impacts that are properly excluded for the reasons described in Response to Comment 2-5 above. Correcting this error leaves a purportedly underestimated impact of approximately $750,000.

Second, contrary to the commenter's suggestion, this asserted "understated economic impact" of $750,000 is not a result of ADE's failure to follow its own protocol. As explained in ADE's Master Response 1, these non-employer businesses were not included in the data sets that ADE reasonably relied upon in estimating McFarland's total revenues. As these businesses were not included in the data that ADE relied upon, there was no "deviation in protocol" by not assigning economic impacts for these retail categories.

Assuming the validity of this purported underestimate, which represents merely ten percent of ADE's estimated economic impact for McFarland, this minor increase in impact must be set against the significantly higher number of businesses that would absorb this minor increase in economic impact. In other words, even if the commenter is correct that the actual economic impact on McFarland is $8,250,000 rather than $7,500,000, this modestly higher economic impact would be distributed among the 45 retail establishments rather than 25 estimated by ADE. This is precisely why ADE's Master Comment 1 asserts that including non-employer business would actually understate potential urban decay.

In short, the commenter's assertion that ADE failed to follow its own protocol is incorrect. Even accounting for the non-employer businesses asserted by the commenter, however, the economic impact of the Project is not significantly higher and does not call into question ADE's data or methodology for estimating McFarland's revenue or predicted economic impact due to the Project.

COMMENT 2-7:

Comment: The comment suggests that the FEIR failed to analyze a "fourth commercial district" in McFarland located east of Highway 99.

Response: Please see ADE's Master Analysis 4. This area is not the proper focus of an urban decay analysis. The urban decay analysis focused on central business districts (including downtown commercial areas), shopping centers, or areas with large format retailers similar to K-Marts. Additionally, the urban decay analysis looked to analyze shopping areas/centers with anchor tenants that attract shoppers to their respective areas. The area located east of Highway 99 is not such an area, as demonstrated by information contained in the commenter's letter.

The layout of the area prepared by the commenter does not reveal a dense central business district or large shopping center but rather individual commercial buildings spread over several city blocks in a residential nature. Commercial outlets located in residential areas do not need to attract customers, but instead may depend primarily on area residents for their vitality, so residential areas are more resistant to urban decay. Even in a situation in which commercial tenants are scarce, a growing population will increase demand for residences – so these particular commercial buildings might even be converted to residential uses.

In sum, the comment is incorrect that the urban decay analysis overlooked a relevant retail center.

COMMENT 2-8:

Comment: Commenter notes that McFarland's downtown commercial district is at risk for urban decay.

Response: If this were not the case, there would be no need to analyze this issue. As commenter notes, there are vacant buildings with boarded up windows in this commercial district; however, existing vacant buildings that are missing doors and windows cannot be attributed to a Project that has not been constructed. Furthermore, the presence of such vacant buildings does not constitute urban decay.[1] Accordingly, the commenter does not raise any issue that is not addressed in the SEIR and ADE Addendum.

Much of the additional information provided by the commenter indicates strength in the existing commercial enterprises in downtown. Of the 17 stores that potentially compete with the Delano Marketplace located in this district[2], many are located on the south side of Kern Street, which is characterized by McFarland as "in better condition and actively used by a mixture of retail and service businesses". Furthermore, many will not compete directly with the Project due to their specialized nature. For example, although Wal-Mart may carry some specialty foods, it is highly unlikely to be the same specialty foods carried by Lopez Mexican Candy store or 123 Nutrition. Furthermore, the Project does not propose addition of party rental goods that would compete with Lupita's Party Time, fresh tacos or pizza, etc.

COMMENT 2-9:

Comment: The commenter feels that the description of McFarland's northwest commercial district indicates that the "full extent" of the district has not been analyzed.

Response: What the commenter characterizes as a commercial district with 13 buildings can equally be characterized as a strip of commercial uses anchored by a discount store and a bank, plus an adjacent small shopping center. Additional buildings housing non-competing establishments (including medical offices, income tax/immigration services, etc.) are unnecessary for the analysis. As discussed in ADE's Master Analysis 1, the total revenues data sufficiently accounts for all of the retail establishments that may potentially compete with the Project.

[1] Please refer to the discussion in ADE's Delano Marketplace Economic Impact Study, April 23, 2007, pp. 51 – 52.
[2] These stores include: Kern Ave Pharmacy; Tacos El Cazador; La Espiga de Oro; Maggies Clothing; Sandy's Fruits; Basic Essentials (convenience store); 123 Nutrition; Fay Yin Restaurant; No Limits (cell phone store); Maria's Pizza; El Cha Cha Cha Bar; Lopez Mexican Candy; Maria's Fashion; Lupita's Party Time; McFarland Tent & Awning; McFarland Tire Service; and M&Js Tune & Lube.

COMMENT 2-10:

Comment: The commenter asserts that the description of McFarland's southern commercial district is cursory and/or incomplete.

Response: While is true that the description of this commercial area lacks a level of detail present in other aspects of the analysis, this is based on the specific characteristics of the area. This area is not the town's central business district or a shopping center including a large anchor that attracts traffic to the location. The A&M Food Market is not an anchor, as it is located a full three blocks away from the other buildings. Nor are there any significant vacancies (the commenter asserts one) or evidence of negligently-maintained buildings. Other than listing the names of certain businesses, the commenter does not challenge any of ADE's findings regarding this area or raise any actual issues that are not already addressed.

COMMENT 2-11:

Comment: The commenter asserts that the analysis of the impact on McFarland's grocery stores is flawed for several reasons: 1) SEIR analyzed five and not ten grocery stores, 2) changing to a neighborhood-serving grocery store "is not a mechanism by which any of the stores can survive," 3) the residual sales concept is illogical, 4) one-third reduction in sales will result in the closure of six grocery stores.

Response: With respect to the number of grocery stores, it is first noted that the commenter does not question either the total grocery revenue prediction or the specific revenue predictions for McFarland's largest three grocery stores. Accordingly, the commenter fails to explain how including these small, non-employer stores increases either the economic impacts or potential for urban decay. To the contrary, the existence of more of these grocery stores will likely reduce the potential for store closures because the economic impact will be spread among more businesses.

Second, the commenter apparently misunderstands the use of the term "neighborhood grocery stores." As proffered as a method of survival, this phrase means to reduce the variety of options provided and devote any remaining space or funds to making the store more attractive to potential customers. The term is not intended to refer to stores that merely sell groceries to the neighborhood – which, as the commenter points out, would not be a particularly useful survival mechanism.

Third, the Residual Sales concept is logical if the analysis is viewed in a supply/demand model. Assuming a simplistic fact pattern of $6.6 million in current sales from 10 stores with each store supplying approximately $660,000 in sales. If two stores go out of business, the current $6.6 million in demand (which stays the same because the number of shoppers has not been affected) would be split among 8 stores, so each store would be able to supply, on average, $825,000 in sales. While the overall demand (or "pie") remains the same, closure of two stores leads to a redistribution of demand among the remaining 8 stores – or "Residual Sales" in the amount of $1.2 million. The SEIR applies this principle in determining the Residual Sales from the two convenience stores.

Finally, CEQA is not concerned with increased competition, or with the number of stores that close at any given time. The only appropriate analysis is the extent to which the proposed Project will cause urban decay, and the commenter has not raised any questions to this effect.

COMMENT 2-12:

Comment: The commenter asserts that ADE's analysis of general merchandise impacts is confused and lacking evidentiary support.

Response: As explained in Response to Comment 5, ADE determined that the downtown pharmacy would likely not be significantly impacted by the Project. This is why impacts are not 100%. With this said, however, the commenter is correct that the analysis remains confusing. This is because the underlying data for Table 19 were transposed and Table 19 therefore does not make sense. Please see ADE's Master Analysis 5. The corrected Table 19 is below.

TABLE 19
MCFARLAND GENERAL MERCHANDISE STORES

Impact Detail	2008	2018
1. Categorical Retail Sales	$3,715,127	$3,715,127
2. Project Impact	$2,965,128	$1,767,0303
3. Post Project Impact Sales (Existing Retailers)	$750,000	$1,948,097
4. Number of Stores	3	3
5. At-Risk Stores	2	1
6. Potential Store Closure Losses (Reallocated to Remaining Businesses)	$0	$221,941
7. Residual Sales	$750,000	$1,948,097
8. Percent Change (Combined)	-80%	-47%

Source: ADE, data estimated from Board of Equalization and U.S. Economic Census ZIP Code Files

COMMENT 2-13:

Comment: The commenter asserts that one must conclude that ten non-employer specialty stores will close as a result of the Project.

Response: Closure of all, or even a majority, of these stores is not a necessary conclusion. Contrary to the commenter's suggestion, ADE's methodology suggests that certain stores may remain viable notwithstanding the numerical model's broad predictions. Please see Response to Comment 2-5 concerning ADE's prediction that the downtown pharmacy would likely remain viable notwithstanding the model's prediction. Similar conclusions can be reached regarding Maria's Fashion, Sandy's Fruits, Lopez Mexican Candies, Lupita's Party Time, and McFarland Tent & Awning, and many of the other boutique type stores in McFarland. These stores, particularly the last three, offer specialty goods that are not always available at Wal-Mart or other components of the Project. This is very similar to Maggie's Clothing, Basic Essentials (a convenience store), and No Limits (a cell phone store), which all offer something that Walmart cannot: convenience and specialization.

COMMENT 2-14:

Comment: The commenter questions ADE's analysis of residual sales with respect to McFarland's eating establishments.

Response: See Response to Comment 2-11 above discussing Residual Sales. The commenter asserts that Residual Sales does "not increase the size of the overall pie." This is correct as evidenced by the fact that pre-Project sales of $4,454,346 is higher than predicted post-Project sales of $4,110,217. Accordingly, this comment does not refute the consideration of Residual Sales.

COMMENT 2-15:

Comment: The commenter asserts that the Project will result in urban decay in McFarland's downtown.

Response: It is first noted that the comment is premised upon an incorrect standard for analyzing urban decay by asserting: "Unless there is substantial evidence that the buildings can be relet on a sufficiently lucrative basis to provide an incentive for proper maintenance and repair, urban decay is likely to take hold downtown." (Letter 2, p. 37.) This premise is incorrect, and indeed asserts an impossible standard for an analysis of urban decay under CEQA. According to this comment, a finding of significant impact for urban decay is mandated unless the EIR analyzes, for every vacant commercial space in the trade area, possible future tenants and offers affirmative evidence that such future tenants are capable of contributing lease payments that are "sufficiently lucrative" to incentivize property owners to maintain their properties. There is no legal support for this onerous burden.

The commenter's factual allegations are also based on an inaccurate premise. While the commenter correctly confirms ADE's conclusion that the Kern Avenue Pharmacy and La Espiga De Oro serve as anchors to the downtown area (See ADE Addendum, p. 23), the commenter incorrectly concludes that the pharmacy must close. This conclusion does not follow from ADE's analysis. (See Response to Comment 2-5.) Thefore, the commenter's prediction of "reducing the draw to downtown" is based on a faulty premise.

Based further on this faulty premise of significant business closures in the downtown area, the commenter then disagrees with ADE's assessment of re-tenanting possible future vacant space in the downtown area by asserting, "But who would sign up for the space?" (Letter 2, p. 37.) Yet the commenter's own factual assertions support ADE's claim of re-tenanting by non-retail uses. In a prior discussion, the commenter asserts that two commercial buildings in the downtown area "have been converted to noncommercial uses." (Letter 2, p. 26.) Such conversion to noncommercial uses is not indicative of urban decay, and rather reinforces ADE's predictions of conversion to non-retail uses. Further reconfirming ADE's prediction is a recent article (dated March 4, 2009) published by Costar Group[3] that discusses alternative tenant uses and strategies for filling retail vacancies, even in the current economic downtown. (Appendix A.) This article cites many examples of prospective non-traditional tenants that are proven alternatives for

[3] www.costar.com

traditional tenants, including government uses, educational uses, churches, medical uses, recreational/family fun uses, fitness uses, second-hand/overstock uses, and seasonal/temporary uses. (Appendix A, pp. 1-4.) The Costar article also provides a detailed list of specific tenants that had been signing new leases within the six-month period of the article's date. (Appendix A, pp. 7-11.) While this lease activity is on a nationwide basis and not specific to McFarland or the regional trade area, it nevertheless demonstrates that retail uses can and are being be retenanted by non-traditional uses.

Finally, as previously explained in the EIR, vacant buildings by themselves do not constitute urban decay:

> [A] building vacancy alone would not meet the CEQA threshold of significance for a physical change to the environment. To cause a significant physical impact, other contributing factors would need to occur such as lack of effort on the part of property owners to maintain or improve their properties to a condition suitable for leasing, combined with the failure of surrounding businesses and physical deterioration of those properties. To reach a condition recognized as a physical impact under CEQA would require total neglect or abandonment of these properties by their owners for an extended period such that substantial physical deterioration, or urban decay, would ensue. As stated above, such an indirect physical impact must be a reasonably foreseeable result of the project, requiring a showing of cause and effect, with the finding of such an impact supported by substantial evidence.

(RDEIR, Appendix H, pp. 51-52.)

Thus, even an entire city block of vacant buildings will require illegal acts (e.g., graffiti, vandalism) and many years of complete absence of maintenance before becoming blighted. Even if premises are not re-tenanted for years, owners have a financial incentive to continue maintenance and upkeep: the costs of basic maintenance are low relative to the complete loss of the ability to re-let the structure in the future. The comment fails to consider this necessary element of urban decay.

In sum, this comment is based on an incorrect legal premise regarding the nature of an analysis of urban decay. The comment is also based on an incorrect factual premise of store closures, and potential for re-tenanting these hypothetical vacant retail spaces. The comment also ignores the fact that vacancies alone do not constitute urban decay.

COMMENT 2-16:

Comment: The commenter asserts that the SEIR failed to analyze urban decay in an area of McFarland located east of Highway 99.

Response: Please see ADE's Master Analysis 3 and Response to Comment 2-7.

COMMENT 2-17:

Comment: The commenter asserts that economic impacts in the northwester and southern commercial districts, although not causing urban decay in those areas, could lead to urban decay in the downtown and an area located east of Highway 99.

Comment: The commenter asserts that economic impacts in the northwestern and southern commercial districts, although not causing urban decay in those areas, could lead to urban decay in the downtown.

Response: This comment is premised on a series of compounding unsubstantiated premises that fail to establish the likelihood of urban decay anywhere.

The comment's first compounding assumption is that all specified retail stores in the northwest district will fail. (See Response to Comments 2 – 9, 11, 13.) The second compounding assumption is that the Top Discount cannot be re-tenanted, which is inconsistent with ADE's findings. (ADE Addendum, p. 25; also see Response to Comment 2-15 and FEIR Appendix A regarding re-tenanting vacant retail space.) In particular, the commenter's assumption about the difficulty of re-tenanting a 12,000 ft^2 retail space internally inconsistent with the commenter's prior assertion that a 3,000 ft^2 space would be difficult to re-tenant as being too small. (Letter 2, p. 37.) Contrary to both of the commenter's inconsistent claims, retail spaces ranging in size from 3,000 to 12,000 ft^2 are well within the range of new leases being signed by a number of different traditional and non-traditional uses, as evidenced in the Costar article attached as Appendix A. (Appendix A, pp. 7-11.) The third compounding assumption is that "building 7" would suffer from physical deterioration with four tenants in seven spaces, for which the commenter provides no supporting evidence. The fourth compounding assumption is competition for tenants between the purported northwest area and the downtown, which "would favor the northwest." There is no evidentiary support for either this competition or the asserted result of this speculative competition. The fifth compounding assumption is that both La Espiga De Oro and the downtown pharmacy will close, which are unsupported and contrary to ADE's findings. (See ADE Addendum, pp. 25 – 26; Response to Comments 2-5, 11.)

Additionally, the comment again assumes that business closures, even of non-anchor spaces, will necessarily result in urban decay. As explained above, this is not the case. (See Response to Comment 2-15.)

In short, this comment is based on a series of questionable and/or unsupported compounding assumptions that constitute speculation. The comment does not provide evidence of a reasonable likelihood of physical deterioration resulting from the Project.

COMMENT 2-18:

Comment: The commenter disagrees with the SEIR's conclusion that the Project will have a less than significant impact on urban decay within McFarland.

Response:	Substantial evidence supports the determination that the Project's urban decay impact will be less than significant. (See Responses to Comments 2-1 – 17.) Sales diversions, and even business closures resulting from those sales diversions, do not constitute urban decay. Rather, urban decay only occurs when the long-term vacancies result in a "ripple of store closures" that prevent future investment/maintenance by property owners and the resulting physical deterioration of the general area. This is contrasted with individual business closures that do not trigger urban decay, such as the commenter's description of the area located east of the Highway 99. (Letter 2, pp. 18-24.) While the commenter asserts that urban decay is present in that area, the evidence establishes precisely the opposite, namely that the existing two vacancies have not hindered subsequent investment and maintenance of nearby commercial properties.

COMMENT 2-19:

Comment:	The commenter asserts that additional business closures are predicted to result under cumulative conditions.

Response:	The commenter is correct that additional business closures are predicted to occur under cumulative conditions.

COMMENT 2-20:

Comment:	The comment asserts that cumulative impact of urban decay will be significant in McFarland because 1) urban decay already exists in McFarland, 2) possible vacancies due to future business closures will not be re-tenanted, and 3) investment will be hindered because most of McFarland lies within a redevelopment area.

Response	The SEIR concludes that urban decay impacts are less than significant under cumulative conditions. An analysis of urban decay is not simply an economic impact, or even the resulting closure of a few retail stores, but rather a causal chain of economic impact, business closures, prolonged vacancy, and resulting inability to maintain property that leads to general physical deterioration of an area. Even if a few individual stores remain vacant for a long period, as claimed by the commenter, it cannot be said with any certainty that this will result in an unwillingness or inability of other property owners in the area to continue to invest and/or maintain their properties. This is demonstrated by the commenter's own examples. The commenter asserts that urban decay exists in an area in the east of McFarland where two vacant buildings exist and then identifies specific investment/renovation to adjacent properties occurring after the vacancy. (Letter 2, pp. 18-24.) Similarly the commenter asserts that there are existing vacancies on one side of the street in the downtown but then asserts the buildings on the other side of the street "are in better condition and actively used by a mixture of retail and service businesses." (Letter 2, p. 28.) These examples, supplied by the commenter, highlight the distinction between business closures and the spiral of non-investment that characterizes urban decay, and support the conclusion that urban decay is not present in McFarland.

In expressing disagreement with the SEIR's conclusions, the commenter offers unsubstantiated assertions of an inability to re-tenant spaces that may become vacant due to possible business closures. Also unsubstantiated is the commenter's claim that all potential tenants would choose Delano rather than McFarland.

As a final matter, the comment claims that McFarland is hindered in its ability to avoid physical deterioration because a significant amount of McFarland's area is located within a redevelopment area. Yet the same is true for a significant amount of Delano's area; and in fact the establishment of redevelopment areas is generally considered a helpful factor in avoiding urban decay. (RDEIR, Appendix H, p. 56 ("the Delano Village Center is located within the City's Redevelopment Area and the City's Enterprise Zone, which creates considerable flexibility for building reuse and incentives for many types of businesses to locate to the site"); see also *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4h 1173, 1183-1184.)

COMMENT 2-21:

<u>Comment</u>: The commenter suggests that the payment of approximately $100,000 to $110,000 per year to the City of McFarland is both feasible and necessary to mitigate impacts to urban decay.

<u>Response</u>: The comment is incorrect for several reasons. First, in light of the finding that urban decay impacts are less than significant, no mitigation is necessary. (Pub. Resources Code, § 21100, subd. (b)(3); CEQA Guidelines § 15126.4, subd. (a)(3).)

Second, even if impacts are significant, the commenter has proposed no mitigation that is enforceable and legally feasible. Broad actions described as "building preservation" and "infrastructure improvements," "financial incentives" and "marketing efforts" are not sufficiently specific as to be enforceable. (See *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1994) 151 Cal.App.3d 61, 79.)

Third, the commenter's suggestion of a contribution of sales tax revenue is not feasible. In support of the assertion for such a payment, the commenter relies on *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341 ("*City of Marina*").) However, *City of Marina* is inapplicable because in that case the governing authority for the impacted area, namely the Fort Ord Reuse Authority ("FORA"), had already prepared a "Base Reuse Plan" that included a specific "capital improvement plan identifying public facilities that need construction or improvement and projecting future expenditures for that purpose through the year 2015." (*Id.* at 347.) FORA had also prepared a "Comprehensive Business Plan setting out assumptions about projected revenue and expenditures." (*Ibid.*) In light of this existing detailed capital improvement plan and nexus study, the Court found it reasonable that the CSU trustees contribute the precise impact fee the same as a private developer within the jurisdiction. (*Id.* at 364.) Here, by contrast, the comment suggests that the City of Delano would apparently design and implement this program anew of whole cloth. Neither CEQA, nor the CEQA Guidelines, nor any interpretive cases have required a lead agency to create a new mitigation fee program where none existed before.

Letter 3: M.R. Wolfe & Associates

m | r | wolfe
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July 17, 2009

By Fax & E-Mail

Mr. Keith Woodcock, Community Development Director
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Re: Draft Supplemental Environmental Impact Report for Delano Market Place Project (SCH#2005011089)

Dear Mr. Woodcock,

Please accept the following comments on the above-referenced draft supplemental environmental impact report (SEIR), submitted on behalf of Citizens for a Better Delano, and McFarland business-owners Peter Tawfik and Harshad Patel. For the reasons explained in this letter, the SEIR's analysis of potential urban decay impacts in communities outside Delano, including McFarland, is fundamentally flawed and legally inadequate under CEQA. We would respectfully request that the concerns set forth below be addressed in a revised and recirculated draft SEIR before the City of Delano takes any further action on the Project.

The SEIR and the underlying analysis by ADE (collectively "SEIR") purport to evaluate the potential for urban decay within the Project's secondary trade area by: (1) describing existing physical conditions with regard to possible urban decay in the six communities identified; (2) documenting the existing inventory of retail establishments in these communities with which the Project would potentially compete; (3) estimating overall retail sales impacts caused by the Project and distributing these impacts among the affected retailers according to a "gravity model;" and (4) forecasting possible store closures and urban decay based thereon. ADE's analysis concludes, rather remarkably given the size of the Project and the economic realities facing the region currently, that this Supercenter-anchored Project carries no potential for significant urban decay effects in any of the six communities studied. For the reasons that follow, the analysis is defective both in terms of its assumptions and methodologies, and its conclusions are therefore unsupported by substantial evidence.

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I. Inaccurate Description of Baseline Conditions

The SEIR's description of potentially affected retail establishments and existing urban decay conditions in the six communities appears materially inaccurate. As a general matter, we would observe that the SEIR nowhere indicates on which date(s) ADE conducted its reconnaissance of the six communities, or the extent to which these jurisdictions have been consulted as part of the CEQA process. The City should disclose this information in a revised SEIR. We would also generally observe that the SEIR does not actually define "blight" or "urban decay" or otherwise describe what physical conditions were assumed to constitute it. Although the reader may extrapolate from the SEIR's description of areas it found to be blighted already (e.g., Pixley, with "boarded-up" windows, "poorly maintained" structures, and "peeling paint"), the City should clarify what it and ADE considered to be the physical indicators of blight/urban decay at the time it conducted its reconnaissance, specifically what ADE considered "unsightly conditions" and "long-term" vacancies. 3-1

A. Earlimart

ADE reports that Earlimart's downtown corridor "does not appear to be blighted." ADE Addendum at p. 15. Our clients disagree with this characterization and believe several areas in Earlimart's downtown, particularly along Front and Armstrong streets, show signs of urban decay. This should be acknowledged and disclosed. It also appears that the SEIR's inventory of existing retail stores in Earlimart is not complete, as there are additional potentially impacted establishments present in the town that are not identified or included in the analysis. 3-1(A)

B. Mc Farland

ADE identified three commercial areas in McFarland and states that there is "no evidence of urban decay" in any of them, notwithstanding the presence of a "non-standard" supermarket in one. ADE Addendum at p. 22, 23, 24. Again, this characterization appears inaccurate as there is in fact evidence of urban decay west of Highway 99 in the downtown area along Kern Avenue, and in areas east of Highway 99 also along Kern Avenue. 3-1(B)

II. Flawed Assumptions, Errors, and Omissions in Economic Impact Analysis

A. Improper Unilateral Assumption of Sales Impacts to Retailers Outside The Six Communities Evaluated

ADE estimates that the Project will reduce retail sales outside Delano in the Project's secondary trade are by approximately $26 million. SEIR, p. 5. ADE then discounted this amount by 39% for purposes of estimating the economic impact and consequent risk of urban decay impacts in the six communities, reasoning that this percentage reflected Project sales within the "regional market area" but outside these six 3-2(A) urban agglomerations. *Id.* ADE explained that: "[t]he stores that would potentially compete with the Delano Marketplace store [sic] most directly are located outside of the regional market area, most likely in communities with multiple large-scale shopping center and major employers such as Bakersfield, Tulare, and Visalia." *Id.*

Please note that the urban decay analysis in the original EIR from 2007 assumed that 100 percent of the Project's sales impacts would be experienced within the Project's primary and secondary market areas as defined. *See* p. 18 of ADE Economic Impact Study, April 23, 2007. This new assumption that 39% of the impacts will occur outside these areas is therefore inconsistent with ADE's own prior assumptions and is otherwise not supported by any evidence beyond conjecture.

Regardless, even if ADE is correct in assuming that 39% of the Project's sales impacts will be felt by retailers in areas such as Bakersfield, Tulare, and Visalia, then it necessarily follows that existing or planned future shopping centers in these same cities similar that are similar to or competitive with the Delano Marketplace (*i.e.,* shopping centers with Wal-Mart supercenters) will likewise impact sales within Delano's regional trade area. For example, there are two Supercenter-anchored shopping centers under construction in Bakersfield, two others announced in Tulare and Porterville for which EIRs are under preparation, and others announced in Visalia and Wasco. Indeed, the draft EIR for the Cartmill Crossings Project in Tulare, which includes a Wal-Mart Supercenter, specifically states that that project will capture significant sales within the same regional trade area that includes Delano. The SEIR's assumptions are therefore improperly unidirectional. The SEIR should be revised to account for overall cumulative sales impacts from all similar competitive projects within the regional trade area. 3-2(A) (continued)

B. <u>Failure to Document 2018 Sales Assumptions</u>

ADE estimates future sales impacts across various retail categories in each of the six communities for the year 2018. Tables 6-30. In each instance "categorical retail sales" are assumed to be the same in 2018 as they were in 2008. The SEIR provides no support, documentation, or explanation of any kind for how ADE arrived at the 2018 sales numbers. Furthermore, the SEIR fails to report the relevant data as sales per square foot, even though this is customary within the industry and indeed necessary to gauge the potential for sales losses to translate into store closures and potential urban decay. On the contrary, ADE "predicts" that certain stores risk closure based on no defined criteria and no estimate of the available square feet affected. The SEIR should be revised to state the assumptions for population growth for each town through 2018, concomitant sales growth, and the amount of displaced retail square footage. 3-2(B)

C. <u>No Evidentiary Support For Re-Tenanting Predictions.</u>

For Earlimart, the SEIR concludes that even if the general merchandise store and convenience store do close as a result of the Project, "there is a likelihood of [their] being re-tenanted." SEIR at p. 6. The only support offered for this conclusion are statements 3-2(C) that downtown Earlimart has a high occupancy rate overall, has generally well maintained buildings, and the location of an auto parts store and food processing plan nearby evidence investment in the area. As already discussed, the SEIR's description of existing physical conditions in Earlimart is suspect, and hence this is an inappropriate basis for concluding that re-tenanting of closed stores is "likely" to occur. Indeed, ADE points to no actual evidence to support this conclusion.

For McFarland, the SEIR finds that stores potentially closed by the Project would be quickly re-tenanted because the spaces are not "disproportionately large so as to hinder re-tenanting" and, in the case of the pharmacy, the area is "well-maintained" with a "relatively low overall vacancy rate." SEIR at p.7. Once again, we question this characterization of the current state of maintenance of McFarland's downtown, and hence this conclusion. Furthermore, ADE provides no analysis to show that re-tenanting potential is driven by "proportionate size." On the contrary there appear to be several smaller stores in McFarland that have been vacant for a considerable time. 3-2(C) (continued)

D. Failure to Document Assumptions of the "Gravity Model."

ADE refers to having predicted sales impacts by means of a "gravity model," but they provide no evidence of the computations used to enable independent verification. The SEIR states that "factors utilized" in the model "include" the distance from Delano and each town and city, as well as the amount of retail activity in each area (SEIR at p. 5) but does not list all the factors or explain the role played by, or the weight ascribed to, each. Two key concerns are that the distances ADE relied upon in running its gravity model appear to be those from town to town and not from Project to competing retailer, and are based upon geographic distance instead of drive time. The SEIR should be revised to document all "factors" included in the model, including data inputs, equations, calculations, and outputs of the "gravity model" run. 3-2(D)

E. No Good Faith Effort At Cumulative Impact Analysis.

ADE basically side-steps the Project's potential to cause future cumulative impacts from urban decay in areas outside Delano by characterizing them as too speculative to evaluate – even though it conducted a cumulative impact analysis for Delano in the original EIR. Although CEQA does not require "foreseeing the unforeseeable," an agency must nevertheless "use its best efforts to find out and disclose all that it reasonably can." CEQA Guidelines, § 15144. We note that the SEIR claims that "significant documented population growth" within the regional market area will create additional retail demand in the future – but fails to disclose what this "documented population growth" consists of. The SEIR should be revised to include a more thorough cumulative impact analysis based on actual population growth forecasts which are disclosed and appended. 3-2(E)

III. Recirculation of a Revised Draft SEIR is Required

Recirculation of a revised draft SEIR is required whenever there is an addition of significant new information in an EIR after the public comment deadline but before certification requires recirculation. Guidelines, § 15088.5, subd. (a). The purpose of recirculation is to subject substantive revisions to the same "critical evaluation that occurs in the draft stage," and to give the public "an opportunity to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom." *Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 822. An EIR is invalid when significant new information is added to the record late in an EIR process with "no opportunity for meaningful public comment and response." *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 128-134. Recirculation is also required if the EIR is changed in a way that "deprives the public of a meaningful opportunity to comment . . ." or when it reveals that the earlier EIR "was so fundamentally and basically inadequate in nature that public comment on the draft was in effect meaningless." *Id.* 3-3

This Draft SEIR is clearly "fundamentally and basically inadequate" under Section 15088.5 of the Guidelines. Therefore, in order to correct the substantive defects identified in this letter, the City must add significant new information and recirculate it in revised form for further public and agency review and comment.

Thank you for your consideration of these comments.

Yours sincerely,

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

Mark R. Wolfe

MRW:ms

COMMENT 3-1:

<u>Comment</u>: The commenter asserts that the SEIR failed to define urban decay and adequately document baseline conditions.

<u>Response</u>: Please See ADE's Master Analysis 1 regarding ADE's methodology for analyzing economic impacts and urban decay.

Additionally, the ADE Addendum and SEIR expressly relied upon the prior analysis of economic impacts and urban decay contained in the *Delano Marketplace Recirculated Draft Environmental Impact Report* ("RDEIR"), which included as Appendix H ADE's prior analysis of the Project's potential to impact urban decay. Consistent with CEQA, the RDEIR was expressly incorporated by reference and made available for inspection during the SEIR's public comment period. The RDEIR included the following definition of urban decay:

> Since only physical effects are to be considered under CEQA, economic and social changes resulting from a project may be considered if they in turn produce changes in the physical environment. To fully satisfy the requirements of an EIR, an economic analysis must start with the economic impacts, but also follow the causal chain to assess the likelihood of new retail space causing long-term vacancies in existing retail space and ultimately leading to urban decay and physical deterioration of existing retail centers and nodes. In the words of *Bakersfield Citizens for Local Control v. City of Bakersfield, Panama 99 Properties LLC, and Castle & Cooks Commercial-CA, Inc*., the analysis is required to assess whether a new retail development "could cause a ripple of store closures and consequent long-term vacancies that would eventually result in general deterioration and decay within and outside the market area" of the proposed development. Further, "[t]hese effects include, but are not limited to, physical decay and deterioration resulting from store closures in the same market area or in established areas of the community (i.e., the 'traditional downtown area') due to competitive pressures, followed by an inability to easily re-lease the vacated premises." One concern is that large retailers that dominate sales in their merchandise lines "will displace older, smaller retail stores and shopping centers, leaving long-term vacancies that deteriorate and encourage graffiti and other unsightly conditions." An EIR "must analyze the cumulative impacts resulting from construction and operation of the proposed shopping center in conjunction with all other past, present or reasonably foreseeable retail projects that are or will be located within the proposed project's market area" and determine the likelihood that a project "individually and/or cumulatively, indirectly could trigger the downward spiral of retail closures and consequent long-term vacancies that ultimately result in decay." In light of the above, even if it could be shown that the proposed project would potentially result in the failure of an existing competing business or businesses, the resulting building vacancy alone would not meet the above definition of urban decay. As such, a building vacancy alone would not meet the CEQA threshold of significance for a physical change to the environment. To cause a significant physical impact, other contributing factors