

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. 50-52.)

### **COMMENT 3-1(A)**

Comment: The commenter asserts that the SEIR failed to document existing conditions in Earlimart and analyze potentially impacted properties.

Response: With respect to existing conditions in the town of Earlimart, the commenter disagrees with ADE's characterization of its physical condition yet does not provide specific deficiencies in ADE's methodology or analysis. Differing conclusions, even among experts, does not render and EIR's analysis inadequate, and this is, at most, a difference in factual categorization.

The comment also asserts that some potentially impacted retail establishments were not identified in Earlimart. The commenter does not identify these retail establishments. ADE's methodology for predicting economic impacts is addressed in ADE's Master Analysis 1, above. ADE's methodology for identifying areas potentially impacted by urban decay is described in the Draft SEIR. No more detailed response is feasible as the commenter has not provided sufficient information about these purportedly affected businesses or their locations.

### **COMMENT 3-1(B)**

Comment: The comment asserts that the SEIR fails to adequately document existing conditions for an area of McFarland east of the Highway 99.

Response: Please see Response to Comments 2-7 and 8 and ADE Master Response 4.

### **COMMENT 3-2(A)**

Comment: The comment asserts that the SEIR is flawed because 100% of the Project's predicted economic impacts were not applied solely to the six communities in the regional trade area.

Response: The commenter is correct that less than 100% of these economic impacts were applied solely to the six communities in the regional trade area, because to do so would

significantly overstate the Project's economic impact in the areas. Please see ADE's Master Analysis 4.

### **COMMENT 3-2(B)**

Comment: The comment asserts that the SEIR fails provide evidentiary support for predictions of future sales, population and amount of displaced square footage.

Response: Population predictions are well documented in the RDEIR that was expressly incorporated by reference and made available for public review during the Draft SEIR's public comment period. (See RDEIR, Appendix H, p. 4, identifying annual growth rates for Delano – 3.7%, McFarland – 3.1%, Wasco – 2.3%, Kern County – 2.1%.) However, these growth rates were not used to calculate the expected future sales. The commenter is correct in that it is not unusual to forecast future population based on current growth rates, assume a future average income and percent expenditure dedicated to retail purchasing, and calculate an increased total sales revenue in the future; however, ADE made the more conservative assumption that sales would not, in fact, increase. This decision was predicated on the fact that these calculations would necessarily have been speculative, and would have required a far more detailed analysis than could be performed with regard to the entire Regional Market Area outside the City of Delano. Accordingly, the Addendum assumes only that the predicted year 2018 sales will be at least as high as the predicted year 2008 sales.

Similarly, the cumulative projects analysis in the Delano Marketplace Economic Impact Study (April 23, 2007) made certain assumptions regarding sales per square foot for future cumulative projects, allowing a conversion between proposed future retail square footage and potential sales diversions, the same assumptions cannot be made with respect to existing retailers and their potential to be displaced. Specifically, it is reasonable to assume that new stores opening in the future cumulative projects will not open unless they are expected to make the retail type's average revenue per square foot at that location. On the other hand, existing stores typically do not close once their revenue drops below the median for the retail type – or it would cease to be the median. Information regarding the revenue per square foot for existing stores is not easy to obtain, as illustrated by the various methods and figures discussed in these Comments and Responses to Comments; however, predicting the threshold level of revenue per square foot below which any given retailer will close is virtually impossible. Such information is a closely held trade secret, and even retail proprietors may not know their threshold. Accordingly, a calculation of retail square footage displaced by future retail projects nearly ten years in the future, as apparently requested by commenter, is not available.

### **COMMENT 3-2(C)**

Comment: The commenter asserts there is no evidence supporting predictions about re-tenanting retail properties after possible business closures.

Response: ADE's predictions about re-tenanting opportunities are based on its understanding of economic conditions and site-specific investigation of the area and specific buildings. This

methodology is consistent with its prior analysis of re-tenanting and urban decay for areas within the City of Delano contained in the RDEIR.

Contrary to the commenter's suggestion that the ability to re-tenant is not affected by size, guiding case law recognizes that re-tenanting big box stores such as Wal-Marts and K-Marts may be more difficult than small spaces. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1209 – 1212.) The statement quoted by the commenter is based on this principle, and asserts that the building is not one of these big-box stores that would be more difficult to re-tenant.

Finally, the commenter's disagreement with ADE's conclusions about the condition of Earlimart, or the potential for re-tenanting in Earlimart of McFarland, do not render the FEIR inadequate. See also Response to Comment 2-12.

### **COMMENT 3-2(D)**

Comment: The commenter asserts inadequate evidentiary support for the Huff Gravity Model.

Response: Please see ADE Master Analysis 2.

### **COMMENT 3-2(E)**

Comment: The commenter asserts that the cumulative impact analysis is inadequate because it 1) "side-steps" the issue by characterizing it as too speculative to evaluate, and 2) fails to document population growth relied upon in the analysis.

Response: Contrary to the commenter's suggestion, the Draft SEIR addresses the issue of cumulative impacts and documents assumed growth rates.

The commenter correctly cites to CEQA Guidelines section 15144 for the proposition that a lead agency must "use its best efforts to find out and disclose all that it reasonably can." Consistent with this principle, the SEIR identified impacts to the extent feasible. The SEIR estimated that cumulative projects would include approximately 1.9 million square feet of retail. The SEIR also predicted that this amount of retail would likely exceed population growth predictions for the regional trade area, which were set forth in the RDEIR that was incorporate by reference in the SEIR. (See RDEIR, Appendix H, p. 4, identifying annual growth rates for Delano – 3.7%, McFarland – 3.1%, Wasco – 2.3%, Kern County – 2.1%.) Based upon this information, the SEIR determined that cumulative projects would result in approximately \$ 88 million in sales diversions in the regional market area through year 2030 conditions. The SEIR predicted that this would result in new closures in the regional trade area. The SEIR further explained that "precise predictions about resulting closures are speculative because insufficient information is available about specific development horizons and the retail mix for cumulative projects." (Draft SEIR, p. 37.) This is consistent with the RDEIR's analysis, which also could not make specific predictions about business closures under cumulative conditions. (RDEIR, Appendix H, p. 57-58.) Notwithstanding this uncertainty, the SEIR predicted that "the most likely store closures will likely occur within shopping areas in McFarland and Wasco, due to their large

concentrations of competitive retail stores.” (Draft SEIR, p. 37.) The SEIR also described existing and future mechanisms and conditions whereby the potential for urban decay would be reduced in the future.

Consistent with CEQA, the level of detail required for analysis of a cumulative urban decay impacts is not the same as for the SEIR’s project-level analysis or the RDEIR’s analysis for areas within Delano. It is well settled that an EIR’s discussion of cumulative impacts need not provide the same level of detail as is provided in project-specific effects. (CEQA Guidelines § 15130, subd.(b).) Thus, there is no requirement to replicate rigorous project-level analysis provided in the SEIR under cumulative conditions, particularly when the timeline and nature of cumulative projects are uncertain. Also, the CEQA Guidelines provide that the discussion of cumulative impacts “should be guided by standards of practicability and reasonableness.” (*Id.*) It would be impracticable for the SEIR’s analysis of six separate communities to rise to the same level of detail as the RDEIR’s cumulative analysis of a single community, i.e. Delano.

Thus, in conformance with CEQA, the SEIR analyzed the cumulative urban decay impacts at a level that was practicable based on reasonably available information.

### **COMMENT 3-3**

Comment: The comment asserts that recirculation of the SEIR is necessary.

Response: Recirculation is not necessarily required when new information is provided in an FEIR. As explained in the CEQA Guidelines, “Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications to an adequate EIR.” (CEQA Guidelines, § 15088.5, subd. (b).) Accordingly, recirculation is required only when “significant new information” is added to an EIR. (Pub. Resources Code §21092.1; CEQA Guidelines § 15088.5.) The CEQA Guidelines provide four examples of “significant new information” that would require recirculation. (CEQA Guidelines § 15088.5, subd. (a).) The comment does not provide information establishing that any of these examples are satisfied. In fact, none of the tests under CEQA Guidelines section 15088.5, subdivision (a) are satisfied.

Therefore, while this FEIR certainly provides additional discussion and analysis requested by the public comments, none of this new analysis rises to the level of “significant new information” that would trigger recirculation of the SEIR.

**Letter 4: State Clearinghouse and Planning Unit**



ARNOLD SCHWARZENEGGER  
GOVERNOR

July 21, 2009

Keith Woodcock  
City of Delano  
P.O. Box 3010  
Delano, CA 93722

Subject: Delano Marketplace  
SCH#: 2005011089

Dear Keith Woodcock:

The State Clearinghouse submitted the above named Supplemental EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on July 16, 2009, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Terry Roberts  
Director, State Clearinghouse

Enclosures  
cc: Resources Agency



CYNTHIA BRYANT  
DIRECTOR

4-1

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044  
(916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

**COMMENT 4-1:**

Comment: The State Clearinghouse states it sent the Draft SEIR to selected state agencies for review. The comments received are enclosed. The State also acknowledges the City of Delano has complied with the State Clearinghouse review requirements for draft environmental documents pursuant to CEQA.

Response: The commenter acknowledged that the City of Delano has complied with the State Clearinghouse review requirements pursuant to CEQA. No further response is required.

# APPENDIX A

Sasha M. Pardy, "Filling Vacant Retail Boxes Requires Thinking Outside the Box,"  
CoStar Group Real Estate Information, March 4, 2009