoundPlan’s graphic noise contour lines are less accurate than the tabular data generated from point receivers in the SoundPlan software. This claim was used by the FEIR to justify its refusal to provide (or simply to identify) the noise contour data we requested. The claim was again used in the EIR preparer’s memo in the staff report to justify the EIR’s exclusive reliance on point sources at residential façades to determine significance. The claim is not true.
As Mr. Watry shows, there is no meaningful difference in the accuracy of the lines generated by SoundPlan to depict graphic noise contour data and the points generated by SoundPlan to determine noise levels at a particular receiver location. His demonstration is based on his discussion with the SoundPlan company’s U.S. representative, an acoustician, trainer, and license administrator for the company. Mr. Watry also points out that the EIR preparer’s memo in the staff report purports to quote the CEQA Guidelines for the proposition that noise contour data is inherently unreliable. Not only is the quote not from the CEQA Guidelines, but it is so dated (at least from 1998, and probably from the mid-1980s) that it does not represent the “present state of the art” that it claims to represent. Furthermore, any defects in the modeling of noise contour lines would also be shared by the modeling of noise receptor points.

In sum, the FEIR misleads the public as to the availability and reliability of information that demonstrates that the Project will cause significant noise impacts. The last-minute staff report admits that the information we requested was available all along, but continues to mislead the public as to its reliability.

F. The EIR Fails To Recognize That The Project Causes Noise To Exceed The Stated 60 dBA Ldn/CNEL Threshold Of Significance

Finally, Mr. Watry demonstrates that the tabular data based on point receivers in the RDEIR also demonstrates that the Project will cause a residence to exceed the 60 dBA Ldn/CNEL threshold. As Mr. Watry explains, Table 3.9-45 shows that, for receiver # 14, noise without the Project would be less than the threshold and noise with the Project would be greater than the threshold. RDEIR, p. 3.9-45. The EIR and the proposed Findings fail to identify this impact as significant.

For all these reasons, we respectfully request the City Council to decline to certify the FEIR at this time, and to defer consideration of the Project’s entitlements until such time as the foregoing deficiencies are addressed in a revised and recirculated DEIR.

Thank you for your consideration of these concerns.

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

Mark R. Wolfe
John H. Farrow
On behalf of Save Atascadero

JHF:am
enclosures
June 19, 2012

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

SUBJECT: Del Rio Road Commercial Area Specific Plan in the City of Atascadero – Review of Findings

Dear Mr. Farrow:

At your request, I have reviewed the Findings for the proposed General Plan Amendment recommended by the Planning Commission for the Del Rio Road Commercial Area Specific Plan in the City of Atascadero. Specifically, I reviewed those Findings related to traffic impacts to address your question as to whether the impacts now identified as significant and unavoidable were previously identified as significant and unavoidable in the City of Atascadero’s 2025 General Plan and General Plan Environmental Impact Report. As explained below, they were not.

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 Cities of Big Bear Lake and 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.

Discussion

Pages 118-120 and 129-134 of the Del Rio Road Commercial Area Specific Plan CEQA Findings recommended by the Planning Commission acknowledge that the project will create significant and unavoidable impacts, including:

➢ Deficient roadway segment level of service on Del Rio Road between El Camino Real and Ramona Road under future conditions.

➢ Deficient intersection level of service at San Anselmo Road and 101 Northbound Ramps under baseline and future conditions.
Mr. John H. Farrow  
Del Rio Road Commercial Area Specific Plan – Review of Findings  
June 19, 2012

- Deficient intersection level of service at San Anselmo Road and 101  
  Southbound ramps under baseline and future condition.

Pages 136-137 of the General Plan Amendment Findings recommended by the  
Planning Commission for the Specific Plan state that the proposed amendment  
of the General Plan to accommodate the Del Rio Road Commercial Area will not  
create any new significant and unavoidable impacts to traffic. The stated basis  
of this finding is that “these are not considered new impacts.” Page 137 of the  
General Plan Amendment Findings states:

“These impacts were previously identified and considered by the City in adopting  
the 2025 General Plan. In particular, both the 2025 General Plan and 2025  
General Plan EIR analyzed these specific interchanges and related roadway  
segments and concluded that they would be significantly impacted under 2025  
General Plan buildout conditions, but that interchange improvements were  
available which would fully mitigate these impacts.”

The General Plan Amendment Findings then point out that the Specific Plan EIR  
proposes construction of roundabouts to mitigate impacts and that the impact is  
characterized as unavoidable because of uncertainty as to the timing of this  
mitigation.

However, the General Plan, its EIR, and its CEQA Findings do not identify these  
impacts as significant and unavoidable. To the contrary, the General Plan EIR  
and its Findings conclude that impacts at these locations will be mitigated to a  
less-than-significant level, or do not require any mitigation as follows:

1) General Plan EIR Specifically Found the Del Rio Road Segment Would Meet  
Level of Service Standards In 2025, and Would Do So Without Mitigation –  
Page 5 of the General Plan EIR CEQA Findings state that unspecified  
“impacts associated with roadway and interchange operations are considered  
significant, due to projected deficient levels of service.” These Findings  
conclude that these unspecified impacts will remain significant and  
unavoidable.

Table 12 on Page 74 of the General Plan EIR projects 2025 traffic volumes  
and roadway level of service based on planned new dwelling units and new  
retail, service, offices and industrial development. Table 12 specifies the  
particular roadway segments that would experience unacceptable level of  
service (below LOS C) in 2025 without additional improvements. These  
include segments of US 101; a segment of SR 41 from Curbaril Avenue to US  
101; two segments of Traffic Way from Ardila Avenue to US 101 and from US  
101 to El Camino Real; and a segment of SR 41 from Santa Rosa Road to  
Curbaril Avenue. These are the only roadways segments that are identified as  
experiencing deficient level of service in 2025. Note that the affected
segments of Traffic Way, SR41, and Curbaril Avenue are related to the US 101 interchanges, and that Page 71 of the General Plan EIR states that the Curbaril Avenue and Traffic Way interchanges would have the highest priority for future improvements.

The General Plan EIR CEQA Findings cannot have been meant to apply to the Del Rio Road segment at issue in the Specific Plan EIR because the General Plan EIR specifically found that this segment would meet service standards in 2025, and would do so without any mitigation. The segment of Del Rio Road from El Camino Real to Ramona Road analyzed in the Specific Plan EIR is part of the larger segment of Del Rio Road from El Camino Real to San Ramon Road that was evaluated in the General Plan EIR. In particular, Table 12 of the General Plan EIR projected that the Del Rio Road segment would operate at LOS B from El Camino Real to US 101 and at LOS A from US 101 to San Ramon Road, without mitigation. This table, “2025 Roadway Levels of Service without Additional Improvements,” was reprinted as Table III-10 in the General Plan itself on Page III-16. In short, the same table that specifies the segments with deficient service levels makes it clear that the Del Rio Road segment will not have a deficient level of service or require mitigation.

Thus, contrary to the Planning Commission’s recommended General Plan Amendment Findings for the Specific Plan, neither the General Plan nor the General Plan EIR identified deficient roadway segment level of service on Del Rio Road between El Camino Real and Ramona Road as a significant impact. In fact, these documents both specifically found that this road segment would have acceptable level of service without mitigation. It is not accurate to state that the General Plan and its EIR found that the Del Rio Road segment at issue would have unavoidably significant impacts.

2) General Plan Specifically Found Impacts to the San Anselmo/US 101 Ramp Intersections from Projected Traffic Would Be Less Than Significant after Adopted Feasible Mitigation - On Page 19, the General Plan EIR CEQA Findings state “projected traffic will exacerbate existing deficient levels of service at area intersections.” Two of those intersections are identified in Table 8 of the General Plan EIR as the San Anselmo Road/US 101 SB ramps and the San Anselmo Road/US 101 NB ramps. The Findings identify a policy requiring the incorporation of recommendations of the traffic engineers as mitigation. Those recommendations are set out in Table 9 of the General Plan EIR. The General Plan EIR CEQA Findings conclude that “the above mitigation measures are feasible, are adopted, and reduce the potential impacts of the project associated with projected traffic levels at intersections to a less-than-significant level.”
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The General Plan EIR and its CEQA Findings specifically state that significant impacts from projected traffic will be rendered less-than-significant by virtue of identified feasible and adopted mitigation measures. Thus, contrary to the Planning Commission’s recommended General Plan Amendment Findings for the Del Rio Commercial Area Specific Plan, it is not accurate to state that the General Plan EIR found unavoidably significant impacts at the San Anselmo/US 101 ramps intersections.

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

Respectfully submitted,

Tom Brohard and Associates

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
- 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.
22 June 2012

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

RE: Del Rio Road Commercial Area Specific Plan EIR

Dear Mr. Farrow:

At your request Autumn Wind Associates, Inc. has reviewed the air quality impacts related to the proposed Del Rio Road Commercial Area Specific Plan. We reviewed the air quality analysis in the Draft, Revised Draft, and Final EIR for the project, focusing on the analysis of toxic air contaminants. We also reviewed documents referenced by the EIR as relevant to the analysis of toxic air contaminants, including the December 2009 San Luis Obispo Air Pollution Control District (SLOAPCD) CEQA Air Quality Handbook\(^1\) and the July 2009 California Air Pollution Control Officers Association (CAPCOA) Health Risk Assessments For Proposed Land Use Projects.\(^2\) Finally, we reviewed analysis of toxic air contaminants provided in the Staff Report to the Atascadero City Council, containing responses to comments you made to the Planning Commission.

Our review discloses that the EIR fails to provide an adequate analysis of cumulative impacts from toxic air contaminants generated by the project and other existing and future sources of these emissions. Had the EIR provided this analysis, it is likely that it would have shown that cumulative impacts to sensitive residential receptors will be significant, and that the Project itself will make a considerable contribution to that cumulative impact.

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I. Background

We understand that the proposed project would include 260,460 square feet of commercial retail uses and 50 dwelling units. The uses would result in 9,216 additional weekday vehicle trips and the commercial use would generate 40 diesel delivery truck trips daily. PRDEIR, pp. 3.2-101, 3.11-37. This traffic would approach the project site using US 101, El Camino Real, and Del Rio Road. Most of the project site is located approximately 500 feet from US 101 to the west, although the northern portion of the project is directly adjacent to US 101. DEIR, Exhibit 2-2. The project is surrounded by residential uses to the north, east, and south. DEIR, p. 2-2. To the west are commercial uses, residences, commercial property, and US 101.

Diesel emissions are emitted by large heavy-duty diesel truck engines and trailer refrigeration units (TRU) that would daily serve or visit the project, along with the project’s customers’ diesel vehicles. These emissions contain toxic air contaminants and would add to already high 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.3 Diesel particulate matter (DPM) has been calculated to represent more than 70% of all ambient air-related cancer risk in California.4 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.5 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 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 2000.6

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II. The EIR’s Analyses of Toxic Air Contaminants

Under the Air District’s CEQA guidance a project that generates new toxic air contaminants (TACs) that would affect sensitive receptors is called a “Type A Project,” whereas a project that sites new sensitive receptors (e.g., residential uses) proximate to TAC emissions is a “Type B Project.” Because this project generates TACs that affect off-site sensitive receptors and also locates new sensitive receptors (its residential uses) proximate to TACs, it is both a Type A and Type B project.

The DEIR provided a Health Risk Analysis (HRA) that considered the effects on off-site receptors of the TACs emitted on-site by diesel delivery trucks. DEIR, Appendix C2. This “Type A” analysis concluded that on-site emissions from diesel delivery vehicles, by itself, would result in a less than significant impact because the incremental cancer risk, at 2.5 excess cancers per one million persons, would be below the Air District’s threshold of significance of 10 excess cancers. DEIR, p. 3.2-84; PRDEIR, p. 3.2-103.

As the Air District objected, that analysis was deficient because 1) it omitted emissions from diesel vehicles other than delivery trucks and 2) it improperly assumed that all 2-axle delivery trucks would be Light Heavy-Duty trucks under 10,000 pounds. FEIR, comment APCD.1-23. Accordingly, the PRDEIR provided the results of a supplemental HRA that included on-site TAC emissions from non-delivery diesel vehicles and the larger 2-axle delivery trucks. PRDEIR, p. 3.2-103 to 104. This analysis also concluded that on-site TAC emissions would be less than significant because excess cancers, at 4.1 excess cancers per one million, would still be below the Air District’s significance threshold. As your April 27, 2012 comments on the PRDEIR objected, the PRDEIR did not include the supplemental health risk assessment. FEIR, comment Wolfe-10. In response, the FEIR provided the modeling data for the supplemental health risk assessment in Appendix Q.

The DEIR did not provide any quantitative assessment of the TAC exposure to the new on-site sensitive receptors in its residential units. In comments on the DEIR, the Air District noted this omission and stated that it had, on its own initiative, performed such an analysis. FEIR, comment APCD.1-24. The Air District reported that its own “Type B” analysis of TAC impacts to on-site receptors indicated that TACs from three sources within 1,000 feet of the project (US 101, a gas station, and project diesel traffic) would result in 49 excess cancers per one million, less than the Air District’s significance threshold of 89 in one million for a Type B HRA. FEIR, comment APCD.1-24.

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The PRDEIR reported the results of the Air District’s Type B HRA, but did not include the analysis. PRDEIR, p. 3.2-105. Although your April 27, 2012 comments on the PRDEIR requested the Type B analysis, the FEIR did not provide it. FEIR, comment and response Wolfe-11.

Neither the DEIR nor the PRDEIR mentioned TACs in their discussions of cumulative impacts. DEIR, pp. 4-3 to 4-4; PRDEIR, pp. 4-4. Your April 27, 2012 comments on the PRDEIR asked that the EIR provide an analysis of cumulative TAC impacts to sensitive receptors in the project vicinity. FEIR, comment Wolfe-12. The FEIR responded by asserting that the Type B analysis constitutes an adequate cumulative analysis, as follows:

“The Type B analysis addresses the impacts of existing sources of emissions and the project on sensitive receptors. There are no other planned or future projects in the area that would contribute additional cumulative impacts; therefore, the analysis adequately discloses the impacts of all potential sources.” FEIR, p. 3-448.

In your June 4, 2012 comments to the Planning Commission, you repeated your request for the Type B analysis. In response to this repeated request, the Staff Report to the City Council acknowledged that the Air District had not preserved its Type B analysis results. Staff Report, p. LC-14. The Staff Report stated that the EIR consultants asked the Air District to re-run the Type B analysis model and provide the results, and those results were included in in the Staff Report. Staff Report, p. LC-18. We note that the Type B analysis included in the Staff Report indicates that project residents would be exposed to 53.5 excess cancers, whereas the Air District and PRDEIR both reported that the Type B analysis showed 49 excess cancers. Id.; FEIR, comment APCD.1-24; PRDEIR, p. 3.2-105. No explanation was provided for the differing results.

As explained below, even if the Type B analysis eventually provided in the City Council staff report had been included in the EIR, this form of analysis does not meet CEQA’s requirements for a cumulative impact analysis. It fails to evaluate the off-site receptors who would experience the maximum cumulative impact. It fails to include the TACs that project vehicles would generate off-site. It fails to include additional TACs that would be generated by foreseeable future traffic not generated by the project. Finally, it fails to consider TACs from traffic on El Camino Real and Del Río Road, which would affect the same receptors. An adequate cumulative impact analysis of TACs would have disclosed a cumulatively significant impact because some off-site sensitive receptors will be exposed to TACs in excess of any reasonable threshold for cumulative impacts. Furthermore, an adequate cumulative analysis would have disclosed that the project’s contribution to that impact is considerable.
III. 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.

An adequate cumulative impact analysis requires a determination whether there is a cumulatively significant impact from a project’s emissions combined with emissions from existing and reasonably foreseeable future sources. If there is, the analysis must separately consider whether the project’s contribution is considerable.

Here, the FEIR’s reliance on the Type B analysis conducted by the Air District as a cumulative impact analysis presents a number of problems.

1. The Air District’s Type B analysis was not included in the DEIR, RDEIR, or FEIR, despite requests for this information.
2. The Type B analysis considers impacts only to those sensitive receptors located on the project site, ignoring those off-site receptors that would be affected by emissions from the project and other existing and future sources. Here, the cumulative impacts would be greatest to off-site receptors, particularly those situated between the project and major roadways (US 101, El Camino Real, and Del Rio Road west of the project site), but these receptors were not considered in the Type B analysis.
3. The only off-site traffic included in the Type B analysis was existing traffic on US 101. Thus, the Type B analysis did not include the off-site generation of cumulatively-relevant TAC emissions on US 101, El Camino Real, and Del Rio Road west of the project site by project-related traffic. Nor did the Type B analysis consider TAC emissions on US 101, El Camino Real, and Del Rio Road generated by other future development that will occur by 2013.

These points are discussed below.

OMISSION OF TYPE B ANALYSIS: Obviously, review of the adequacy of the Type B analysis offered in lieu of a cumulative impact analysis was hampered by the EIR’s failure to present the Type B analysis itself. The analysis should have been provided in the DEIR or PRDEIR.

OFF-SITE SENSITIVE RECEPTORS ARE NOT CONSIDERED IN TYPE B ANALYSIS: A health risk analysis for TACs is supposed to focus on the Maximally Exposed Individual (MEI). See, e.g., DEIR, App. C2, p. 22, Table 22 identifying MEI for analysis of on-site emission sources as at a residence at the intersection of Del Rio Road and Obispo Road. The
Type B analysis does not identify the relevant MEI for a cumulative impact analysis since that receptor is off-site and the Type B analysis considers only on-site receptors.\footnote{The Air District’s CEQA guidance makes it clear that, whereas the purpose of Type A analysis is to assess impacts to off-site receptors, the purpose of Type B analysis is to consider impacts to on-site receptors. SLOAPCD, CEQA Air Quality Handbook, December 2009, p. 3-4.}

The on-site receptors that the Type B analysis considers are the project’s own proposed residential uses, which are to be located at the northeastern and southeastern corners of the project, no closer than 989 feet from US 101, and relatively distant from El Camino Real and Del Rio Road compared to other receptors. DEIR, Exhibit 2-5a; DEIR, App. C.2, Exhibit 5 (sensitive receptor locations); City Council Staff Report, p. LC-18. These roadways are major sources of cumulative TACs. Their TACs, combined with the project’s TACs, would most substantially affect those off-site receptors located between the project and the noted roadways. By considering only the on-site receptors relatively distant from the roadways, the Type B analysis failed to identify and assess cumulative impacts to the Maximally Exposed Individual, who is likely located at one of the three existing, occupied residential uses located between the project and El Camino Real to the east and US 101 to the west. DEIR, App. C.2, Health Risk Assessment, Exhibit 5. As discussed below, these three receptors would experience cancer risks from DPM well in excess of any reasonable threshold for cumulatively significant impacts.

**TACs FROM OFF-SITE PROJECT TRAFFIC AND OTHER FUTURE TRAFFIC ARE OMITTED IN TYPE B ANALYSIS:** An adequate cumulative analysis should have considered existing and reasonably foreseeable future TAC emissions that would affect sensitive receptors potentially subject to project impacts, whether those emissions were generated within the project site or off-site. In particular, the cumulative analysis should have included TAC emissions from future traffic on US 101 and city streets in the immediate vicinity of the project. Most of the increase in future traffic will be project-related since it will add over 9,000 daily vehicle trips, including trips by diesel delivery and non-delivery diesel vehicles. All of the offsite TAC sources (existing and future, project-related or not) that affect receptors who will also be affected by project-specific TACs should have been included in the first step of a cumulative analysis in order to determine whether there is a cumulatively significant impact.

**Offsite TAC Emissions From Project Traffic:** The Type B analysis relied on the EIR’s Type A analysis to quantify the effect of project TACs, concluding that the project traffic would generate 4.1 excess cancers in one million. The Type A Health Risk Analysis contained in the EIR did not, however, evaluate the offsite TAC emissions generated by project-related traffic, i.e., the TAC emissions that traffic would generate while traveling on adjacent roadways to or from the project. Exhibit 4 of the Type A HRA, “Location of Emission Sources,” graphically illustrates the fact that this analysis considered only the TAC emissions generated by project traffic while that traffic is within the project’s property boundaries. DEIR, App. C.2, p. 15. No emissions were identified in the Type A analysis from project-related traffic on El Camino Real, Del Rio Road
west of the project, or US 101, even though those emissions would affect sensitive receptors, particularly those receptors located between the project and these roadways.\(^9\)

**Future TAC Emissions:** The only off-site traffic-related TAC's included in the Type B analysis were based on 6,000 peak hour vehicle trips on US 101. This number does not represent US 101 traffic in 2013 in combination with the project's new traffic; it mistakenly represents only existing traffic on US 101.\(^10\) The EIR projects peak hour vehicle trips on US 101 and other major roadways in the project vicinity under 2013 conditions with the project as follows:

- 101 north of Del Rio Road Interchange – 7,200 peak hour trips
- 101 south of Del Rio Road Interchange – 7,500 peak hour trips.\(^11\)

Thus, it is clear that the Type B analysis omits the project's own traffic on US 101. It also ignores the growth in traffic unrelated to the project that the EIR projects will occur before the 2013 baseline conditions.\(^12\) At 7,500 peak hour trips, traffic on US 101 south of Del Rio will be fully 25% higher than the 6,000 peak hour trips identified in the Type B analysis; this is a very significant increase.

Additionally, the Type B analysis does not consider TACs from El Camino Real and Del Rio Road west of the project site. The EIR projects these volumes under 2013 baseline plus project conditions as follows:

\(^9\) The omission of project-related off-site TAC emissions from the Type A HRA may very well have resulted in a failure to identify the Maximally Exposed Individual for that analysis and a failure to determine the actual risk correctly. As discussed below, receptors located between the project and US 101 would be exposed to TAC emissions as project traffic travels to and from the project site. These receptors would also be exposed to TAC emissions from project traffic while that traffic is on-site. The Type A HRA should be revised to include off-site emissions from project-related traffic in the project vicinity.

\(^10\) As its source for its estimate of 6,000 peak hour vehicle counts on US 101 at Del Rio Road, the Type B analysis references what may be a CalTrans web site at H:\PLAN\CEQA\HRA\Screen_Tools\CaltransData\Caltrans_SLO_Hwy101_TrafficCounts.xls. We are unable to access this site. However, Caltrans data available at http://traffic-counts.dot.ca.gov/2010all/Route101.html indicates that peak hour traffic between the US 101 Del Rio interchange and the San Ramon interchange as of 2010 was 6,000 vehicle trips.

\(^11\) 101 north of Del Rio is based on 1,699 northbound plus 1,895 southbound times two for two lanes each direction. 101 south of Del Rio is based on 1,771 northbound plus 1,975 southbound times two for two lanes each direction. See PRDEIR, App. O, p. 72, Table 45.

\(^12\) The FEIR's characterization of the Type B analysis indicates that it omitted other foreseeable future sources of TACs from traffic on adjacent roadways, i.e., that from growth in traffic on US 101, El Camino Real, and Del Rio Road from non-project development:

"The Type B analysis addresses the impacts of existing sources of emissions and the project on sensitive receptors. There are no other planned or future projects in the area that would contribute additional cumulative impacts; therefore, the analysis adequately discloses the impacts of all potential sources." FEIR, p. 3-448, response to Wolfe-12.
- Del Rio west of El Camino Real – 1,065 peak hour trips
- El Camino Real north of Del Rio – 712 peak hour trips
- El Camino Real south of Del Rio – 978 peak hour trips.13

In sum, the Air District’s Type B analysis omitted future TAC sources from project and non-project traffic on roadways adjacent to the project, including US 101, El Camino Real, and Del Rio Road east of the project. Such omissions are particularly troubling since the majority of the increase in future traffic is project-related.

As discussed below, the TAC emissions from roadways adjacent to the project would result in excess cancers above any reasonable threshold of significance for a cumulatively significant impact. Since TACs from the project are a major source, the project’s contribution to this significant impact should have been identified as considerable.

NO THRESHOLD IDENTIFIED FOR CUMULATIVE IMPACTS: The EIR does not identify a threshold of significance for cumulative impact analysis. The thresholds that it does identify are A) the 10 per million excess cancer threshold for Type A analysis; and B) the 89 per million excess cancer threshold for Type B analysis.14 We note that the 10 excess cancer threshold applies to impacts to sensitive receptors affected by newly permitted sources, i.e., to existing receptors that that do not voluntarily choose to be exposed to TACs from newly permitted development. Because the cumulative analysis should assess impacts to existing off-site receptors involuntarily exposed, it may be appropriate to use the 10 excess cancer threshold. The 89 excess cancer threshold applies, alternatively, to impacts on receptors who voluntarily move into an area already affected by TAC emissions. There appears to be no principled reason to apply this higher threshold to existing sensitive receptors involuntarily affected by a decision to site the project adjacent to them.

CUMULATIVE IMPACTS WOULD BE SIGNIFICANT FOR SOME RECEPTORS. Regardless of whether the threshold for cumulatively significant impacts is 10 or 89 excess cancers per million, data in the Type B analysis and in the EIR itself indicate that that existing

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13 Peak hour volumes are from PRDEIR, Appendix O, Appendix C, pdf pages 459, 461, and 462.

14 Neither the EIR nor the Air District CEQA guidance provides any discussion of, or justification for, a threshold other than 10 excess cancers as a measure of acceptable risk to offsite receptors. The DEIR’s HRA reports that its significance threshold is based on the Air District’s adoption of the California Office of Environmental Health Hazard Assessment (OEHHA) threshold of 10 excess cancers at the nearest sensitive receptor, but the EIR does not discuss a cumulative risk threshold for TACs. DEIR, App. 2c, p. 10. The Air District Guidance states that “a cumulative impact analysis should be performed to evaluate the combined air quality impacts of this project and impacts from existing and proposed future development in the area,” but this document does not identify a separate risk threshold for cumulative analysis. SLOAPCD, CEQA Air Quality Handbook, December 2009, p. 1-6.
TAC emissions in the project vicinity would constitute, and in fact already constitute, a significant cumulative impact, to which the project’s own contribution would be considerable.

The Type B analysis itself demonstrates that existing receptors to be affected by the project are already located closer to major roadways than identified locations for the project’s (onsite) residences, and those existing receptors experience much higher excess cancer risk rates. For example, one sensitive receptor is located just west of the southern end of the project area and between it and US 101 (at about 2500 El Camino Real). That residence is located less than 50 feet from US 101, and about 300 feet from El Camino Real where it abuts the proposed project’s southwestern property corner.

Risk to this residence can be estimated from the table and graph relating receptor distance from US 101 to excess cancer risks, which is contained in the Type B analysis. Staff Report, p. LC-18. This table is based on the existing US 101 vehicle counts (approximately 6,000 peak hour trips), and omits the project’s traffic and other foreseeable traffic growth before 2013. However, even with this omission, it shows that a receptor at 50 feet would experience an excess cancer rate of 252 in one million, well over the thresholds used in the EIR. Adjusting this risk to reflect the new trips to and from the project, along with other growth on US 101 by 2013, would increase the risk by 25% to 315 in one million.\textsuperscript{15} Adjusting this to reflect the risk from traffic on El Camino Real further increases it. At a distance of 250’ from El Camino Real, and extrapolating from the SMAQMD data employed in the Type B analysis, the 978 peak hour trips at El Camino Real would contribute an additional 16 cancers per million.

Another sensitive receptor not evaluated in the Type B analysis is located 335’ east of US 101, 40’ west of El Camino Real, and slightly less than 400’ north of Del Rio Road. DEIR, App. C2, Exhibit 5. Using information employed in the Type B analysis and adjusting for the increased hourly peak (see previous discussion), we estimate this receptor would experience an increased cancer risk of 98 per million from US 101 traffic alone. Yet more cancer risk will be contributed by the 1,075 peak hour trips on Del Rio Road and the 712 peak hour trips on El Camino Real adjacent to the receptor.

The DEIR itself also contains evidence that sensitive receptors will be exposed to cumulative risks over the 10 or 89 excess cancer thresholds. Although the EIR’s air quality section does not discuss background TACs, the Health Risk Assessment contained in DEIR Appendix C2 indicates that existing TAC levels in the area already cause from 100 to 250 excess cancers:

\textsuperscript{15} The 25% adjustment would follow the method used in the Type B analysis, which uses a linear interpolation of the risks from 4,000 and 8,000 peak hour trips to determine the risk from 6,000 peak hour trips. Since the actual trips on US 101 south of Del Rio as of 2013 with project traffic and other growth will be 7,500, the risk would be 25% higher than for 6,000 trips based on existing traffic levels.
“According to ARB [the California Air Resources Board], the estimated environmental cancer risk due to the emissions of TACs in the Atascadero area is in the range of 100 to 250 cancer risks in a population of one million people (or 1 to 2.5 cases in a population of 10,000). (ARB 2010).” EIR, App. C2, p. 9.

We note that this information is inconsistent with the Type B analysis showing a cancer risk of only 53.5 (or 49) excess cancers from TACs from existing sources combined with the project.

In view of the evidence contained in both the Type B analysis and the DEIR appendix C2 that sensitive receptors will be exposed to substantially elevated cumulative TAC levels, and the evidence that the project’s traffic itself is a major source of this exposure, the project’s incremental TAC emissions must be recognized as a considerable contribution to a significant cumulative impact.

ROUNDABOUTS: The sensitive receptor located north of Del Rio Road, west of El Camino Real, and east of US 101 will be exposed to even more substantial yet unquantified TAC emission risk as a result of the traffic roundabout that is required by Mitigation Measure TRANS-1d. See PRDEIR, Exhibit 3.11-16. This new traffic facility will locate roadway TACs closer to the existing residence. Similarly, receptors located on Ramona Road west of US101 will be affected by relocating traffic-based TAC’s closer to residences through the traffic roundabout that is required by Mitigation Measure TRANS-1e. The re-routing of existing traffic closer to these residences, coupled with the substantial increases in traffic volumes due to the project are likely to result in or aggravate cumulative TAC levels that are already over reasonable thresholds.

Additionally, to the extent that traffic roundabouts “calm” higher-speed traffic, they increase the duration that heavier-duty, diesel TAC-emitting vehicles will operate in proximity to nearby sensitive receptors. The effects of these roundabouts on TACs should have been evaluated in the project-specific Type A analysis, and in an adequate cumulative emissions impact analysis.

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

Sincerely,

[Signature]

Greg Gilbert
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.
21 June 2012

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

Subject: Review of Atascadero Del Rio Road Commercial Area Specific Plan EIR Noise Section

Dear Mr. Farrow:

As requested, we have reviewed the PRDEIR and the FEIR for the Del Rio Road Commercial Area Specific Plan. The plan has two major components – the Walmart Component and the Annex Component. This letter discusses elements of the analysis and FEIR that we find deficient in some way.

Wilson, Ihrig & Associates, Acoustical Consultants, has practiced exclusively in the field of acoustics since 1966. During our 46 years of operation, we have prepared hundreds of noise studies for Environmental Impact Reports and Statements. We have one of the largest technical laboratories in the acoustical consulting industry. We also utilize industry-standard acoustical programs such as Environmental Noise Model (ENM), Traffic Noise Model (TNM), SoundPLAN, and CADNA. In short, we are well qualified to prepare environmental noise studies and review studies prepared by others.

The documents we have reviewed are:

1. Partially Recirculated Draft Environmental Impact Report, Del Rio Road Commercial Area Specific Plan, City of Atascadero, San Luis Obispo County, California, SCH No. 2010051034, March 15, 2012. ("PRDEIR")

2. Final Environmental Impact Report, Del Rio Road Commercial Area Specific Plan, City of Atascadero, San Luis Obispo County, California, SCH No. 2010051034, March 25, 2012. ("FEIR")

Issue #1: Construction Noise Analysis Fails to Identify Large Increase in Noise Levels as a Significant Environmental Impact

The PRDEIR correctly states the six CEQA Guidelines criteria for determining whether or not implementation of a proposed project would create significant noise impacts [PRDEIR at p. 3.9-42]. Two of these are:

Would the project cause

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

d) A substantial temporary or periodic increase in ambient levels in the project vicinity above levels existing without the project?

Our understanding is that these two criteria are included to address two distinct possibilities:

1. To prevent noise levels from increasing however slowly to the point where they far exceed an absolute threshold of acceptability, and

2. To prevent quiet areas from suffering large relative increases in noise levels even when the level may remain under an absolute threshold.

The PRDEIR adopts the upper limit of the "Conditionally Acceptable" range for residences from the General Plan, 70 dBA Ldn, to evaluate Criterion (a) for construction noise. However, nowhere in the EIR documents is the relative increase in noise levels from construction evaluated, thereby failing to identify significant impacts under Criterion (d).

Table 3.9-24 in the PRDEIR indicates the existing daytime noise levels around the project site and the modeled construction noise levels including the benefits of mitigation measures. At the fifteen (15) locations listed, the increase over existing is greater than 10 dBA at eleven (11) residences, greater than 15 dBA at six (6) residences, and over 20 dBA at one (1) residence. As stated in the PRDEIR, "[a]n increase of 10 dB represents a 10-fold increase in acoustic energy, while 20 dB is 100 time more intense..." and "[e]ach 10-dB increase in sound level is perceived as approximately a doubling of loudness." [PRDEIR at p. 3.9-1]. Given the mathematics of decibel (logarithmic scale) calculations, at 15-dB increase corresponds to a 32-fold increase in acoustic energy and an approximately tripling of loudness. A 20-dB increase corresponds to a quadrupling of loudness.

Any noise increase over 15 dB that occurs for more than a few days should be identified under Criterion (d) as a substantial increase. Arguably, noise increases over 10 dB could also be considered substantial depending on the duration of the impact. If the grading operation were to
take more than one month, for example, 10 dB should also be considered a substantial increase. Here, the project description indicates that 330,000 cubic yards of earth will be moved. [DEIR at p. 2-41.] The Air Quality analysis states that construction activities using heavy-duty diesel equipment such as bulldozers, excavators, loaders, graders and diesel-fueled haul trucks would occur intermittently over the course of one year. [RDEIR, p. 3.2-100.]

In any case, the information provided in Table 3.9-24 of the PRDEIR indicates that at least six (6) local residents will have their existing rural and tranquil noise environments transformed by a 32- to 100-fold exposure to acoustic energy corresponding to a tripling to quadrupling of loudness over the duration of heavy grading. This is clearly a "substantial temporary increase in ambient levels in the project vicinity above levels existing" and, as such, should be identified as a significant noise impact.

Construction noise was also addressed in a memo to the City of Atascadero dated June 13, 2012, by the EIR noise analysis preparer, Michael Brandman Associates ("MBA"), responding to the criticism that the EIR construction noise analysis was inadequate because it did not assess whether there would be a substantial increase in noise level, only whether it would exceed an absolute level. The response in the memo did not take the opportunity to address the magnitude of the increase, but rather, reasserted that assessment against the absolute standard was adequate in conjunction with the following considerations:

1. construction noise would not occur during late night or early morning hours.
2. construction noise is temporary in nature,
3. construction staging and equipment maintenance must be performed a minimum distance of 300 feet from the nearest residence, and
4. construction equipment is required to use noise reduction features like mufflers and engine shrouds.

As developed above at length, the increase in noise levels during construction will be substantial, and none of these considerations address this fact. Furthermore, these four considerations are not relevant to this discussion for the following reasons:

<p>| construction noise would not occur during late night or early morning hours | There is nothing that limits the consideration of noise impacts to nighttime or early morning hours. In the words of one resident, &quot;We all purchased our properties because of the rural atmosphere, quiet days and nights...&quot; (Pieters 1-1). Furthermore, through comments received on the |</p>
<table>
<thead>
<tr>
<th>PRDEIR, it is known that at least one nearby resident works some nights and sleeps some days: &quot;My duties on the PM shift and mandated overtime on NOC shift mean that I need to be able to sleep somewhat atypical hours.&quot; (Weeks 1-3).</th>
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<tr>
<td>construction noise is temporary in nature.</td>
</tr>
<tr>
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<tr>
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### Issue #2: EIR Failed to Identify Significant Operational Noise Impact at Property #11

The PRDEIR unambiguously states that one of the primary criteria to determine whether a neighboring property is significantly impacted by combined transportation and stationary noise is that "the proposed project would need to increase the noise levels above 60 L_{dn}/CNEL for outdoor activity areas ..." [PRDEIR, p. 3.9-74.] Two key components of this criterion are:

"increase above" – this implies that it would be below 60 L_{dn}/CNEL without the project

"outdoor activity areas" – the purpose of this criterion is clearly to enable the enjoyment of one’s property for outdoor activities. There is, in fact, a separate criterion for indoor noise exposure, reinforcing that the criterion cited above emphasizes outdoor use.
Exhibits 3.9-7 and 3.9-8 show Year 2013 noise contour maps with the project for weekdays and Saturday, respectively, including, apparently, the effects of proposed mitigation.\(^1\) Both of these exhibits clearly show large patches of dark orange on the property associated with "point receiver" number 11. The legend indicates that dark orange signifies an \(L_{eq}\) level greater than 60 and less than or equal to 65. The corresponding areas on Exhibits 3.9-5 and 3.9-6 showing Year 2013 noise levels without the project clearly indicate that the entire property has a noise exposure less than 60 \(L_{eq}\). Therefore, it seems irrefutably clear that project noise at this property triggered the outdoor noise significance criterion and this situation should have been identified as a significant impact of the project.

That said, in the FEIR and other responses to comments, the EIR preparers have already given some indication that they would dispute that the property of residence #11 would be impacted significantly, so we will address possible refutations in the following paragraphs.

**Where does noise standard apply?** The PRDEIR cites the City of Atascadero General Plan as the source for the outdoor noise criteria presented in Table 3.9-11 [PRDEIR at p. 3.9-22]. Footnote 1 to this table states "Where the location of outdoor activity is unknown, the exterior noise level standard shall be applied to the property line of the receiving land use." The calculation locations used in the PRDEIR were at the façade of the residence, not at either the property line or at the obvious outdoor activity area of the green lawn in front of the home (this being clearly distinguishable in the aerial photos from the brown dirt undeveloped areas).

In a memo to the City of Atascadero dated June 13, 2012, the EIR preparer, Michael Brandman Associates ("MBA"), defended the use of the façade location with the following statement:

> The receivers in the SoundPlan model were placed at the nearest facades of each analyzed sensitive receptor structure. This location was chosen, since the receiver noise levels were used to calculate both the exterior and interior noise levels that the nearby sensitive receptors are anticipated to be exposed to. Other locations, such as placement of the receiver on the property line would result in distorted results since there are several existing walls on the nearby property lines and placing a receiver immediately in front of or behind one of these walls would provide noise level results that are not experienced on the majority of the analyzed property. Also, several of the nearby residences are located on large lots with minimal outdoor improvements so identification of specific outdoor

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\(^1\) According to a memo to the City of Atascadero dated June 13, 2012, the EIR preparer, Michael Brandman Associates, states "PRDEIR Exhibits 3.9-7 and 3.9-8 show the noise environment with implementation of the proposed mitigation." This was not obvious from the PRDEIR itself, nor was this revealed in the FEIR response to comment WOLFE-31 that specifically asked for "post-mitigation" noise contours (based on the incorrect assumption that Exhibits 3.9-7 and 3.9-8 showed "pre-mitigation" contours). The FEIR response obscured the exact nature of the exhibits by stating that "CEQA Guidelines do not require the use of exhibits, figures, or other images to support conclusions; therefore, there is no need to revise the EIR to include the requested noise contours." In fact, we learn through the June 13, 2012 memo that the noise contours shown in the PRDEIR were exactly the ones requested, and, importantly, the ones needed to allow someone to ascertain if a significant impact remains even after mitigation. For this latter reason, we believe the true nature of the noise contours in Exhibits 3.9-7 and 3.9-8 should have been revealed in the FEIR response.
activity areas was not possible. Furthermore, analyzing the noise levels at the locations
of the nearest residential structures is an accepted industry practice in determining noise
impacts.

We believe this multi-faceted rationalization does not, in fact, justify the failure to assess the
outdoor noise impact at an appropriate location for the following reasons:

<table>
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<tr>
<th>The receivers in the SoundPlan model were placed at the nearest facades of each analyzed sensitive receptor structure. This location was chosen, since the receiver noise levels were used to calculate both the exterior and interior noise levels that the nearby sensitive receptors are anticipated to be exposed to.</th>
<th>We acknowledge the benefit of having a receiver location at the façade to facilitate indoor noise calculations. However, that does not preclude the use of additional receiver locations in the SoundPlan software at appropriate locations to adequately assess outdoor noise exposure.</th>
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<tr>
<td>Other locations, such as placement of the receiver on the property line would result in distorted results since there are several existing walls on the nearby property lines and placing a receiver immediately in front of or behind one of these walls would provide noise level results that are not experienced on the majority of the analyzed property.</td>
<td>While it may not be appropriate to place a receiver location immediately behind a wall, that does not mean it is appropriate to use only one at the façade of the residence to assess outdoor noise exposure. A second, appropriately placed receiver in a location suggested by the noise contours in Exhibits 3.9-7 or 3.9-8 could have been used to confirm the apparent significant impact revealed by those exhibits.</td>
</tr>
<tr>
<td>Also, several of the nearby residences are located on large lots with minimal outdoor improvements so identification of specific outdoor activity areas was not possible.</td>
<td>The City of Atascadero General Plan specifically states, &quot;Where the location of outdoor activity is unknown, the exterior noise level standard shall be applied to the property line of the receiving land use.&quot; Furthermore, for property #11, there is a clear and obvious outdoor improvement of the dark green front lawn, an area that is completely covered by the dark orange contours (&gt; 60 $L_{dn}$) in the two 2013 &quot;with project&quot; noise level exhibits.</td>
</tr>
<tr>
<td>Furthermore, analyzing the noise levels at the locations of the nearest residential structures is an accepted industry practice in determining noise impacts.</td>
<td>We do not believe that the methodology used in the PRDEIR is &quot;an accepted industry practice&quot; that supersedes an explicit directive in the local General</td>
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Plan. Nor do we believe that conformance with Caltrans guidelines for receiver placement (cited elsewhere in the June 13, 2012 MBA memo) preempts or supersedes the local ordinance requirements.

Can one rely on SoundPlan graphic output? In response to requests for additional noise contour information, the EIR preparers twice asserted that the tabular output of their noise calculation program, SoundPlan, is adequate for determining significant impacts but either implied or stated that the graphical output of SoundPlan was not precise and could not be relied upon. In response to comment WOLFE-29, the FEIR stated “The noise contour exhibits are based on noise level averaged over 5-square meter areas, while the tables provide the noise levels at exact locations. Thus, the tables should be referenced when seeking information about noise levels at specific receptors.” In response to comment WOLFE-31 for additional noise contours, the FEIR stated “Post-mitigated noise levels were provided in Table 3.9-45 and supporting modeling data was provided in Appendix N.” In the June 13, 2012 memo to Atascadero, MBA provided a much longer response:

[T]he PRDEIR provides the data in the most precise format available (i.e., tabular format). The SoundPlan model that was used to create the noise contour exhibits does so by calculating each pixel by averaging the noise level over a 5 square meter (270 square foot) area, which is not as precise as placing a receiver at the nearest edge of a structure, which was the procedure that was used in the analysis provided in the tables.

Furthermore, the following excerpt from the CEQA Guidelines provide confirmation that noise contours provided in the requested graphical format are not necessarily precise and should not be interpreted as being precise.

"Although considerable effort may go into developing noise contours which, in some instances, utilize rather sophisticated digital programming techniques, the present state of the art is such that their accuracy is usually no better than +/- 3 dB. In fact, the accuracy of the noise exposure prediction decreases with increasing distance from the noise source. In the near vicinity of the source, prediction accuracy may be within the range of +/- 1 dB, while at greater distances this may deteriorate to +/- 5 dB or greater. At greater distances, meteorological and topographic effects, typically not totally accounted for in most models, may have significant influence. Thus, while dealing with the concept of noise contours, it is best not to think of them as absolute lines of demarcation on a map (such as topographical contours), but rather as bands of similar noise exposure."

To ensure that our understanding of how SoundPlan calculates noise levels is correct, we discussed both SoundPlan and Exhibit 3.9-7 with the SoundPlan representative for the United
States and Canada, Mr. Hans Forschner. In addition to administering SoundPlan licenses, Mr. Forschner is a working acoustician who uses the software regularly, and he also gives regular training seminars on the use of SoundPlan.

Mr. Forschner confirmed for us that SoundPlan uses only one calculation algorithm to determine noise levels throughout the area being modeled at specific grid points. If the noise level at a particular receiver location is desired, the program simply interpolates the noise level at that location from the nearest grid points. Similarly, the noise contours are drawn by interpolating and spline fitting the calculated noise levels at the grid points.

While it may be true that the contour-fitting process does not determine the position of the line quite as precisely as it determines the noise level at a given point, Mr. Forschner stated that the accuracy of the line was a fraction of a decibel, far better than implied by the quote above.

No date is given for the quote regarding the inaccuracy of noise contours, purportedly taken from the "CEQA Guidelines." In fact, the quoted language is not from CEQA Guidelines adopted by the California Resources Agency contained at 14 CCR 15000 et seq. The quote appears in an appendix to the 1998 California Office of Planning and Research, California General Plan Guidelines. Appendix A, Guidelines For The Preparation And Content Of The Noise Element Of The General Plan, was prepared by the California Department of Health Services in coordination with The Governor's Office of Planning and Research. Based on the 1984 date of the most recent publication cited in the bibliography for Appendix A, this source apparently dates from the mid-1980s. As such, the quoted language no longer represents "the present state of the art." Furthermore, even if it were applicable today, it would be applicable to the noise grid calculations done by SoundPlan, not just the contour calculations, so it would apply to both the accuracy of contour locations and the tabulated results equally.

Finally, after examining Exhibit 3.9-7 (Year 2013 with project noise levels), Mr. Forschner stated unequivocally that the graphical output establishes that the noise level on parts of property #11 exceeds 60 $L_{dn}$. In other words, enough of the property is colored dark orange that the graphic may be relied upon to determine that the noise levels on parts of the property are, in fact, greater than 60 $L_{dn}$.

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2 Personal communication with Hans Forschner, June 20, 2012.

3 Interpolating and spline fitting are mathematical techniques used to connect discrete data points with smooth curves, in this case noise contour curves.

4 Available at http://ceres.ca.gov/planning/genplan/gpg.pdf.

5 Available at http://ceres.ca.gov/planning/genplan/appendix_a.html.
Issue #3: EIR Failed to Identify Significant Operational Noise Impact at Property #14

The PRDEIR unambiguously states that one of the primary criteria to determine whether a property is significantly impacted by combined transportation and stationary noise is that "the proposed project would need to increase the noise levels above 60 L_{dn}/CNEL for outdoor activity areas ..." Table 3.9-45 presents the Mitigated Combined Transportation and Stationary Exterior Noise Levels at Nearby Sensitive Receptors, tabulated results from the SoundPlan model. Under the heading "Weekday Year 2013 (dBA L_{dn})," the "No Project" noise level is 59.3 L_{dn} and the "With Project" noise level is 60.1 L_{dn}. By crossing the absolute threshold criteria established in the PRDEIR, this noise level increase should have been identified as a significant impact.

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Please call us if you have any questions regarding this review.

Very truly yours,

WILSON, IHRIG & ASSOCIATES, INC.

Derek L. Watry
Principal
DEREK L. WATRY, M.S.

Experience

Wilson, Ihrig & Associates, Inc. (1992 to Present)
Principal
Mr. Watry is experienced in all aspects of environmental acoustics, including noise measurement and prediction, regulatory analysis, environmental impact assessment, and noise control design. He is well versed in the requirements of CEQA, and has both prepared and critiqued many environmental noise studies. Over the past 18 years, he has conducted numerous construction, traffic, HVAC, and industrial equipment noise projects, and has extensive experience with construction noise and vibration monitoring.

University of California, Berkeley (1988 - 1992)
Graduate Student, Research and Teaching Assistant
  Teaching Assistant for "Fundamentals of Acoustics" course

Education
M.S. (1991) in Mechanical Engineering, University of California at Berkeley
B.S. (1988) in Mechanical Engineering, University of California at San Diego
M.B.A. (2000), Saint Mary's College of California, Moraga

Professional Associations
Member, Acoustical Society of America
Member, National Council of Acoustical Consultants

Academic Distinctions
Summa Cum Laude, Saint Mary's College of California (2000)
National Science Foundation Fellowship Recipient (1988 - 1991)
Summa Cum Laude, University of California, San Diego (1988)

Representative Projects

Patterson Ranch EIR, Fremont
Noise section of EIR for 428 acre project that included residential, educational, religious, community recreation, and commercial land uses.
Mare Island Dredged Material Disposal Facility EIR, Vallejo
EIR noise study for proposed disposal facility to be built next to residential neighborhood.

Silva Ranch Annexation EIR, King City
EIR noise study for development of new, large, primarily residential, district on the outskirts of King City.

525 Golden Gate Avenue Demolition, San Francisco
Noise and vibration monitoring and consultation during the demolition of multi-story office building next to Federal, State, and Municipal Court buildings in San Francisco.

Tyco Electronics Annual Noise Compliance Study, Menlo Park
Conducted annual noise compliance monitoring for Tyco Electronics in 2009 and 2010. Provided letter critiquing the regulatory requirements and recommending improvements.

Safeway Redevelopment, Sunnyvale
Noise study of store redevelopment including loading dock, trash compactor, parking lot, and rooftop HVAC equipment.

Safeway Redevelopment, Los Altos
Noise study of store redevelopment including loading dock, trash compactor, rooftop parking lot, rooftop HVAC equipment, and Foothill Expressway traffic noise.

Central Park Apartments Noise Study, Mountain View
Noise study for new residential building development. Major noise sources included Central Expressway and Caltrain.

465 N. Whisman Road, Mountain View
Noise control among suites in a low-rise office complex.

Caltrain Centralized Equipment Maintenance and Operations Facility, San Jose
Noise study of impacts for new maintenance and operations facility built next to existing residential neighborhood. Included analysis of 16 ft sound barrier wall.

Conoco-Phillips Refinery Noise Control, Rodeo
Environmental noise study and assessment of refinery noise at residential neighborhood.

Groth Winery HVAC Sound Barrier, Oakville
Design of sound barriers to control noise from rooftop HVAC equipment.

Dahl Booster Pump Station, Palo Alto
Design of sound barrier and specification of mufflers for pump station equipment.
Memo

Date: June 25, 2012
To: Warren Frace, Community Development Director, City of Atascadero
From: Jason Brandman and Grant Gruber, Michael Brandman Associates
Subject: Del Rio Road Commercial Area Specific Plan – Wolfe Comments (6.22.2012)

Michael Brandman Associates (MBA) prepared this memo to address a second set of comments submitted by Mark Wolfe, an attorney representing Save Atascadero, to the City of Atascadero on June 22, 2012 in response to the Del Rio Road Commercial Area Specific Plan Final EIR.

I. Claim: Mr. Wolfe states that “[t]he City may not approve a General Plan Amendment with significant unavoidable impacts.” Specifically, Mr. Wolfe asserted that the proposed General Plan Amendment is in conflict with the City of Atascadero General Plan’s requirements that state that such amendments “will not create any new significant and unavoidable impacts to traffic, infrastructure, or public services” because of the significant unavoidable impacts at Del Rio Road between El Camino Real and Ramona Road. He claimed that impacts on this roadway segment were not disclosed in the General Plan Final EIR and, thus, represent a “new” impact. Mr. Wolfe claimed there was a discrepancy between the Draft EIR’s conclusion about impacts in this regard and the General Plan Amendment Resolution, which stated that the General Plan EIR found that the project’s impacts would occur under 2025 conditions and that the interchange improvements would fully mitigate impacts in this regard. He stated that he retained Tom Brohard, a traffic engineer, to review the General Plan EIR’s findings and stated that he found that the General Plan EIR concluded that the US 101 / Del Rio Road interchange would operate at acceptable levels, with no mitigation being necessary.

I. Response: The General Plan Circulation Element Policy 1.3 establishes Level of Service (LOS) C as the minimum acceptable standard for traffic operations on City-controlled facilities and allows LOS D in cases where nearby residences would be impacted by improvements. Circulation Element Table III-10, which focuses on roadway segments, forecasts that Del Rio Road between US 101 and El Camino Real would operate at acceptable LOS B and Del Rio Road between San Ramon Road and El Camino Real would operate at LOS A under Year 2025 conditions without any additional improvements. However, Table III-3 of the Circulation Element concludes that improvements at the San Anselmo Road and Del Rio Road US 101 interchanges would be needed to bring the Year 2025 levels of service “into compliance with the City’s adopted standard of LOS C or better.” Specifically, the Technical Appendix to the Circulation Element Update states that these improvements “have been identified as necessary to correct existing and projected circulation deficiencies and achieve the City’s General Plan goals and policies.”
The proposed project—which involves a General Plan Amendment—would result in unacceptable roadway segment operations on Del Rio Road between El Camino Real and Ramona Road under “Existing Plus Project,” “Baseline Plus Project,” “Future Plus Walmart,” and “Future Plus Project” scenarios. Installation of the US 101 / Del Rio Road interchange improvements would result in acceptable “mitigated” operations on Del Rio under all scenarios. This conclusion was noted in Table 3.8-3 of the Draft EIR.

II. Claim: “The EIR fails to disclose the uncertainty of traffic mitigation and improperly assumes delaying the Annex resolves any uncertainty.” Mr. Wolfe alleged that the revisions to Mitigation Measure TRANS-1d and TRANS-1e contained in the Final EIR effectively “piecemeals” the project into two separate projects and conflicts with CEQA principles by requiring that a solution be found to an admittedly significant impact in the future.

II. Response: As discussed in the Final EIR on pages 2-9 through 2-11, the revisions to Mitigation Measure TRANS-1d and TRANS-1e—which involved adding a statement to both measures requiring the that US 101 / Del Rio Road interchange improvements be in place prior to issuance of the first certificate of occupancy for the Annex commercial uses—were made at the request of Caltrans. The changes did not alter the improvements required by either mitigation measure; they simply added a statement identifying the milestone by which they must be in place. In this sense, the “solution” (i.e., interchange improvements) has always been identified by the mitigation measures and, furthermore, the revisions provided reinforcement regarding when they must be completed.

As for the claim of “piecemealing,” both the Draft EIR and Partially Recirculated Draft EIR (PRDEIR) acknowledge that the Walmart component would likely be developed first, followed by the Annex component; refer to Draft EIR page 2-70. Thus, it is entirely appropriate for the mitigation measures set forth in the EIR to reflect this possibility. Furthermore, this does not constitute “piecemealing” because the “whole of action” (i.e., the Del Rio Road Commercial Area Specific Plan) was the project evaluated in both the Draft EIR and PRDEIR, including Walmart and Annex components.

II. Claim: “The EIR does not provide an analysis of cumulative toxic air contaminants, and it failed to provide adequate responses to requests for information related to this issue.” Due to the length of this comment and appended technical information cited by Mr. Wolfe, the comments are addressed individually (IIa through IIIk).

II. Response: To preface this response, Michael Brandman Associates (MBA) followed the guidance set forth in the San Luis Obispo County Air Pollution Control District (APCD) California Environmental Quality Act (CEQA) Air Quality Handbook. On several occasions between September 2010 and June 2012, MBA staff contacted APCD staff to clarify or obtain additional information concerning the guidance set forth in the CEQA Air Quality Handbook. Additionally, the APCD submitted written comments to the City of Atascadero concerning both the Draft EIR and PRDEIR. In sum, the APCD was consulted about the proposed project’s air quality analysis and closely reviewed the environmental documents prepared for the project.
More importantly, the APCD provided written communications to the City of Atascadero on three occasions that are relevant to Toxic Air Contaminants (TACs):

- **March 18, 2011:** The APCD requested revisions to the Type A Health Risk Assessment contained in the Draft EIR, which were ultimately provided in the PRDEIR. The APCD also noted that it prepared a Type B screening Health Risk Assessment for the proposed project, which accounted for TACs emitted from US 101, the Shell gas station, and project-related diesel truck trips, and indicated that the risk would not be significant.
- **April 30, 2012:** The APCD reviewed the supplemental Type A Health Risk Assessment contained in the PRDEIR and stated "...we agree with the conclusions of acceptable risk."

**June 13, 2012:** In response to Mr. Wolfe’s June 4, 2012 comment letter, MBA contacted the APCD to inquire about the availability of the Type B screening Health Risk Assessment that the APCD had conducted in connection with the Draft EIR. APCD staff indicated that they did not save their original work, but in the interests of addressing Mr. Wolfe’s comments, re-ran the Type B screening Health Risk Assessment, which was attached to the June 13, 2012 response. The APCD’s conclusion did not change.

As is evident from the above written communications, the APCD is in agreement with the PRDEIR’s conclusions regarding TACs and sought to provide Mr. Wolfe (via MBA and the City of Atascadero) with his requested information in a timely manner.

**Illb Claim:** Mr. Wolfe claimed that the PREIR does not provide an analysis of cumulative TACs, and it failed to provide adequate responses to requests for information related to this issue. Mr. Wolfe indicates that the Type B analysis was provided in the City Council Staff Report and not included with the PREIR and response to comments. He further states that the Type B analysis is not a cumulative analysis of TAC impacts because it does not assess the impact to off-site receptors.

**Illb Response:** The PREIR on page 3.2-105 indicated that the APCD had prepared a Type B analysis for the project and found that the project did not exceed the APCD threshold of 89 in 1 million. The APCD used a screening tool to estimate the impacts of existing sources of TACs on the residential receptor location closest to US 101. The APCD provided the results of the analysis in their comment letter on the PREIR (49 in 1 million). The APCD did not provide a copy of the spreadsheet screening tool used to obtain the results at that time. After Mr. Wolfe requested a copy of the spreadsheet used by the APCD, MBA made a similar request of the APCD.

In response, the APCD prepared a second screening analysis with slightly different analysis assumptions reflecting changes made to the HRA in response to comments. The spreadsheet indicates that the Type B analysis was revised from a risk of 2.5 in 1 million for larger diesel delivery truck only as in Table 7 on Page 22 of the Draft EIR HRA, Page 463 of the Draft EIR to 4.1 in 1 million from response to Draft EIR Comment APCD-23-3 which includes risks from delivery trucks as well as the remaining diesel vehicles that would access the fully built out site. This includes passenger vehicles, worker vehicles, and small delivery trucks and vans and variable distances shown in the updated risk model. The revisions resulted in a small increase in estimated Type B risk from 49 to 53.5 in 1 million. The APCD provided the revised screening.
spreadsheets to MBA. After the Planning Commission staff report was released, the screening analysis spreadsheet was then provided to the public in the City Council Staff Report.

Screening tools use conservative assumptions of impacts to allow Lead Agencies to identify projects that do not require a detailed analysis to demonstrate that the impact is less than significant. In this case, the Type B impact estimated using the screening tool was 53.5 in 1 million. The Type B analysis was conducted in accordance with the guidelines contained in the APCD CEQA Air Quality Handbook and in fact was prepared by the agency. The Lead Agency relied upon the expert commenting agency and their adopted guidance to determine that the impact of cumulative sources on the sensitive receptors within the project were not significant.

The PREIR used the list of projects approach for cumulative analysis. The APCD CEQA Handbook requests that the cumulative analysis should encompass all planned construction activities within one mile of the project. The PREIR included a list of projects (Table 4-1) known at the time the NOP was released for use in preparing the cumulative impact analysis in the PREIR. The cumulative air quality analysis included on page 4-4 of the PREIR states that all projects included in the list of cumulative projects in Table 4-1 are more than 1 mile from the project site. Therefore, there are no other existing or future projects that should have been included in the cumulative analysis. Under that analysis approach, the project was found to have less than significant cumulative air quality impacts.

Another approach utilized by some air districts to determine cumulative TAC impacts is to add the impacts from existing sources of emissions and planned projects near the project site, and the impacts of the proposed project for comparison to a cumulative threshold. The Type B analysis recommended by the SLOAPCD is a cumulative analysis. The Type B analysis includes the impacts of existing sources, planned sources, and the proposed project on the receptor location predicted to have the highest impact on the project site. Projects with receptors that are exposed to risk exceeding the threshold would be required to implement mitigation measures to reduce the impact to future residents of the project. This approach works well in determining the cumulative impact of sources on a project, and can also provide the data needed to determine the cumulative impact of the project on existing and planned sensitive receptors.

Although the APCD CEQA Handbook does not include a screening radius for Type B analyses, the APCD used an analysis radius of 1,000 feet. The Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines identify 1,000 feet as an appropriate geographic scope for performing a cumulative TAC analysis. The BAAQMD chose this geographic scope for TAC analysis because emission concentrations drop rapidly with distance from the source and cannot be distinguished from background emissions at 1,000 feet. The BAAQMD CEQA Guidelines have been set aside due to a March 2012 Alameda County Superior Court judgment finding that the Air District failed to comply with CEQA when it adopted its thresholds. Although the thresholds contained in the BAAQMD Guidelines have been set aside by court action, the information used to support the CEQA thresholds contained in the Guidelines is broadly applicable to other areas.
Ilc Claim: Mr. Wolfe claims that the cumulative analysis should have been based on the impact to residences that are within 1,000 feet of the project and are closest to US 101 which already exceed the 89 in a million threshold.

Ilc Response: Using the suggested methodology would result in an invalid approach to cumulative assessment. There is an existing residence approximately 70 feet from US 101 that is also within 1,000 feet of the project. The existing conditions for that residence would result in a risk of over 200 in 1 million based on the screening spreadsheet provided by the APCD. Under Mr. Wolfe's methodology, any project proposed within 1,000 feet of a residence within about 400 feet of US 101 and contributes a single molecule of TACs would result in a significant cumulative impact. When a project would contribute to the impact of an area that already exceeds thresholds or standards, CEQA allows for the threshold to be based on a project's cumulative contribution to an existing exceedance. Otherwise, all projects would be significant prior to considering their contribution.

Although the APCD CEQA Handbook does not discuss circumstances where an area already exceeds their threshold without the project, according to the BAAQMD CEQA Thresholds of Significance document, thresholds for an individual new source are designed to ensure that the source does not contribute a cumulatively significant impact. The San Joaquin Valley Air Pollution Control District (SJVAPCD) draft Guide for Assessing and Mitigating Air Quality Impacts Update also makes the case that 10 in 1 million should be used to determine if an impact is cumulatively considerable as discussed in the following section of their guidance:

Impacts from hazardous air pollutants are largely localized impacts. As presented above in section 8.3 (Thresholds of Significance - Toxic Air Contaminant Emissions), the District has established thresholds of significance for toxic air contaminants (TAC) that are extremely conservative, protective of health impacts on sensitive receptors. Consequently, the District's application of thresholds of significance for TACs is relevant to the determination of whether individual project emissions of TAC would have a cumulatively significant health impact. Because the established TAC significance thresholds are highly conservative, if project specific TAC emissions would have a less than significant health impact, the project would not be expected to result in a cumulatively considerable net increase in TAC. Thus, the project and would be determined to have a less than cumulatively significant impact on air quality.

The individual new source threshold for the APCD is 10 in 1 million. The project contributes a risk of 4.1 in a million at the most impacted sensitive receptor location. All other receptors including those near US 101 are less impacted than the most impacted receptor located near the corner of Obispo Road and Del Rio Road. Therefore, the project would not result in a significant contribution to a cumulative impact for receptors that are already impacted.

Illd Claim: Mr. Wolfe asserts that the roundabouts required to mitigate traffic impacts would make a significant contribution to the cumulative TAC impact.

Illd Response: This claim is based on the notion that the roundabouts would be located closer to the residence near the Annex West parcel than the existing signalized
intersection at the US 101/ Del Rio Road Northbound Ramps. As shown in PRDEIR Exhibit 3.11-6, the proposed roundabouts largely occupy the footprint of the existing intersection at this location. Furthermore, one of the principle reasons roundabouts were identified as preferred improvements for the interchange was that they avoided the need to widen the existing bridge structure. Thus, the roundabouts must inherently be in proportion to the existing width of the overcrossing and, therefore, vehicular traffic lanes would be significant closer to the residence near the Annex West parcel than under existing conditions.

Ille Claim: Mr. Wolfe stated that the Type A analysis does not account for off-site roadway emissions. He stated that the Type A analysis should have considered the impact of project traffic generated on off-site roadways. As we understand this comment, it apparently is based on the premise that traffic will be concentrated at the roundabout and on the other off-site roadways and would create additional impacts that were not addressed in the analysis.

Ille Response: The Type A threshold is based on impacts that would occur at the project site. It is based on emissions generated from all mobile and stationary sources inside the property line. This is because the primary concern with TACs is concentrated sources of emissions such as large stationary sources and the areas where trucks idle for extended periods of time. Including emissions on the roadways serving the site are not required by the APCD CEQA Handbook and was confirmed by their comment letter. The APCD comment letter requested that emissions from worker vehicles, passenger vehicles, and small trucks and vans accessing the parking lot should be added to the analysis. No request to model roadway emissions from these vehicles was made by the APCD. This is consistent with the approach used by the SJVAPCD and the South Coast Air Quality Management District for conducting project analysis. Expanding the emissions analyzed to include off-site travel would add sources not intended by the APCD and would be inconsistent with the use of their adopted threshold.

The BAAQMD provides additional guidance on when to add new traffic volumes generated by a project to a screening analysis:

If the development is anticipated to have more than 10,000 additional vehicles per day on the roads, the District recommends evaluating the sum of the existing traffic with the additional new traffic volume for comparison to the screening tables. If the user conducts a refined modeling analysis, the roadway impacts based on the combined traffic volumes (existing and new traffic) should be compared to applicable thresholds of significance.

The project generates less than 10,000 additional vehicle trips per day, so based on this criteria, the additional vehicle miles traveled from vehicles traveling on public roads near the project should not be added to the screening analysis. The PREIR Table 3.11-12 indicates that the project at buildout will produce 9,164 trips per day of which only a small portion is diesel traffic. Roadways with this trip volume would contribute an insignificant amount of additional risk such that their inclusion in the screening analysis is not warranted.

The maximally exposed individual was identified in the analysis using accepted modeling protocols. However, if one were to add roadway emissions generated by the
project to the analysis, the results would still be insignificant. Because of idling and slow travel speeds to the loading dock and across the parking lot for non-delivery vehicles on-site, the time that emissions are generated is much greater than a vehicle traveling on the public road. Therefore, emissions and related risk from the roadways on receptors would be less than that from the project site. The risk was estimated at 4.1 in a million from the project. If the risk were doubled by adding the roadways as a conservative estimate, the total risk would be 8.1 in a million which is well below the 10 in a million threshold. There is no need to perform additional analysis to show that the project would remain less than significant.

Illf Claim: Greg Gilbert, the air quality consultant for Mr. Wolfe, provided additional detail on the analysis. He contends that no explanation was provided for the differing results from the screening analyses referred to in the PREIR and the later version provided in the Planning Commission staff report.

Illf Response: The screening spreadsheet included notes describing the differences. The increase from 49 in a million to 53.5 was the result of adding risk related to customer diesel vehicles and other non-delivery trucks that would access the site and that were included in the revised HRA.

Illg Claim: Mr. Gilbert summarized his interpretation of what should be included in a cumulative TAC analysis and compares that with the Type B analysis prepared for the project.

Illg Response: The APCD Handbook does not include a separate threshold for analyzing the cumulative impacts of the project on off-site receptors. However, the Type B analysis provides data that can be used for this purpose and supports a finding of less than significant in this case. The APCD has established a CEQA health risk threshold of 89 in 1 million for sources which are not otherwise directly regulated. This value represents the population weighted average health risk caused by ambient background concentrations of toxic air contaminants in San Luis Obispo County. Under the APCD approach, the combined emissions of the project and other existing and planned TAC sources that exceed the risk threshold at receptor subject to the maximum impact from the project would be considered significant. The Type B analysis showed that most of the existing impact would be caused by existing truck traffic on US 101. The maximally impacted receptor is located farther from US 101 than the residences that are part of the project. Therefore, the impact on the maximally impacted off-site receptor (located at Del Rio Road and Obispo Road) would be less than the amount predicted for the onsite receptor (53.5 in 1 million).

Illh Claim: Mr. Gilbert states that off-site receptors are not included in the Type B analysis and would be required for a cumulative analysis, and that the receptors closest to Highway 101 should have been used in the analysis.

Illh Response: Mr. Gilbert is incorrect in his assertion that the analysis should have used off-site receptors nearest to US 101. It is more appropriate to compare the project's cumulative contribution to the sensitive receptor that is most impacted by the project. This approach is consistent with the BAAQMD's guidance:
For new sources, the project sponsor should first identify the location of the maximum exposed receptor from the single source screening analysis. In the cumulative analysis, the user evaluates the risks and hazards from all sources within 1,000 foot radius of the new source to the maximally exposed receptor that was identified through the single source analysis. The risks, hazards, and PM2.5 concentrations at the maximally exposed receptor locations are then compared against applicable thresholds of significance.

**III Claim:** Mr. Gilbert states that future TAC emissions should be used in the screening analysis.

**III Response:** TAC emissions are declining at a rapid rate due to the California Air Resources Board Diesel Risk Reduction Program and its adopted regulations. Using current emissions constitutes a worst case analysis because it assumes that emissions will remain constant over the next 70 years. The use of a screening analysis provides an even more conservative analysis. Therefore, once a project passes the screening test, no additional analysis is required. In any event, the risk at 7,500 as requested by the commenter would still not add sufficient risk to exceed the 89 in 1 million threshold. The screening threshold includes the impact of 6,000 peak hourly trips and for 8,000 peak hourly trips. The difference in risk at 8,000 trips is an additional 1.8 in 1 million at 50 feet. The nearest receptor is 989 feet from the centerline of the closest lane of US 101 and would experience a cumulative increase of less than 89 in 1 million.

**IIIj Claim:** Mr. Gilbert states that no threshold was identified for cumulative TAC impacts.

**III Response:** The APCD has not adopted a threshold for cumulative impacts to off-site receptors; however, a population weighted average for the County was used to determine the cumulative impact threshold for onsite receptors exposed to cumulative toxic emissions. This threshold provides a valid approach in areas where the existing impact without the project does not already exceed the threshold. This is the case for this project as described previously. The commenter opines that the 10 in a million project threshold should be used as the cumulative threshold since APCD has not adopted a cumulative threshold. As stated previously, if the maximally exposed receptor already exceeds the threshold, the project threshold can be used to define a cumulative contribution to an existing exceedance. This is not required for this project because the maximally exposed receptor would not exceed the 89 in 1 million threshold. However, if a receptor close to US 101 were the maximally exposed receptor, the 4.1 in 1 million contribution by the project would not result in a significant cumulative contribution to an existing exceedance.

**IIIk Claim:** Mr. Gilbert indicates that the DEIR in Appendix C2 indicates that TAC risk in the area is between 100 to 250 in a million which is inconsistent with the Type B analysis results.

**IIIk Response:** The APCD The information cited was obtained from the California Air Resources Board Diesel Risk Reduction Plan website. Since it was utilized in writing
the HRA existing air quality section, the California Air Resources Board has pulled the information from the website. Contact with Board staff by MBA indicates that the information was removed because it is out of date and may overestimate current impacts. The California Air Resources Board estimates were generalized estimates covering a large area. The APCD’s estimate provided in the Type B screening spreadsheet provides project specific information and more accurately portrays impacts at the project site.

**IV Claim:** “Construction noise increases will be significant.” Mr. Wolfe reiterated his prior comments from his June 4, 2012 comment letter regarding the significance of construction noise impacts and stated that he had asked Derek Watry of Wilson, Ihrig & Associates to review the construction noise analysis. Mr. Watry indicated that the Partially Recirculated Draft EIR should have used a threshold of 5 dB increase for short durations and a 10 dB increase for longer than a month as the basis for determining the significance of temporary increases in ambient noise levels.

**IV Response:** Mr. Wolfe’s prior comments on construction noise were addressed in the June 13, 2012 response. As indicated in that response, the PRDEIR used the City of Atascadero’s 70-dB conditionally acceptable residential exterior noise standard as the basis for determining the significance of short-term increases in ambient noise levels. It should be emphasized that the CEQA Guidelines are silent regarding whether the type of threshold that can be used (e.g., an “upper limit” as used in the PRDEIR or a “numerical increase” as proposed by Mr. Watry) in the context of determining the significance of temporary increases in ambient noise levels. Thus, in the absence of specific thresholds, the City elected to use the “upper limit” approach, as this was supported by the City of Atascadero General Plan adopted noise standards. In contrast, there are no statements in the City of Atascadero General Plan that provide support for using Mr. Watry’s proposed 15-dB and 10-dB increase thresholds.

Underscoring this point, a fundamental flaw with Mr. Watry’s noise increase thresholds is that they are so arbitrarily low, virtually any outdoor construction or maintenance activity would likely exceed them. As shown in Table 3.9-2 of the PRDEIR, many pieces of commonly used construction equipment such as backhoes, concrete mix trucks, graders, pavers, and tractors emit noise levels of 80 dB or higher. Given that ambient noise levels in the project vicinity were measured at 47.6 dBA $L_{eq}$ to 59.1 dBA $L_{eq}$ over a 24-hour period, use of any of the afore-listed pieces of equipment for a period of several days would easily exceed Mr. Watry’s 15-dB increase for short durations even though the activities in question may not be disruptive to surrounding receptors.

Furthermore as shown in PRDEIR Table 3.9-1, a 15-dB increase can yield a variety of human responses based on the resulting noise level. For example, 47.6 dB plus 15 db yields noise levels of 62.6 dB, which is roughly equivalent to normal conversation. In contrast, 59.1 dB plus 15 dB yields noise levels of 74.1 dB, which is equivalent to noise levels louder than a vacuum cleaner but lower than a freight train at 50 feet. Thus, under this approach, significant impacts could be identified in cases where noise levels are within “normally acceptable” levels for residential uses and, likewise, could be identified as less than significant in cases where noise levels are in excess of “conditionally acceptable” levels for residential uses.
Because of a significant difference in the resulting noise levels and associated human response, it is more informative to use an "upper limit" as the basis for assessing the significance of temporary increases in ambient noise levels.

**V Claim:** "The Final EIR misleadingly responded to comments requesting noise data, and the requested data demonstrate that the project causes noise to exceed the stated 60 dBA Ldn/CNEL threshold of significance." Mr. Wolfe stated he had originally requested "post-mitigated" noise contour maps in his comments on the PRDEIR and was advised that these were not available and then subsequent informed in the June 13, 2012 response that these contours were provided in Exhibits 3.9-7 and 3.9-8. Mr. Wolfe also disputed a statement from the June 13, 2012 response regarding the accuracy of noise contours and stated that Mr. Watry's own consultation with the SoundPlan company's representative indicates otherwise. Mr. Wolfe also alleged that a reference to the CEQA Guidelines regarding the accuracy of noise contours was incorrect and most likely out of date.

**V Response:** The response provided in the Final EIR to Mr. Wolfe's comment (Response to WOLFE-31) reflected the ambiguous nature of his original request. His original comment was predicated on the mistaken assumption that the PRDEIR provided "pre-mitigation" and "post-mitigation" noise contours, which was not the case. Thus, in the interests of correcting the misstatement, the Final EIR noted that "post-mitigated" noise levels were provided in tabular format in Table 3.9-45. As noted in Response to WOLFE-29, the tabular values are more precise that noise contours exhibits and, therefore, the Partially Recirculated Draft EIR provided the most precise level of analysis in this regard.

After release of the Final EIR, it was clarified that Exhibits 3.9-7 and 3.9-8 depicted "post-mitigated" noise contours. This was noted in the June 13, 2012 response to Mr. Wolfe's June 4, 2012 comment letter. As such, Mr. Wolfe's original desire to review "pre-mitigation" and "post-mitigation" noise values was provided in the PRDEIR in the most precise format available. Thus, he has never been deprived of the ability to obtain information in this regard.

Regarding Mr. Wolfe's claims about the statement in the June 13, 2012 response concerning noise contours being out of date, the quote in question came from the Governor's Office of Planning and Research website: http://ceres.ca.gov/planning/genplan/appendix_a.html. Although this was incorrectly identified as being from the CEQA Guidelines in the June 13, 2012 response, the statement is still current and was provided by an authoritative source on the matter.

Regardless of how accurate noise models become in the future, this quote will remain accurate, since noise levels are constantly fluctuating at any particular location. Changes to noise levels can occur from variations in humidity, temperature, cloud cover, wind, as well as from changes in traffic volumes, speeds and the number of trucks on the nearby roads. Because there are so many variables that can alter noise levels, noise level contour maps should not be treated as more precise than specific readings at particular locations.

**VI Claim:** "The EIR fails to recognize that the project causes noise to exceed the stated
60 dBA L_{eq}/CNEL threshold of significance.

VI Response: Mr. Wolfe’s comment confuses the difference between a “standard” and a “threshold.” The City of Atascadero General Plan exterior residential “normally acceptable” value of 60 dBA L_{eq} cited in the Partially Recirculated Draft EIR referenced a “standard;” not a “threshold.” Instead, the “threshold” used in the analysis was cited on Partially Recirculated Draft EIR page 3.9-43 and reproduced below:

- Increase noise by 3 dB or more where the without project noise level is 60 to 65 dB;
- Increase noise levels by 1.5 dB or more where the without project noise level is greater than 65 dB.

First, it should be noted that the receiver cited by Mr. Wolfe (No. 14) would experience unmitigated Year 2013 “without project” noise levels of 59.3 dBA L_{eq} and unmitigated Year 2013 “with project” noise levels of 59.9 dBA L_{eq}; refer to Table 3.9-44. Thus, this would not be considered a significant impact under the thresholds of significance cited above.

However, Mr. Wolfe has appeared to base his claims on the “mitigated” values shown in Table 3.9-45. Receiver No. 14 would experience mitigated Year 2013 “without project” noise levels of 59.3 dBA L_{eq} and mitigated Year 2013 “with project” noise levels of 60.1 dBA L_{eq}; refer to Table 3.9-45. The likely explanation for the larger increase for “mitigated” values at Receiver No. 14 compared to “unmitigated” values is that the SoundPlan model is only accurate to the integer for point receivers. If represented in integer format, Receiver No. 14 would experience mitigated Year 2013 “without project” noise levels of 59 dBA L_{eq} and mitigated Year 2013 “with project” noise levels of 60 dBA L_{eq}. This reaffirms the prior conclusion that Receiver No. 14 would not experience a noise increase of 3 dB or more. It should be noted that the 3 dB threshold reflects the noise increase required to be perceptible to the human ear.
Walmart/Annex Project Does Not Pay

I alone voted against the Walmart/Annex project at the Atascadero Planning Commission meeting on June 5. That Walmart was one of the Project applicants had nothing to do with it. The Project entails costs and risks for Atascadero that greatly exceed the hoped-for benefits and rewards.

The Walmart/Annex Project commits the City to advancing approximately $2.5 million to improve the Del Rio freeway interchange. Recovering that money depends on the Annex component of the Project being built. That is a doubtful matter, at best.

Five of the Annex’s six parcels were acquired through foreclosure last month by the Montecito Bank and Trust Company, from its borrower, The Rottman Group. Rottman was Walmart’s co-applicant on the Project going back to 2006. Since then, it faltered financially, fell out with Walmart and lost all but one of the Annex parcels. So now five Annex parcels are held by a bank, and the other is controlled by a disgruntled, insolvent developer. With the economy still stalled, and no white knights or angels around, assuming the Annex will be developed as Rottman planned is unrealistic.

Nonetheless, the City proposes to bet $2.5 million of taxpayer money on the premise that the Annex will be built as Rottman planned.

Not only that, with the City suffering its own financial distress, it must take the $2.5 million from the Atascadero Wastewater Fund, as a loan. When I questioned this at the Planning Commission meeting, the City Attorney summarily declared it legal, without elaborating on the grounds for his opinion. As to whether insurance would cover the risk of the Wastewater Fund coming up short, due to an earthquake or other unplanned event (like a state mandate requiring additional wastewater spending), no answers were forthcoming. Given the sums involved, the irregularity of this inter-agency borrowing, and the various risks, a thorough, written analysis of the issues, at a minimum, should be given to City officials expected to approve such a “funny money” transaction.

Predictably, the Environmental Impact Report is also being challenged. Attorneys for Project opponents submitted a letter arguing, most notably, that the EIR’s “fair share” analysis, under which Walmart bears only about half of the Project’s traffic mitigation costs, is legally flawed. The City Attorney and the EIR consultants dismissed those arguments at the Planning Commission meeting, but did not provide detailed written refutation. That led me to inquire whether insurance might cover the City’s costs in defending against litigation arising from certification of the EIR. Nobody had an answer to that question.

To justify a municipality proceeding in the face of costs and risks of this magnitude, there should be near-certainty that the community will make big money from the Project. Here, however, the prospects are nothing like that. Annual sales tax revenues of about $320,000 are projected from Walmart, along with another $200,000 from the Annex if and when it is developed as originally proposed. Beyond that, there are only unquantifiable hopes that multiplier benefits will trickle through Atascadero from money spent at Walmart, even though Walmart’s products are sourced elsewhere and its profits go back to Arkansas.
The Walmart/Annex Project’s limited upside cannot support spending $2.5 million that we don’t have, raiding the Wastewater Fund, and exposing the City to risks of major financial loss and protracted litigation. Putting aside the culture-war distractions that come with Walmart’s involvement and assessing this Project purely on its merits, it is plain that approval of it in its current form does not withstand analysis. The public’s money is not for gambling, especially in such large amounts and on such an unsafe bet.

Len Colamarino
Atascadero, California
June 23, 2012

NOTE: The preceding piece was published as a Viewpoint column in the June 22, 2012 edition of The Tribune newspaper of San Luis Obispo, California.
Memo

Date: June 25, 2012

To: Warren Frace, Community Development Director, City of Atascadero

From: Jason Brandman and Grant Gruber, Michael Brandman Associates

Subject: Del Rio Road Commercial Area Specific Plan – Colamarino Comments

Michael Brandman Associates (MBA) prepared this memo to address comments submitted by Atascadero Planning Commissioner Len Colamarino to the City of Atascadero on June 23, 2012 concerning the Del Rio Road Commercial Area Specific Plan.

Summary of Comments: Mr. Colamarino reiterated many of his same comments from the June 5, 2012 Planning Commission meeting, including the potential risks of the City spending $2.5 million in “taxpayer” dollars on the US 101 / Del Rio Road interchange improvements. He cited the recent foreclosure proceedings involving six of the seven Annex parcels as evidence that this portion of the project is in doubt, thus, making it unlikely that it will contribute proportionate share fees to the interchange improvements. Mr. Colamarino also questioned the legality of borrowing $2.5 million from the City’s Wastewater Fund to fund the interchange improvements. Additionally, he referenced the June 4, 2012 late submittal provided by Mark Wolfe on behalf of Save Atascadero and stated that the City’s consultants “dismissed“ the items contained in the submittal without providing a “detailed written refutation.” Finally, Mr. Colamarino disputed the sales tax estimates for the proposed project, citing the unpredictable nature of the Annex portion of the project, and also asserted that the “multiplier effect” of the project is in doubt because “Walmart’s products are sourced elsewhere and its profits go back to Arkansas.”

Response: This response will address Mr. Colamarino’s key points by topic:

- Timing and Funding for US 101 / Del Rio Road Interchange Improvements

This issue was addressed at length in the Final EIR on pages 2-1 through 2-17. To recap, the US 101 / Del Rio Road interchange is projected to operate at acceptable levels in the near-term after opening of the Walmart store. The need for the interchange improvements occurs at some point after opening of the Walmart store and, thus, Mitigation Measure TRANS-1d and TRANS-1e require that the improvements be in place prior to issuance of the first certificate of occupancy for the Annex commercial uses. This trigger point reflects the proximity of the Annex to the interchange and the likelihood that the Annex will be the only other major commercial development that could occur in the interchange vicinity.

Should the Annex prove not to be economically viable and site remains undeveloped for the foreseeable future, this would obviate the need for the US 101 / Del Rio Road Interchange Improvements.
interchange improvements until a much later date (i.e., 20 years or more). Under this scenario, the City would have the option of postponing the planning and implementation of the interchange improvements.

However, Montecito Bank & Trust has indicated to the City of Atascadero that its intention is to obtain approval of the Annex entitlements for the six parcel it owns and then sell the entitled parcels to a developer. Thus, the City is proceeding as if the Annex will be developed as contemplated by the Del Rio Road Commercial Area Specific Plan.

- Use of “Taxpayer” Dollars / Borrowing From Wastewater Fund

As discussed on pages 2-16 and 2-17 of the Final EIR, the City of Atascadero’s Transportation Impact Fee (TIF) program collects fees from new development projects for the specific purpose of implementing traffic improvements. TIF funds are not a tax imposed on the general public and are held in a separate account from the City’s General Fund. The City has approximately $800,000 in the TIF account and a portion of these funds would be expected to be applied to the interchange improvements. Thus, taxpayers would not bear the costs of the interchange improvement costs.

Regarding the Wastewater Fund, in the interests of informed decision-making, the June 5 Planning Commission meeting Staff Report identified borrowing funds from another restricted City account as one option for funding the balance of the interchange improvements. It is anticipated that City staff will engage in more detailed investigation of potential funding sources for the balance of interchange improvements (including legal review of the various approaches), with these options being presented to the City Council for consideration as part of a public hearing process. In sum, no decisions have been made regarding funding for the balance of the interchange improvements and, thus, it is premature to make any statements in this regard about the economic risk or legality about any potential approaches. Additionally, identification of the account from which the City may borrow funds is not an environmental impact but a matter of City policy.

- June 4, 2012 Late Submittal by Mark Wolfe

At the June 5, 2012 Planning Commission meeting, Atascadero City staff and the City’s consultants provided oral responses addressing the various comments contained in the 9-page letter submitted by Mark Wolfe on behalf of Save Atascadero the previous day (June 4, 2012). Due to the length and timing of the letter, preparing detailed written responses in advance of the June 5 meeting was not possible. However, after the meeting, Michael Brandman Associates prepared a written response dated June 13, 2012 to address the late comments, which was included the City Council staff report packet. Note that this written response mentioned many of same items that were discussed in the oral responses provided by City staff and consultants at the June 5 meeting. In any event, a detailed written response was provided to the late letter.

- Economic Benefits of the Proposed Project

Regarding Mr. Colamarino’s statements expressing skepticism about the sales tax
estimates and “multiplier effect” of the proposed project, it should be emphasized that these issues are outside of the scope of the environmental review process because they do not have physical impacts in the environment. Nonetheless, in the interests of addressing relevant concerns about the project, they will be addressed below.

The sales tax estimate was provided by Bay Area Economics in the “Final Draft Fiscal Impact Analysis” dated December 2010. The intent of the Fiscal Impact Analysis was to evaluate the entire Del Rio Road Commercial Area Specific Plan (including Walmart and Annex) in order to provide a complete assessment of fiscal impacts. Although Mr. Colamarino is skeptical that the Annex is economically viable and, thus, would be unlikely to generate the revenues cited in the Fiscal Impact Analysis, it would also not increase fiscal demands on the City of Atascadero under this scenario as well.

As for the “multiplier effect,” it should be noted that the Fiscal Impact Analysis did not attempt to quantify this phenomenon in its estimates. Rather, the Fiscal Impact Analysis relied upon “hybrid average” and “marginal cost/revenue” approaches towards estimating impacts, which are regarded as conservative methodologies for this type of analysis.
Mr. Sturtevant, I am very disappointed in your appointee, Len Colamarino, commissioner on the planning commission. Not only does he out of hand reject eight years of planning commission professional staff work and recommendations; but he presumes to second guess Mr. Pierik's sound and qualified legal advice. Then he publishes a poorly reasoned rant in the local press declaring that of seven planning commissioners only he is worthy of understanding the issues. I do understand that Mr. Colamarino has run unsuccessfully for the city council, and speculatively wants to do so again. So he wants to get his name out there. But the position of planning commissioner should be one of service to the community, not just an opportunity for bald self aggrandizement and promotion. Certainly, many local folks are urging the council to approve this long pending development. Lots of us want it for the goods, services, opportunities and competitive prices afforded to Atascaderans. I'm saddened to see that Mr. Colamarino exploits his postion in such a personally selfish fashion. Thank you for your consideration. John Paul Daly, Colorado Road, Atascadero.
June 24, 2012

Dear Ms. Torgerson:

Please forward the letter below to all City Council Members. Thank you.

Dear City Council; Mayor Kelly, members Clay, Fonzi, O’Malley, and Sturtevant:

I am writing to ask you to not approve the Walmart Supercenter and Del Rio interchange modification as currently planned. I feel the Walmart-only alternative is flawed for several reasons: it is unlikely to produce the expected increase in tax revenue, it forces the city to take a large gamble with city funds, and it very likely will compromise existing small businesses resulting in erosion of a vital city center.

Tax revenue from Walmart is based on unproven economic forecasts, and yet it inevitably will result in lower tax revenue from existing shops. Walmart will very likely out-compete a number of small businesses in town, even those in the existing Outlet mall. Will the current collection of Outlet shops, which cater to budget-minded shoppers as does Walmart, be able to compete? Don’t you believe in your hearts that there will be significant transfer of tax revenue from these shops over to Walmart? The result will be a net tax revenue less than anticipated, at the expense of small business. Not a good way to promote a vital city center which needs a critical mass of retail stores along with entertainment and eating establishments.

I also feel that the City is ignoring the needs of its citizens in prioritizing the Del Rio/El Camino interchange over other, perhaps more mundane traffic needs. Many streets in the city need repair or re-surfacing. Yet Walmart’s traffic impact fees, which are meant to support other circulation needs in the city, are being counted as approximately half of Walmart’s $2.2 million “fair share” interchange costs. This is improper favoritism; neglecting citizen’s needs over a corporation. Further, gambling city funds to cover the full $4.5 million cost is imprudent. If Walmart wants to come to Atascadero, let it be a good citizen corporation and loan the money to the city, not vice-verse.

Finally, the Walmart project will forever change the tone of the Del Rio/El Camino interchange area. Please demand it be built with sensitivity, foresight, and solid fiscal policy to Atascadero’s citizens. The future of Atascadero’s image rests with decisions that are responsible to the city’s populace first, not a huge corporation that apparently is attempting to bend the rules of the city. Do you believe this project, as presently presented, will promote Atascadero as a dynamic destination city or as a strip-mall city? Please consider my concerns, it’s in your hands.

Thank you for your efforts on this incredibly complicated decision,

John Goers, Atascadero resident for 32 years.
Memo

Date: June 25, 2012

To: Warren Frace, Community Development Director, City of Atascadero

From: Jason Brandman and Grant Gruber, Michael Brandman Associates

Subject: Del Rio Road Commercial Area Specific Plan – Goers Comments

Michael Brandman Associates (MBA) prepared this memo to address comments submitted by John Goers to the City of Atascadero on June 24, 2012 concerning the Del Rio Road Commercial Area Specific Plan.

Summary of Comments: Mr. Goers expressed opposition to the proposed project and Walmart Only Alternative, stating either option was unlikely to produce the expected increase in tax revenue, involves undue financial risks, and will likely result in adverse economic impacts on small businesses and the Downtown area. He also stated that prioritizing the improvements at the US 101 / Del Rio Road interchange will come at the expense of other traffic improvements and objected to the use of City funds to cover the balance of the cost of the interchange improvements.

Response: The Bay Area Economics Final Draft Fiscal Impact Analysis identifies the methodology used in estimated tax revenues generated by the proposed project. Mr. Goers did not provide any specific comments on the report.

The Draft EIR evaluated impacts on competing business in Atascadero, including small businesses and those located in the Downtown area. As a practical matter, Walmart would fill a market segment (regional-serving retail) that is generally absent from the local retail market. Thus, it is expected to primarily capture many local retail expenditures leaking to other markets and have limited potential to divert sales from local businesses. Refer to Section 3.12, Urban Decay of the Draft EIR for further discussion.

As noted on page 3.11-26 of the Partially Recirculated Draft EIR, the US 101 / Del Rio Road interchange improvements rank fourth on the City’s Adopted Interchange Priority Ranking list. The proposed reprioritization reflects the nexus between the proposed project and the need for the US 101 / Del Rio Road interchange improvements. Likewise, by not reprioritizing improvements, significant traffic impacts at the US 101 / Del Rio Road interchange may go unmitigated, which is contrary to CEQA principles.
June 22, 2012

Bob Kelly, Mayor
City of Atascadero
6907 El Camino Real
Atascadero, Ca 9342

Subject: Del Rio Road Specific Plan

Dear Mayor Kelly,

As you review the Atascadero Planning Commission recommendation related to the Amendment of the Del Rio Road Specific Plan, consider attaching a condition that all street and road improvements must be installed prior to the opening of any business or building, and those improvements include the three roundabouts, the improvements on the east side of El Camino Real in front of both the Walmart Site and the Annex Site, both sides of Del Rio Road from Rio Rita Road to Ramona Road, and the four foot wide pedestrian friendly shoulder on Del Rio Road from the Project to Potrero Road.

In support of this condition I offer:

The roundabout at El Camino Road and Del Rio Road must not be designed alone; its design must be coordinated with the two roundabouts at the 101 interchange. Once the design is completed, the City will have a better understanding of costs
and can then structure an agreement that will best serve the City of Atascadero and its residents.

Much inconvenience will occur when the street improvements are being installed. If the roundabouts are constructed in two phases, the second phase will be worse than the first phase and will impact users of El Camino Real from the San Ramon Interchange all the way to the San Anselmo interchange. Why impact the City twice when it can be avoided?

If only the El Camino/Del Rio Roundabout is constructed, it may be a long time (maybe never) before the Annex portion is developed thus delaying much of the income and jobs referred to in the EIR.

If all of the road improvements are in place, the Annex property will be more marketable and its development will occur much sooner. The Annex owner having committed to the improvements will have an incentive to find developers or tenants. It is not until the Annex is fully developed that the City will realize the benefits of income and jobs as suggested.

Section 65451 of the Government Code discusses the requirements of Specific Plans. It requires that the Plan specify the proposed distribution, location, and extent and intensity of the major components of private and public transportation, sewage, water, drainage, solid waste disposal, energy and other essential facilities and it also requires a program of implementation measures and financial measures. I believe
that the intent is to have all the issues in contract form and nothing remaining for future disagreement or argument.

It is in the best interest of the City of Atascadero to take a next step of designing the three roundabouts to determine the extent of those improvements i.e., land acquisition, bridge modification, pedestrian accommodations. Once a design has been established and a cost is known, the City can move forward with a proper agreement. A delay should not be substantial because the joint design work is necessary.

Respectfully submitted,

[Signature]
Hardy I Nielsen
4950 Del Rio Road
Atascadero, Ca 93422

Cc:
Councilperson Tom O’Malley
Councilperson Jerry Clay, Sr.
Councilperson Roberta Fonzi
Councilperson Brian Sturtevant
City Manager Wade McKinney
Community Development Director Warren Frace
Public Works Director Russ Thompson
Memo

Date: June 25, 2012

To: Warren Frace, Community Development Director, City of Atascadero

From: Jason Brandman and Grant Gruber, Michael Brandman Associates

Subject: Del Rio Road Commercial Area Specific Plan – Nielsen Comments

Michael Brandman Associates (MBA) prepared this memo to address comments submitted by Hardy Nielsen to the City of Atascadero on June 25, 2012 concerning the Del Rio Road Commercial Area Specific Plan.

Summary of Comments: Mr. Nielsen stated that the installation of the El Camino Real / Del Rio Road roundabout should not occur separately from the roundabouts at US 101 / Del Rio Road because of the potential for traffic congestion on the El Camino Real corridor. He stated that requiring installation of all three roundabouts at the outset obviates the need to potential delay the Annex until completion of the US 101 / Del Rio Road roundabouts. Mr. Nielsen referenced Government Code requirements for Specific Plans and stated that the City of Atascadero should take the next steps in designing and implementing the roundabouts before approving the project in order have a proper agreement that would allow all three roundabouts to be installed concurrently.

Response: As stated in the Final EIR on page 2-18, the Del Rio Road / El Camino Real roundabout is a required opening day improvement for the Walmart store, and therefore, will be in place prior to store opening. The US 101 / Del Rio Road interchange roundabouts are not necessary to achieve acceptable levels of service on opening day and, thus, are not required to be installed at that time. During the interim period between Walmart store opening and completion of the US 101 / Del Rio Road interchange improvements, Del Rio Road and El Camino Real are anticipated to operate at acceptable levels of service. Thus, there is no basis to require that all three roundabouts be installed prior to occupancy of the Walmart store.

Regarding, Mr. Nielsen’s suggestion that consideration of the project be delayed until the City completes the next steps in the design process and has an agreement in place to allow all three roundabouts to be constructed concurrently, as described in the Final EIR on pages 2-1 through 2-18, the circumstances of the project do not warrant this approach. The City has a preliminary design for the three roundabouts and Caltrans has indicated that the next steps in the process require the City to file a Project Initiation Form and submit a deposit in order to proceed. Thus, this action requires a commitment from the City to implement the improvement, which in turn, is predicated on the likelihood of the proposed project being developed. Also, the Walmart and Montecito Bank & Trust) applicants have indicated that they agreeable to the proposed mitigation approach and, thus, they would be unlikely to request a delay to revise the EIR further to adopt Mr. Nielsen’s preferred approach.