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California Responses to Supercenter Development  
A Survey of Ordinances, Cases and Elections

by

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## Table of Contents

### **EXECUTIVE SUMMARY 4**

### **I. INTRODUCTION 5**

- A. Purpose 6*
- B. Organization 6*

### **II. “BIG BOX” DEFINITIONS 8**

- A. Classifications Based on Physical Area & Types of Stores 8*
- B. Classifications Based on “Stock-Keeping Units” 9*
- C. Classifications Based on Design or Aesthetics 9*
- D. Supercenter definitions 10*

### **III. COMMUNITY IMPACTS OF BIG BOX DEVELOPMENT 11**

- A. Background 11*
- B. Consumer Savings 15*
- C. Wages, Benefits and Impacts on Community Employment 16*
- D. Impacts on Tax Revenue 21*
- E. Leases 22*
- F. Traffic 25*
- G. Environment 27*
- H. Design 28*

### **IV. STEP 1: THE BATTLE OVER LOCAL ELECTIONS 30**

- A. Case Study Gilroy, California 31*
- B. Wal-Mart’s Campaign Funding & Lobbying Efforts 32*
- C. Lobbying and Public Appeal by Community-based Groups 33*
- D. Tools to Combat Election Losses 34*
  - 1. Challenging Inadequate Environmental Assessments 35*
  - 2. Publicizing Unethical Conduct by Local Officials 36*

### **V. STEP 2: PUBLIC REFERENDUM 37**

- A. Case Studies: Contra Costa County, San Marcos, and Inglewood 38*
  - 1. Contra Costa County 39*
  - 2. The City of San Marcos 40*

3. The City of Inglewood 41

*B. Campaign Funding: The Impact of Money and the “Specific Location” Factor 44*

**VI. STEP 3: THE LAWSUIT 46**

*A. Background 46*

1. Wal-Mart’s Lawsuit Against Alameda County 46

2. Wal-Mart’s Lawsuits Against the City of Turlock 48

**VII. STRATEGIES FOR OPPOSITION TO AND SUPPORT OF SUPERCENTERS 52**

*A. Procedural Challenges to Ballot Measures 52*

*B. Challenges to the Adequacy of Environmental Review 53*

*C. Subsidies 54*

**VIII. ALTERNATIVE STRATEGIES – FINDING BENEFIT IN BIG BOXES 55**

*A. Big Box Stores as a Positive Element of Redevelopment 55*

*B. Alternative Uses of Vacant Big Box Stores 56*

**IX. CONCLUSION 56**

**X. APPENDIX: Database of Big Box Ordinances and Cases in California 59**

## **EXECUTIVE SUMMARY**

This report addresses a number of issues relating to supercenter development, with particular attention given to Wal-Mart's goal of building 40 supercenters within California over the next four years. We first discuss the pros and cons of supercenter development in terms of consumer savings, employee wages, tax revenues, and various environmental impacts. We then examine how different communities have either supported or opposed supercenter developments and emphasize the legal tools that have provided the framework for these actions including voter referendums, ballot initiatives, and lawsuits.

Recent controversies over supercenter development in several California cities and counties are discussed and provide the basis for insights about how the issue may be addressed in the future. Tactics successfully used by large-scale retail advocates in California include mounting advertising campaigns for or against ballot measures and donating money to the election campaigns of development friendly officials. However, supercenter opponents have successfully staved off supercenter development in some areas. Based on the results from various campaigns in California, it appears the more concrete the plans for supercenter development are, the more likely communities and decision-makers will be able to identify negative impacts associated with the development. Pending lawsuits will determine the limits or restrictions local government decision makers may employ to control supercenter development in their communities. In the mean time, we hope this report helps to identify the economic, environmental, and social implications involved with supercenter and large scale retail that should be considered by all communities in California where this development is proposed.

## I. INTRODUCTION

Wal-Mart and other large retail stores offer communities the prospect of consumer savings, but at the same, time pose potential negative impacts on traffic, the environment, and wages. In balancing the positive and negative effects of large-scale retail developments on local communities, many California cities and counties have approved such stores, while many others have enacted restrictions to limit their construction. This report examines the legal and political battles between developers and local governments in California by providing a history of tools used to encourage or impede the siting of “big box” retailers, and by analyzing which tools have been the most effective, both legally and politically.

Wal-Mart currently operates approximately 3,000 total stores in the U.S., and 1,400 big box supercenters.<sup>1</sup> It is the largest U.S. grocer, with a 19 percent market share, and the third-largest pharmacy, with a 16 percent market share.<sup>2</sup> By 2007, Wal-Mart is expected to control 35 percent of food and drug sales in the U.S.<sup>3</sup> Retail Forward, a global management consulting and research firm, estimated that for every one supercenter that opens, two supermarkets would close.<sup>4</sup> Indeed, since 1992, the supermarket industry has experienced a nationwide net loss of 13,500 stores.<sup>5</sup> Over the next five years, Wal-Mart plans to open 1,000 more supercenters in the U.S, including 40 supercenters planned for the state of California.<sup>6</sup> On March 2, 2004, Wal-Mart opened its first California supercenter, a 225,000 square foot combined retail and grocery store, in La Quinta, California.<sup>7</sup>

The reaction to these developments has been highly contentious. In reaction to Wal-Mart’s supercenter development plans in California, many local city and county governments across the state passed, or are considering ordinances that seek to restrict or ban big box developments.<sup>8</sup> Other locales have welcomed supercenters into their communities.

### A. Purpose

This report examines current legal and political issues arising from big box development in the state of California, as well as the tools available for big box opponents and supporters alike to challenge actions taken by city and county governments. While the report analyzes big box development in general, because so much of the current legislation targets Wal-Mart's supercenter program this report will focus on recent developments involving this subcategory of big box retail.

### B. Organization

The report is organized into eight parts. The first section explores various bases by which big box stores are defined including overall square footage, items sold, or physical appearance. The section will also delineate in greater detail the definition of the supercenter, a big box subcategory particularly pertinent in California in light of Wal-Mart's future development plans.

The second section examines regional and national reports that study the effects of economic, social, and environmental impacts of big box retail on local communities. This section sets forth the costs and benefits of big box retail faced by local communities, such as lower prices and increased tax revenue contrasted by lower wages and increased traffic.

Although the section examines studies conducted both by Wal-Mart supporters and opponents, this report finds that the studies generally highlight the negative aspects of big box retail. Wal-Mart supercenters will provide consumer savings, but these savings are offset by lower paying jobs and negative environmental impacts.

Sections three through six explore the tools available to big box supporters and opponents by highlighting examples of legal and political strategies used in California and other states. Section three addresses the importance of campaign funding and local city council elections. By looking at the Gilroy City Council's approval of a Wal-Mart supercenter in March 2004, this

section describes how campaign efforts by Wal-Mart to elect “development-friendly” city council officials could result in an uphill battle for supercenter opponents challenging such development. This strategy by developers can serve to avoid later, more costly, legal or political battles by ensuring that local legislation preventing big box development plans will not be approved. Tools used by big box opponents to counter the effect of developer-sponsored legislation by highlighting lawsuits brought in Bakersfield and San Marcos, California are also described.

A strategy employed by both sides of the big box debate is the use of ballot initiatives and referendums that override approvals or restrictions made by local government officials. The fourth and fifth sections discuss big box related initiatives and referendums in Contra Costa County, San Marcos, and Inglewood, California. The political and legal tools available before, during, and after initiatives and referendums are examined in depth as are the political implications of ballot measures.

As an alternative to the referendum battles, Wal-Mart has recently challenged local government opposition through litigation, targeting city and county legislation that restricts “supercenter” formats. The sixth section discusses Wal-Mart’s use of state and federal lawsuits to challenge the constitutionality of supercenter regulations in Turlock and Alameda County, California. The legal bases of the lawsuits and forecasts on their resolution are discussed.

The final two sections are comparative and prospective, looking at how similar big box battles have been resolved in other states, and what issues local governments should address in considering big box development.

## II. “BIG BOX” DEFINITIONS

### A. Classifications Based on Physical Area & Types of Stores

There is no single definition of big box retail, but most definitions tend to focus on the square footage of retail outlets as rather than the items sold inside the stores. For example, the state of California defines big box retail as a “store of greater than 75,000 square feet of gross buildable area that will generate sales or use tax.”<sup>9</sup> The Maryland Department of Planning defines big box retail facilities as “large, industrial-style buildings or stores with footprints that generally range from 20,000 square feet to 200,000 square feet.”<sup>10</sup> In October 2003, the City of Los Angeles commissioned a study to identify potential impacts of big box retailers in the city’s neighborhoods (“the Rodino report”). The Rodino report defined big box stores as “[a]ny large store format that is larger than a specified threshold of square footage in size. Generally this threshold ranges from as low as 60,000 sq. ft. to 130,000 sq. ft.”<sup>11</sup>

The wide variance of size used to define big box stores is a reflection of the weakness of a size-based indicator itself. A Hawaii Legislative Reference Bureau study noted, “[b]ecause of product category, ‘big’ is relative. For example a book retailer occupying 25,000 square feet would qualify as a ‘big box.’ On the other hand, a ‘big box’ warehouse outlet like Costco may occupy 120,000 square feet or more.”<sup>12</sup> In order to understand the meaning behind the range of big box size, it is important to understand the range of establishments that typically qualify as big box retail. There are four major big box subgroups as defined by the Maryland and Hawaii studies. They include:

**Discount Department Stores:** These big box stores range from 80,000 to 200,000 square feet and offer a wide variety of merchandise, up to 60,000 distinct items, at low prices.<sup>13</sup> Examples include K-Mart, Wal-Mart, and Target. “Superstores,” defined and described below, are an offshoot of the discount department store.

**“Category Killers:”** These big boxes are so named because they do not intend to compete with existing businesses, rather “they mean to kill them off and monopolize

the market.”<sup>14</sup> Category killers are specialty or niche stores that offer a large selection of items in a particular category and may vary in size from 20,000 to 120,000 square feet.<sup>15</sup> Retailers include Barnes & Noble/Borders Books, Music & Café, (ranging from 25,000 to 45,000 square feet<sup>16</sup>), Blockbuster Video, Circuit City, Office Depot, Lowe’s, Home Depot, and Toys ‘R Us.<sup>17</sup> This group depends on high sales volume and not price markups, dealing directly with product manufacturers to eliminate middleman charges.<sup>18</sup>

**Outlet Stores:** These big box stores range from 20,000 to 80,000 square feet, and are often the discount arms of major department stores.<sup>19</sup> Retailers include Nordstrom Rack, Nike, and Burlington Coat Factory.<sup>20</sup> Some manufacturers sell merchandise directly through outlet stores so as to reduce costs by eliminating middleman charges.<sup>21</sup>

**Warehouse Clubs:** These big boxes range from 104,000 to 170,000 square feet and offer a variety of goods in bulk wholesale process. Warehouse clubs typically charge their customers an annual fee and provide a limited number of product items, generally 5,000 or less.<sup>22</sup> This group includes Costco Wholesale, Pace, and Sam’s Club.<sup>23</sup>

#### B. Classifications Based on “Stock-Keeping Units”

Additional definitions of big box retail focus on the diversity of products sold in the stores, e.g. “stock-keeping units” (SKUs) (the number of different products of specified style types in the inventory of a retailer).<sup>24</sup> Warehouse clubs typically carry small numbers of SKUs (from 3,400 to 5,000), but have large, bulk stocks of merchandise within a particular SKU. Discount stores and superstores, on the other hand, offer wide product diversity, with an inventory of 50,000 to 200,000 SKUs respectively.<sup>25</sup> The Rodino report noted that while an SKU focus may serve as an informative indicator in assessing potential impacts on smaller businesses, this indicator should not serve alone as the basis for defining a “big box.”<sup>26</sup> SKUs should be examined in conjunction with other definitions assessing the physical area of a store, for if analyzed alone, warehouse clubs will escape big box categorization.

#### C. Classifications Based on Design or Aesthetics

Finally, big box retail can also be defined by its aesthetic qualities and impact on community character. In addition to size-based definitions, a Columbia University study characterized big box architecture as “large windowless, rectangular single story buildings” with

“standardized facades” that “seem to be everywhere and unique to no place, be it rural town or urban neighborhood.”<sup>27</sup> A Los Angeles city attorney describes big box retailers as businesses that “rely on auto-borne shoppers and require acres of surrounding parking.”<sup>28</sup>

#### D. Supercenter definitions

Supercenters average in size at about 250,000 square feet, considerably larger than typical big box outlets. They are often redevelopments of existing big box discount department store sites.<sup>29</sup> While the average supercenter is approximately 6 acres, the required parking space surrounding these stores is four to seven times larger.<sup>30</sup> Supercenters are distinguished not only by their greater size but also by their inclusion of grocery items.

Supercenters contain a full sized discount retail store and a full size grocery store under the same roof,<sup>31</sup> with groceries comprising at least 25% to 33% of the store area.<sup>32</sup> Cities and counties often define supercenters with greater particularity. For example, in a report to the Los Angeles Planning & Land Use Management Committee, and L.A. city attorney proposed that superstores be defined as stores greater than 100,000 square feet which combine retail and grocery sales and which devote more than 10% of sales floor area to the sale of non-taxable items.<sup>33</sup>

While the grocery component of supercenters makes them distinct from traditional big box outlets, cities and counties regard supercenters as more akin to discount department stores than warehouse clubs because of their greater variety of SKUs and lack of membership fees. The Rodino report defines “warehouse clubs” as big box stores specializing in groceries and discount general merchandise, but with a more limited selection of goods than either general discount stores or supermarkets, and requiring annual membership dues.<sup>34</sup> The distinction is more than superficial. The L.A. city attorney report proposed that wholesale and membership clubs selling primarily bulk merchandise should be excluded from the city definition of

supercenter, and in turn, excluded from any upcoming city big box regulations.<sup>35</sup> The City of Oakland's October 2003 supercenter ban specifically excluded wholesale clubs that sell bulk merchandise and charge membership dues.<sup>36</sup> Therefore, in order to understand the term "supercenter," one must keep in mind that it does not refer to size or the sale of groceries alone, but rather to the existence of combined full retail and full grocery services.<sup>37</sup>

### **III. COMMUNITY IMPACTS OF BIG BOX DEVELOPMENT**

Supercenters provide a timesaving convenience to shoppers who prefer to make the majority of their purchases at one time and place. Proponents assert that this convenience, together with the lower price of goods, overshadows the possible disadvantages. However, the average shopper may not be aware of the potential harms associated with supercenters. These harms include 1) lower employee wages, 2) increases to municipal costs, 3) increased urban sprawl, 4) foreclosure of local competition, and 5) changes to the flavor and character of the neighborhood. Thus, the availability and low prices offered by supercenters should be weighed against the potential negative impacts in approving or rejecting the development of a supercenter.

Supporters and opponents of big box retail offer conflicting forecasts for the social and economic impacts of big box retail on California communities. In particular, several reports analyze the potential impact of Wal-Mart's proposal to build 40 supercenters in California over the next three to five years.<sup>38</sup> The majority of these studies are overwhelmingly skeptical about the long-term benefits of supercenter development. Regional and national studies alike conclude that Wal-Mart will have a negative impact on California jobs, tax revenue, and the environment.

#### A. Background

There are two recent studies that analyze the potential regional impacts of Wal-Mart supercenter development in California. The Los Angeles Economic Development Corporation ("LAEDC study"), prepared "*Wal-Mart Supercenters: What's in Store for Southern California*"

and analyzed the economic implications of Wal-Mart's entry into the Southern California grocery market.<sup>39</sup> The Bay Area Economic Forum ("BAEF study") published "*Supercenters and the Transformation of the Bay Area Grocery Industry*," which estimated the economic impact of supercenter development in the Bay Area, and outlined the costs and benefits for communities considering supercenters.<sup>40</sup>

A significant difference between the two studies is the broader scope of the BAEF study. Thus, it is not possible to directly compare and contrast each finding, as the BAEF study analyzed some aspects of supercenter development not covered by the LAEDC study. However, the topics that do overlap offer insight as to the possible consequences of supercenter development, and the opposing conclusions help frame both sides of the supercenter economic debate.

The LAEDC study focused primarily on the economic impact of supercenter development in California: emphasizing consumer benefits, comparing Wal-Mart wages against grocery and union standards, and suggesting possible responses by city officials in southern California.<sup>41</sup> In contrast, the BAEF study addressed both the economic and non-economic impacts in order to explain why supercenters, as a style of retail development, are so controversial. The BAEF study found the economic impact of supercenters upon wages and competition is a key factor contributing to the controversy. Other relevant issues include the impact of supercenters on traffic, land use, and urban decentralization.<sup>42</sup> The BAEF study concluded that California communities are not only concerned about jobs; they are also concerned about the potential environmental harms of resulting from supercenter development such as pollution and traffic congestion, and the effect of these structures on community character or pedestrian mobility.<sup>43</sup>

The BAEF and LAEDC studies emerged with widely divergent viewpoints as to the effect of supercenters on local economies and the competitiveness of the wages paid. Both studies have been attacked, on the grounds that their conclusions are either overly optimistic or overly pessimistic. Wal-Mart has publicly criticized the BAEF study for its negative view, claiming it underestimated Wal-Mart wages and overestimated wages paid by its competitors. While it accepted the study's conclusion that supercenter growth in the Bay area would save residents money on groceries, Wal-Mart attacked the conclusion that it would also diminish entry-level wages, worsen traffic, and possibly deplete regional tax revenue. Likewise, the LAEDC study has received much criticism for its positive view of supercenter growth. The LAEDC study concluded that increased consumer savings from Wal-Mart supercenters would lead to more spending in local economies, thereby stimulating employment and producing a net gain of tens of thousands of jobs in Southern California.<sup>44</sup> Arguably though, more jobs at lower wages are really not such a boon.

Another major difference between the two reports is the basic assumption on part of the LAEDC study that supercenters are an inevitable element of California's growth planning. As a result, it focused most upon the benefits of such development, and ways in which communities might adapt to these changes, rather than examining whether this type of development might be prevented or mitigated.<sup>45</sup> The BAEF study took a slightly different stance, in that supercenter development was not viewed as a foregone conclusion. This stance is substantiated by the growing voice in California which asserts that Wal-Mart's entry into the California market could be prevented or restrained, through the institution of carefully crafted zoning ordinances.<sup>46</sup> Increasingly, cities are limiting supercenter expansion by passing ordinances containing size or

design restrictions, or which require big box retailers to mitigate some of the damages and costs associated with their businesses.<sup>47</sup>

It is not easy to reconcile the differing outcomes presented by these two studies. Perhaps the most relevant factor goes to the question of who proposed and funded the studies. Wal-Mart commissioned the LAEDC study for a sum of \$65,000. Although the study was to provide an impartial overview of the situation, Wal-Mart's strong involvement has resulted in some questions as to its reliability. Wal-Mart not only provided the underlying data, but it continued to play an influential supervisory role throughout, and retained the contractual right to veto the eventual release of the report. The LAEDC report's conclusions should therefore be analyzed in light of the above information.<sup>48</sup>

In contrast, the BAEF study was prepared by a public policy group affiliated with the Bay Area Council and the Association of Bay Area Governments and supported by regional businesses, labor unions, educators and governments.<sup>49</sup> The lack of a single dominating interest group suggests that this study was conducted with greater impartiality. Wal-Mart claims that the union's involvement unfavorably slanted the BAEF study against the chain, as unions strongly oppose Wal-Mart's supercenter entry into California markets.<sup>50</sup> However, the combination of groups supporting and funding the BAEF project makes it unlikely that the unions had an undue influence upon its conclusions.

In addition to the LAEDC and BAEF studies, several other reports have been published that analyze supercenter impacts. They include the September 1999 supercenter publication prepared for the Orange County Business Council,<sup>51</sup> the 2003 Rodino report, commissioned by the City of Los Angeles,<sup>52</sup> and the February 16, 2004 report by the staff of U.S. Representative George Miller (D-CA) on the House Committee on Education and the Workforce.<sup>53</sup> These

reports are discussed further below and help to clarify the positions held for and against supercenter development in California.

### B. Consumer Savings

Both the BAEF and LAEDC studies indicate that the introduction of Wal-Mart supercenters into the California market will significantly lower the price of groceries. Based on Wal-Mart pricing data, Southern California household grocery expenditures, and assuming that Wal-Mart gains a 20% share of the current Southern California grocery market, the LAEDC study estimates that Wal-Mart supercenters will save consumers an average of 15%. This translates into savings of at least \$668 million annually in the City of Los Angeles (\$524 per household per year), \$1.78 billion annually in Los Angeles county (\$569 per household per year), and \$2.78 billion annually in the entire Southern California market.<sup>54</sup> Pointing to formal and informal studies, the LAEDC study contends that an average basket of groceries purchased at Wal-Mart will cost 17% less than Safeway, and 23% less than Albertsons.<sup>55</sup> In a department to department comparison with competitors, the study determined that Wal-Mart supercenter items range from 2.53% to 38.86% less than competitor prices.<sup>56</sup> Moreover, after initial entry, the LAEDC study estimates that competitor grocery prices will decline on average by 10% to compete with Wal-Mart supercenter prices.<sup>57</sup> The study speculates shoppers will redirect their resulting savings to purchase other items in the local economy. The LAEDC study estimates this will result in the creation of up to 6,500 full-time equivalent jobs outside the grocery industry in the city of Los Angeles and approximately 36,400 jobs in the Southern California market as a whole.<sup>58</sup>

Similarly, based on a combination of factors such as population growth projections, Wal-Mart's market share in other large metropolitan areas, the expected number of supercenters in the San Francisco Bay Area by 2010, and a grocery inventory of \$10.4 billion in 2010,<sup>59</sup> the BAEF

study estimates Bay Area consumers would save between \$382 million and \$1.13 billion per year on groceries as a result of Wal-Mart supercenter development.<sup>60</sup> The BAEF study recognized that on average, a basket of groceries purchased at a recently opened Wal-Mart superstore sells for 8% to 20% less than other competing chains.<sup>61</sup> After initial entry into the Bay Area market, the BAEF study observes that competitor grocery prices will lower an average of 12% in order to compete with the Wal-Mart superstore prices.<sup>62</sup> The BAEF study notes that these savings will raise net incomes and may create additional employment when spent on regional goods and services. However, the BAEF study cautiously warns that the lower prices will also lead to downward pressure on wages, lowering living standards for grocery employees, and place a negative “ripple effect” on the regional economy.<sup>63</sup>

#### C. Wages, Benefits and Impacts on Community Employment

Both the LAEDC and BAEF studies agree that supercenters will produce wage decline and job loss in the grocery sector. The LAEDC study maintains that while Wal-Mart compensation is lower than that of unionized grocery employees, health care and other benefits are “better than most people realize, particularly in its food business.”<sup>64</sup> The LAEDC study contends that most studies examining wages at Wal-Mart supercenters fail to consider that the wages appear low because supercenters have not been open long enough to accumulate employees with higher rates of pay.<sup>65</sup> Pointing to Wal-Mart’s promotion structure, the LAEDC study maintains that Wal-Mart’s hourly wage is skewed downwards because the retailer often promotes from within.<sup>66</sup> The LAEDC study concludes that in so doing, wages appear lower because higher paid hourly workers are promoted to management, and are therefore removed from the pool of workers typically compared in wage studies.<sup>67</sup> Nevertheless, the LAEDC study observes that unionized grocery workers earn on average \$14 per hour, an amount \$2.50 to \$3.50 more per hour than a supercenter employee in Southern California could expect.<sup>68</sup> The LAEDC

study projects that the cumulative wage loss upon the introduction of Wal-Mart supercenters will be \$150 million to \$258 million annually in Los Angeles County and \$307 million to \$529 million annually in the 7-county Southern California region.<sup>69</sup>

The BAEF study finds similar disparities in wages between unionized and Wal-Mart employees and adds that earnings discrepancies are even greater when employee benefits are considered. The BAEF study notes that the average hourly wage of unionized grocery employees in the San Francisco Bay Area is \$15.30.<sup>70</sup> However, the total average unionized wage and benefits package per hour is \$23.64 when benefits are considered.<sup>71</sup> The BAEF study concedes that accurate estimates of supercenter wages are “generally unavailable.”<sup>72</sup> Based on news reports, wages in other states, and other sources, the BAEF study estimates that the average supercenter wage is approximately \$9.60 per hour.<sup>73</sup> Although the BAEF study does not take into account the contention that supercenters have not been open long enough to accurately compare supercenter wages with unionized wages, the study notes that average Wal-Mart employee turnover is less than three years. By comparison, the average tenure of unionized grocery workers is nine years.<sup>74</sup> In light of such turnover, the study determines that Wal-Mart employees typically fail to realize benefits and wage increases, and thus, the combined total average supercenter wage and benefits package equal to \$11.75 per hour.<sup>75</sup> The BAEF study concludes that as a result of lower supercenter wages, aggregate direct wages and benefits to workers in the Bay Area will decline by \$353 million to \$677 million per year.<sup>76</sup>

As indicated earlier, the LAEDC and BAEF studies differ in their analysis of whether consumer savings will offset grocery job losses and produce either a net positive or negative effect on local economies. The LAEDC study maintains that even if all current unionized grocery employees were to earn wages equivalent to Wal-Mart supercenter employees (which it

argues is unlikely to materialize), the lost spending due to eroded household income would cost Los Angeles County 1,500 to 2,500 full-time equivalent jobs and Southern California 3,000 to 5,100 full-time equivalent jobs.<sup>77</sup> Yet, because the LAEDC study estimates that consumer grocery savings will yield a region wide gain in 36,400 jobs, Southern California will experience net job growth, where “at least seven jobs would be added for every one lost.”<sup>78</sup> The BAEF study concludes differently, focusing not on the net change in the number of jobs, but the net impact on wages and benefits. Although conceding the positive spending effect from consumer savings, the study notes that the parallel decline in spending as a result of lower regional incomes can have a net economic impact of more than double the \$353 million to \$677 million in direct losses faced by grocery employees.<sup>79</sup>

The focus on job figures and the de-emphasis of net economic losses reveal the inadequacies of the LAEDC conclusions, but this also suggests the two studies findings are not contradictory. The BAEF study recognizes the possibility that although supercenters will pay lower wages to employees, the introduction of supercenters might lead to the employment of more people.<sup>80</sup> The BAEF study concedes there is a possibility that, as the LAEDC contends, there may be an increase in employment even amidst declining wages and benefits. However, in terms of the value those jobs offered, the BAEF study concludes that most employees will find themselves with less income and benefits than the jobs they had prior to the entrance of Wal-Mart supercenters.

Critics of the LAEDC study, such as Patrick Burns, a senior researcher at Economic Roundtable in Los Angeles, disagree with the LAEDC study’s conclusion that an increase jobs itself corresponds with net regional economic growth.<sup>81</sup> Burns notes that “L.A. County already suffers from an overabundance of low-wage jobs with few, if any, benefits, not to mention a

disproportionate share of the nation's 'under the table' jobs...This is the wrong direction for the L.A. economy.”<sup>82</sup> Like the BAEF study, the 1999 Orange County Business Council study focused not on net job growth, but whether “high wage jobs will be converted to low wage jobs.”<sup>83</sup> In so doing, the study concluded differently than its LAEDC counterpart, finding that the entry of supercenters into the Southern California regional grocery business may depress industry wages and benefits at an estimated impact ranging from a low of \$500 million to a high of almost \$1.4 billion per year, potentially effecting 250,000 grocery industry employees, and creating a \$2.8 billion per year loss in wages and benefits across all industries.<sup>84</sup>

California municipalities and civic groups have been more persuaded by the economic studies that focus on net wage and benefit decline. In September 2003, a month prior to enacting its ban on supercenters, the Oakland Community and Economic Development Agency pointed to the findings of the Orange County study when reasoning that “the presence of big box grocers tends to depress wages.”<sup>85</sup> Citing the study, the City of Oakland concluded “when business is diverted from traditional grocery supermarkets to combined retail/grocery establishments, higher wage jobs are converted to low wages jobs.”<sup>86</sup> The Orange County study has similarly resonated with community groups in opposition to the approved Wal-Mart supercenter in Gilroy, California.<sup>87</sup>

The report commissioned by Representative George Miller (“the Miller report”) includes similar negative findings regarding supercenter wage impacts. The Miller report notes that nationally, union members make 30% more in wages than non-union supermarket employees. In particular, supermarket employees make on average \$10.35 per hour whereas Wal-Mart employees make on average \$8.23 per hour.<sup>88</sup> Unlike the LAEDC and BAEF studies, the Miller

report discusses the prominence of additional wage losses resulting from Wal-Mart's failure to pay employees for "off-the-clock work" (time actually worked, but not billed).

The Miller report also notes that as of December 2002, there were thirty-nine class-action lawsuits against Wal-Mart in thirty states claiming back pay for off-the-clock work.<sup>89</sup> For example, in 2001, Wal-Mart compensated 69,000 workers for \$50 million in unpaid wages in a Colorado class action lawsuit and paid \$500,000 to 120 workers who filed a similar suit in Gallup, New Mexico.<sup>90</sup> In 2002, a class-action suit was filed on behalf of 200,000 former and current Wal-Mart employees in Texas. Statisticians for the Texas plaintiffs estimated that the company underpaid workers \$150 million over four years – based only on the frequency of employees working through their daily 15 minute breaks.<sup>91</sup> Also in December 2002, a jury found in favor of 400 Oregon Wal-Mart employees from 27 stores who sued for unpaid work.<sup>92</sup> Most recently, in November 2003, a Minnesota judge certified a lawsuit for 65,000 Wal-Mart employees seeking compensation for back pay.<sup>93</sup>

In addition to the net wage decline estimates within the California studies, the Miller report points to additional labor issues that arise from Wal-Mart's effort to maintain union free-status. The report notes that:

Wal-Mart has issued "A Manager's Toolbox to Remaining Union Free," which provides managers with lists of warning signs that workers might be organizing, including "frequent meetings at associates' homes" and "associates who are never seen together start talking or associating with each other." The "Toolbox" gives managers a hotline to call so that company specialists can respond rapidly and head off any attempt by employees to organize.<sup>94</sup>

The Miller report also criticizes the LAEDC study's conclusion that Wal-Mart health benefits are "better than most people realize."<sup>95</sup> Even if the benefits themselves are adequate, Wal-Mart has increasingly made it difficult for employees to become eligible for health care coverage. The Miller report found that Wal-Mart increased the waiting period for new full-time

employees to be covered by health insurance from 90 days to 6 months.<sup>96</sup> The waiting period is even longer for part-time employees who cannot get health insurance coverage for their family and must wait 2 years before they are eligible for individual coverage.<sup>97</sup> In addition to these requirements, Wal-Mart has changed the definition of part-time workers from employees working less than 28 hours a week to all employees working less than 34 hours a week.<sup>98</sup> The Miller report puts Wal-Mart's practices into perspective by noting that the average waiting period for health coverage for employees at other large retail establishments is 1.3 months.<sup>99</sup> Furthermore, Wal-Mart's health plan shifts much of the health care costs onto employees; a single worker could end up spending around \$6,400 out-of-pocket before seeing any health plan benefits.<sup>100</sup>

#### D. Impacts on Tax Revenue

The BAEF study indicates that the introduction of supercenters may not yield a windfall for city and county tax revenue. The study projects that supercenters will generate approximately \$140 million per year in store revenue, 75% of which can be expected to be taxable.<sup>101</sup> Since one percent of sales tax is returned by the state to the local municipality as required under California law, each supercenter should yield approximately \$1 million per year to local governments.<sup>102</sup> The BAEF study notes that supercenters have more customers per day than conventional retail stores and customers who come to purchase only groceries are more likely to "cross-shop" and purchase taxable retail items.<sup>103</sup> However, because supercenters are often expansions of preexisting retail stores, the introduction of a full-scale grocery store within the new development will offer primarily nontaxable grocery items. Thus, a physical expansion of an existing big box store will not be accompanied by a proportional expansion in sales tax revenue.<sup>104</sup> In addition to these tax reductions, the BAEF study forecasts that net sales tax revenues may be reduced if supercenters displace existing sales at grocery competitors and at

other stores that rely on foot traffic to those grocery stores.<sup>105</sup> The LAEDC study did not analyze this issue, but the Orange County study made similar observations as the BAEF study.<sup>106</sup>

The Miller report infers that negative federal tax implications may result from additional Wal-Mart development. The report estimates that each 200-employee Wal-Mart store may cost federal taxpayers \$420,750 per year – about \$2,103 per employee.<sup>107</sup> Specifically, the report notes that as a result of low employee wages, various health and social services program costs are being passed along to taxpayers including:

- \$36,000 a year for free and reduced lunches for just 50 qualifying Wal-Mart families.
- \$42,000 a year for Section 8 housing assistance, assuming 3 percent of the store employees qualify for such assistance, at \$6,700 per family.<sup>108</sup>
- \$125,000 a year for federal tax credits and deductions for low-income families, assuming 50 employees are heads of household with a child and 50 are married with two children.<sup>109</sup>
- \$100,000 a year for the additional Title I expenses, assuming 50 Wal-Mart families qualify with an average of 2 children.<sup>110</sup>
- \$108,000 a year for the additional federal health care costs of moving into state children's health insurance programs (S-CHIP), assuming 30 employees with an average of two children qualify.<sup>111</sup>
- \$9,750 a year for the additional costs for low-income energy assistance.<sup>112</sup>

The Miller report also discusses state tax implications with regard to Wal-Mart health care coverage. In California alone, taxpayers have subsidized \$20.5 million worth of medical care for Wal-Mart employees.<sup>113</sup>

#### E. Leases

Big box retailers and supercenters commonly negotiate long-term leases that include the option of vacating the premises but maintaining the lease until the lease contract expires.<sup>114</sup> Retention of the lease enables the retailer to prevent competitors from taking over that location and starting up a competing business. Because there are usually a limited number of real estate

parcels that are appropriate for either a big box or a supercenter, the ability of a big box retailer to hold onto a lease can give it considerable leverage in its goal of preventing competitors from entering its market.<sup>115</sup>

Control over a lease becomes especially relevant when big box retailers or supercenters saturate a small geographic area to the point of overexpansion. Overexpansion occurs when too many stores are located within a small area, thereby saturating the market to the point that stores compete against stores from the same chain for market share. The chain may then close or consolidate some stores and retain the leases on the closed stores. For the local community, this raises two potential concerns. First, small local businesses often are unable to compete with the lower prices offered by big box retailers and go out of business. Although some consumers continue to support local stores, the reality is that many more are attracted away from the local hardware and household supply stores, as well as the more traditional supermarket.<sup>116</sup> Retail Forward, a consulting firm that conducted a study on this issue, found that “for each Wal-Mart supercenter that opens in the next five years, two conventional supermarkets will shut their doors.”<sup>117</sup> Second, the study goes on to note, Wal-Mart already has a larger market share in the grocery industry than any of the nation’s largest food retailers.<sup>118</sup> Therefore, it would not be difficult for a supercenter to end up with a virtual monopoly on the local market, with the ability to retain control of leases helps to perpetuate the chain’s ability to monopolize a local market.

Lease retention policies raise additional concerns for local communities. Although the supercenter chain benefits from domination of the local market and its ability to shut down non-productive stores at will, the surrounding community loses both revenue and jobs as a result.<sup>119</sup> The lease retention policy may also contribute to blight or the failure of nearby stores. The big box format is so specialized that unless another big box merchant takes over the property, it will

remain vacant for some time, especially if the company continues to hold onto the lease.<sup>120</sup> This is especially detrimental if the supercenter acted as an anchor store in a shopping mall, because its closure and the company's refusal to end the lease may lead to the closure of the smaller mall stores.

Some communities have taken over vacant big box stores so as to re-use them for an alternative purpose; however, this requires the investment of a substantial amount of money.<sup>121</sup> Therefore, the more common result of a big box foreclosure is for the vacant structure to receive only minimal upkeep, leading to an unattractive and hazardous structure.<sup>122</sup> All of this leads to a general deterioration that depresses surrounding property values. One town in Georgia has combated this by passing a law requiring big box owners to maintain any vacated structure, and terminate the lease if another business wants to take over the vacant building.<sup>123</sup> Another township near Philadelphia has passed an ordinance requiring supercenters to set aside money in an escrow account to cover demolition costs in the event that the site ever becomes vacant.<sup>124</sup> While this step could be considered overly cautionary, as of 2002 Wal-Mart had vacated 426 of its stores, many of which continue to remain empty.<sup>125</sup>

Many traditional leases contain "recapture clauses," which allow the property owner to break the lease and take back an underperforming property.<sup>126</sup> However, in the case of big box retailers or supercenters, these clauses are rarely used because the tenants have enough bargaining power to negotiate favorable terms that reduce the effectiveness of recapture clauses.<sup>127</sup> Even if used, simply ending the lease is not the solution. Obtaining a replacement tenant may be a time consuming and difficult process. In Bardstown, Kentucky, a vacated Wal-Mart remained empty for almost 10 years, despite attempts to re-lease it.<sup>128</sup> A city in Wyoming has responded to the problem of vacant stores by including a clause within its zoning ordinance

requiring that big box retailers work in conjunction with city officials to locate replacement tenants for any store it vacates.<sup>129</sup> If Bardstown had had a means of pressuring Wal-Mart to take responsibility for this structure, it is unlikely that it would have remained vacant for that duration of time. Bardstown ultimately used taxpayer money to demolish the eyesore that Wal-Mart left behind.<sup>130</sup>

#### F. Traffic

Big box stores and supercenters are generally located on the fringe of urban areas, primarily because the amount of land needed for development makes it cost prohibitive to build closer to the city center.<sup>131</sup> Superstores are larger than the average big box store, and this increases the need to locate them in sparsely populated areas. Consequently, unless special efforts are made to extend some form of public transit to these sites, access is predominantly by car rather than public transit. The distance from residential neighborhoods and the lack of walkways near the store or through the parking lot make box stores and supercenters less accessible to pedestrians.

Because their design forces shoppers to primarily rely upon automobile transit to reach the big box or superstore, traffic congestion in an area can dramatically increase.<sup>132</sup> A report prepared for Oakland's Community and Economic Development Agency indicated that because they combine features of a grocery store, with those of a general retail store or warehouse membership club, superstores are much more likely to spawn traffic as compared to other similarly sized stores.<sup>133</sup> Since shoppers need to buy groceries on a more frequent basis, supercenters are likely to be visited more often than similar big box retail establishments without a grocery component.<sup>134</sup> The BAEF study confirms that Wal-Marts' supercenters have a per-store average of 3,582 customer visits per day, with 40% of those trips for the purpose of buying groceries.<sup>135</sup> The BAEF study also found that supercenters will face more traffic congestion than

other retail big box stores because “shoppers are willing to drive further to access a supercenter grocery store than a conventional supermarket.”<sup>136</sup> This conclusion is evidenced by the lower prices and variety of products offered as compared to a conventional supermarket and by the fact that Wal-Mart superstores have higher revenue per square foot than competing supermarket chains such as Safeway or Albertsons.<sup>137</sup>

Some have disagreed with this assertion, claiming that a supercenter produces the same amount of traffic as a large supermarket and a big box discount store located next to one another. Mark Husson, a research analyst with Merrill Lynch, has stated that in urban markets convenience may trump the lower prices available from supercenters.<sup>138</sup> Even though consumers could get lower prices, they may prefer driving to their local supermarket because it will save time.

The BAEF study found that consumers are willing to drive farther if it will enable them to save money, which seems to contradict the “convenience” theory. However, it may be possible to align the BAEF study and Mr. Husson’s analysis. Consumers may prefer shopping locally if they are merely picking up a few needed supplies, but consumers may be willing to make the effort to travel further when their purchases are significant enough to make the lower costs worth the extra distance. However, because most of the proposed supercenters in California are expected to be developed near low-income communities,<sup>139</sup> the convenience theory may not be as relevant in California.

In terms of traffic congestion, the above studies suggest that the preference for the supercenter, in lieu of a local supermarket chain, will cause traffic density to be higher in areas around the supercenter than around the stand-alone supermarket, even in instances where the supermarket is close to a big box retailer. Traffic in the general region is also likely to increase,

in the sense that motorists are willing to drive longer distances in order to shop at a supercenter, thereby clogging up area roadways.<sup>140</sup> When these cars converge upon their final destination, the density of traffic around the supercenter will also be higher than if only local patrons shopped there. In terms of supercenter development, the general increase in traffic congestion needs to be evaluated to assess its impact upon air and noise pollution in the local area.

#### G. Environment

Under the California Environmental Quality Act (“CEQA”), the significant environmental effects of projects or actions undertaken by public agencies must be identified before the project is approved, and significant impacts that should either be avoided or mitigated. The environmental impacts of proposed projects are considered in a document called an Environmental Impact Report (“EIR”). The categories of environmental impacts that must be addressed in EIRs include land use, air quality, noise, traffic, water resources, and cultural resources among others. Actions that trigger the requirements of CEQA review include changes to local zoning laws or the approval of building permits. However, agencies or decision-making bodies have discretion to approve projects even when the EIR indicates there are significant impacts associated with the action.

Thus, unless the proposal has been specifically exempted, EIRs are generally completed for proposed developments such as big box or supercenter stores. This requirement safeguards the community by enabling the city council and the public to evaluate the potential negative impacts upon the environment. Potential impacts of a supercenters often related to the large parcels of land required and traffic generated by the development. The environmental review requirement has been used to halt Wal-Mart’s incursion into several communities on the grounds that the environmental damage resulting from the increased pollution outweighed the benefit.<sup>141</sup>

In other instances, cities have placed conditions on their approval as a result of the impact assessment findings.<sup>142</sup>

Environmental impact studies play an important and influential role in determining whether a supercenter can be built at all or whether restrictions will be placed on its development. Wal-Mart has recently tried to avoid such restrictions in Inglewood, California by attempting to bypass the requirement of an environmental study (*see infra*, Section V).<sup>143</sup> In November of 2002, Wal-Mart gathered enough signatures to force a ballot initiative in Inglewood calling for building permits to be issued without a public hearing or environmental review.<sup>144</sup> If passed, Wal-Mart would have circumvented the need for city council approval of its proposed supercenter.<sup>145</sup> Voters rejected this proposal by a strong majority, due partly from concern over the possible negative consequences associated with the lack of environmental review.

#### H. Design

The typical supercenter store is designed for function, not aesthetics. Grossly dwarfing its nearby competitors, supercenters are reminiscent of large warehouses. Typical features include a standard block shape in a single building format, with a flat roof, no windows, all of which is surrounded by a sea of blacktop.<sup>146</sup> Because big box stores average 100,000 plus square feet, with supercenters reaching as large as 250,000 square feet, both types stand out from their neighboring communities in terms of layout and size.<sup>147</sup>

Stores of this magnitude require an enormous parking lot in order to provide enough parking for the number of consumers who shop there. The BAEF study looked at a survey of California parking requirements, and concluded that “almost every city requires one parking space for every 200 square feet of floor space.”<sup>148</sup> Thus, a 250,000 square foot supercenter needs at least a 16-acre parking lot in order to meet the minimal requirement of five parking spaces per

thousand square feet of store space.<sup>149</sup> The enormous amount of asphalt required to meet this demand forms a large basis for the negative visual impact of these stores. In one instance, Wal-Mart has responded to this complaint by agreeing to modify a proposed Georgia supercenter by designing the 204,000 square foot store with an underground parking lot.<sup>150</sup> While this response might pacify some of the opposition, Wal-Mart has not yet raised this as a possibility for the supercenters proposed in California.

Another cause for residents to oppose big box stores, comes from the lack of any attempt to integrate the architecture of these buildings with that of the surrounding community. The cookie-cutter design, as well as a general lack of character or color, forms the basis for why many consider them to be blight upon the neighborhood. This conclusion is underscored by a study commissioned by the Santa Fe Independent Business and Community Alliance. It determined that big box chains were eroding Santa Fe's distinctive character and economy.<sup>151</sup> As a consequence of this study, several pro-local business initiatives are being examined as part of Santa Fe's new economic development plan.<sup>152</sup>

Many communities have instituted size and design requirements as part of their city's General Plan in order to control such aspects as: the architectural design of the building, its overall size, the building materials or color scheme, and whether the building conforms to community character.<sup>153</sup> With regards to building layout, this opposition has convinced Wal-Mart of the need to depart from its previous rigid adherence to its single-story format.<sup>154</sup> Wal-Mart has agreed to open four multi-level Wal-Mart stores in San Diego, La Mesa, El Cajon, and in greater Los Angeles.<sup>155</sup> Multi-story buildings optimize the urban landscape in a more efficient manner than the traditional sprawl of the one story building. The benefits of multi-story buildings are two-fold. First, adjustments in building design assuage concerns of local

communities that supercenter builders are monolithically imposing their buildings. Second, the multi-story format may also benefit Wal-Mart, as it reduces the amount of real estate it must acquire for a proposed site. This suggests that design restrictions may ultimately lead to a positive outcome for both sides.

Outside of California, design standards have also been used to restrict supercenter development. The city of Stoughton, Wisconsin, enacted an ordinance that capped big box stores at 110,000 square feet, in order to prevent a planned 180,000 square foot Wal-Mart supercenter.<sup>156</sup> The city also imposed strict design standards, including varying roof heights that would break up the skyline, display windows, clearly defined entrances, and a landscaping plan.<sup>157</sup> The community succeeded in forcing Wal-Mart to accede to its demand despite its small size. However, it also suggests that Wal-Mart will respond only to organized community opposition.

#### **IV. STEP 1: THE BATTLE OVER LOCAL ELECTIONS**

Most of the clashes over Wal-Mart and other supercenter plans have occurred when development plans conflict with the goals of the community or local officials. Rather than compete with local governments planning approval authority, Wal-Mart has focused much attention facilitating the election of officials that will support their goals and prevent later conflict. Using Gilroy, California, as a case study, this section will highlight the methods used both by those for and against large retail development in their efforts to help elect local candidates that match their values. The section concludes that while there are legal and political tools available to challenge the policies of hostile local officials, the success of a big box project may turn largely on Wal-Mart's ability to elect supportive City Council members.

### A. Case Study Gilroy, California

Gilroy, an agricultural Northern California town with a population of 47,000, has in recent years seen much of its farmland replaced by big box retail. Gilroy has a Home Depot, Lowe's, Staples, Office Max, Best Buy, PetCo, Ross, Bed Bath & Beyond, Michael's Crafts, and a 125,000 square foot Wal-Mart.<sup>158</sup> Both Costco and Target are presently constructing stores in Gilroy.<sup>159</sup> On March 15, 2004, Gilroy became the first city in Northern California to approve construction of an approximately 220,000 square foot Wal-Mart supercenter.<sup>160</sup>

United Food and Commercial Workers union members, troubled by the low-wage grocery job opportunities with Wal-Mart and the resultant economic impact on the community, initiated a fierce debate between local labor leaders and the Gilroy City Council. The union did not oppose the Costco store being constructed that includes 60,000 square feet of groceries. That project received Council approval in 19 minutes.<sup>161</sup> The union noted that while the Gilroy Costco is non-union, “[w]e didn't fight Costco because they pay good wages.”<sup>162</sup>

The heart of the Gilroy Wal-Mart debate centered on the economic implications identified in the supercenter's EIR, conducted by the Monterey-based EMC Planning Group. The EIR concluded that although a new supercenter could have a significant negative impact on Gilroy's air quality, as long as appropriate mitigation measures were employed, the impacts across nine other environmental areas of concern, such as noise pollution and water quality, would be “less than significant.”<sup>163</sup> According to the EIR, traffic from a Wal-Mart Supercenter with 986 parking spaces would result in the emission of 132.4 pounds per day of nitrous oxide fumes, even though 80 pounds per day is the maximum allowed under state law.<sup>164</sup> However, because California clean air laws allow a city council to approve a project that exceeds environmental standards by signing a statement of “overriding economic considerations,” the Gilroy City Council was allowed to assess whether the economic benefits of a Wal-Mart

supercenter justified construction. After reviewing a number of economic impact statements, presented by Wal-Mart supporters and opponents alike, and delaying a February vote on the supercenter, the Council voted 5-2 in favor of the project on March 15, 2004.<sup>165</sup>

#### B. Wal-Mart's Campaign Funding & Lobbying Efforts

The approval of the supercenter in Gilroy was primarily the result of Wal-Mart's political maneuvering and funding the campaigns of several "Wal-Mart friendly" City Council candidates. Wal-Mart has already used this method in both the local and national arena. In 2001, Wal-Mart lost a bid with local city officials in Asheville, North Carolina to build a proposed store on a 78-acre site.<sup>166</sup> Shortly after the council voted against the project, developers formed a political action committee called the "Citizens for New Leadership," which contributed \$8,000 each to the campaigns of candidates who pledged to make Asheville more "friendly" to developers.<sup>167</sup> After these individuals were elected in 2002, the new City Council voted to approve plans for the same Wal-Mart that had failed to receive approval a year and a half earlier.<sup>168</sup> On the national level, Wal-Mart has significantly increased campaign donations, particularly to Republican candidates. In the 2000 and 2002 elections, Wal-Mart contributed about \$475,000 in soft money to the Republicans, as compared to \$50,000 for Democrats in the same time period.<sup>169</sup> In 2003, Wal-Mart contributed over \$1 million to federal campaigns – 85 percent to Republicans and 15 percent to Democrats – jumping from the 71<sup>st</sup> biggest campaign contributor in 2002 to the second biggest contributor in 2003.<sup>170</sup>

As the November 2003 Gilroy City Council election approached, media attention increased.<sup>171</sup> A week before the election, Wal-Mart sent a mass mailing to all Gilroy homes with registered voters, urging residents to vote against candidates who were members of Gilroy First!, a union supported political group mobilized against the Wal-Mart supercenter.<sup>172</sup> The mailer was titled "Don't Let Gilroy First! Ruin Gilroy" and asks voters to "Say 'No!' to dishonest

political activists, and say ‘Yes!’ to a healthy Gilroy future.”<sup>173</sup> According to the *Gilroy Dispatch*, after the election, the new City Council included a majority of big box retail advocates and, “at best, two Wal-Mart watchdogs.”<sup>174</sup> One vocal Wal-Mart opponent, one of the two council members who voted against the supercenter, was elected only after grocery unions spent over \$12,000 on his campaign.<sup>175</sup>

Wal-Mart continued efforts after the election to convince council members that Wal-Mart’s economic outweighed potential negative environmental impacts. Between the election and the March 2004 vote, Wal-Mart representatives lobbied members of the Gilroy Planning Commission and City Council prior to Commission meetings, discussing Wal-Mart’s alleged “competitive wages.”<sup>176</sup> On February 10, 2004, a week prior to the first City Council vote on whether to approve the supercenter project, Wal-Mart submitted its own EIR – presenting the issues in a light favorable to Wal-Mart. While the Council was able to review the conclusions, there was not time sufficient for the public and existing businesses to comment on Wal-Mart’s report prior to the Council’s vote.<sup>177</sup> The Council ultimately voted in favor of the supercenter on March 15, 2004.<sup>178</sup>

### C. Lobbying and Public Appeal by Community-based Groups

Wal-Mart opponents made efforts both before and after the election to prevent supercenter approval in Gilroy. In August 2003, prior to the council election, an eight-page environmental critique of the Wal-Mart supercenter was prepared at the request of an organization called “Citizens for Responsible Development.”<sup>179</sup> The report challenged the city’s environmental review, claiming that the negative impacts to traffic and the local economy had not been addressed adequately in the existing EIR. The report requested a new economic impact assessment and a revised EIR be completed, noting that regionally, supercenter development could result in \$2.8 billion in lost wages and benefits for grocery industry employees.<sup>180</sup> The

City Council voted 4-3 against the proposal for new assessments, finding that the existing 1992 EIR for the entire Pacheco Pass Center retail development had already yielded positive results.<sup>181</sup>

After Gilroy's election, supercenter opponents shifted their political focus away from the Wal-Mart friendly City Council appealing directly to the public and other regional officials.<sup>182</sup> The *Gilroy Dispatch* published an editorial questioning whether the project's economic benefits were sufficient to override the potential environmental violations, pointing to the likelihood of a significant drop in business at other supermarkets and the low-wage, low-benefit jobs at Wal-Mart.<sup>183</sup> The United Food & Commercial Workers union lobbied Santa Clara County officials unsuccessfully to introduce a ballot initiative similar to the Contra Costa County initiative (discussed *infra*), that would have banned supercenter development on unincorporated county land.<sup>184</sup>

Finally, a community group comprised of union leaders, concerned residents and two anti-supercenter City Council members, drafted a petition calling for a November 2004 public referendum on whether a Wal-Mart Supercenter should be approved, a new economic impact study to determine the effect on existing local businesses and workers and Council disclosure of the full traffic impacts for the proposed supercenter.<sup>185</sup> By the March 15 hearing, opponents had gathered 1,200 petition signatures, and asked for a referendum on the Council's supercenter decision.<sup>186</sup> However, in early May of 2004, the referendum was abandoned.<sup>187</sup> On May 10, 2004, the United Food and Commercial Workers union and Citizens for Responsible Planning filed suit against the City of Gilroy alleging that the city violated CEQA by failing to properly review the new Supercenter's economic impacts.<sup>188</sup>

#### D. Tools to Combat Election Losses

Gilroy serves as an example of how Wal-Mart involvement in funding City Council elections can effectively reduce or eliminate later council opposition to supercenter development.

However, there remain a number of political and legal tools to challenge pro-big box retail decisions by local governments in California.

### *1. Challenging Inadequate Environmental Assessments*

As recently evidenced in Gilroy, when environmental reviews for proposed supercenters appear inadequate, opponents may pursue legal action. In March 2003, the “Bakersfield Citizens for Local Control,” a homeowners group backed by union support, filed two lawsuits against the City of Bakersfield, alleging that city officials had violated CEQA by not adequately considering noise, traffic, safety, and other environmental factors when it approved two Wal-Mart superstores.<sup>189</sup> The California Supreme Court has held that an EIR is the “heart of CEQA,”<sup>190</sup> and its “purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made.”<sup>191</sup> The purpose of an EIR is for officials to “identify the significant effects of a project on the environment, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.”<sup>192</sup> Courts reviewing government action under CEQA assess whether the agency has not proceeded in a manner required by law or if the EIR findings were not supported by substantial evidence.<sup>193</sup> In January 2004, the superior court agreed that the Bakersfield City Council had not conducted adequate environmental review prior to approving the two supercenters, and ordered that construction be frozen indefinitely.<sup>194</sup>

The Bakersfield lawsuit was not a victory for big box opponents as the court’s decision was specifically directed to the Wal-Mart supercenter format. The judge ordered the two Wal-Marts be technically “severed” from other City approved development projects, allowing other approved big box stores to be opened as planned, including a Kohl’s department store and a Lowe’s home improvement center.<sup>195</sup> Bakersfield Citizens for Local Control argued that the decision to sever the Wal-Marts from the other stores was wrong because all developments

should be subject to a new environmental review.<sup>196</sup> The Bakersfield City Council is preparing a more detailed study of the economic impact of the two supercenters before public hearings begin again.<sup>197</sup> Two similar lawsuits are underway challenging supercenter approval in the cities of Redding and Anderson.<sup>198</sup>

## *2. Publicizing Unethical Conduct by Local Officials*

Another way that opponents have fought the establishment or expansion of Wal-Marts is to create public awareness of Wal-Mart's campaign contributions and intensive lobbying efforts. In Grand Island City, Nebraska, local media called attention to the Wal-Mart tactic of funding elections by showing that eight council members violated the public's trust by meeting with Wal-Mart officials in individual or group meetings "out of the public's eye and away from city staff and the mayor," breeding "suspicion about what happened behind those doors."<sup>199</sup> In San Marcos, California, a lawsuit was filed against the City Council, alleging that "three council members illegally reached a consensus before a formal vote on plans to build a Wal-Mart in south San Marcos."<sup>200</sup> The complaint argues that the three members met privately with a Wal-Mart employee, whom they hired as their "political consultant" on the Wal-Mart project.<sup>201</sup> The crux of both claims is that developer campaign funding or lobbying can extend beyond First-Amendment approved conduct to illegally influence the political process.

## V. STEP 2: PUBLIC REFERENDUM

Supercenter opponents and proponents have increasingly used public referenda or initiatives as a tactic. A referendum gives voters the right to either accept or reject a decision made by legislative bodies.<sup>202</sup> An initiative is the electoral process whereby the general public proposes legislation and compels a popular vote on its adoption.<sup>203</sup> Thus, initiatives resolve issues that may not have previously been considered by the legislative body but subsequently bind that body, whereas referenda only accept or reject existing statutes or laws that have already been passed.

California law states that “[a]cts of a legislative body which are legislative in nature are subject to the referendum process, whereas acts which are administrative in nature are not.”<sup>204</sup> The California Supreme Court has concluded that zoning ordinances<sup>205</sup> and modifications to a city's general plan<sup>206</sup> both constitute legislative acts. The California Supreme Court has also held that “a general plan can be amended by an initiative of the county’s electorate acting pursuant to article II, section 11 of the California Constitution.”<sup>207</sup> Therefore, zoning changes and general plan modifications may be subject to public referendum or initiatives that give voters the final say over planning decisions.

Public referendums and initiatives, and the attendant legal battles, have emerged as an important tool for unions and retailers in California to reverse government decisions or to motivate council action. However, the use of these political methods to decide land issues such as big box expansion is controversial. Large-scale developments require, by their nature, the knowledge and experience of community and city planning professionals. The concern is that ballot initiatives circumvent the normal governmental checks and balances, and remove oversight from those people best capable of understanding the subject. On the other hand,

referendums and initiatives allow decisions to be made by the people who are most affected by the impacts of those decisions.

Regardless whether they are the most appropriate method for dealing with supercenter expansion, referendums and initiatives are being used in a growing number of localities. This section will focus on two supercenter battles in the southern California cities of San Marcos and Inglewood and one that occurred in the San Francisco Bay Area's Contra Costa County. The similarities and differences in these cases demonstrate how money, lobbying, and lawsuits can make the difference between the approval or elimination of supercenter development. While funding of political action is a significant factor in influencing ballot measure outcomes, it is not determinative. Funding may be counterbalanced by community mobilization around specific big box projects or with litigation challenging the procedural and substantive aspects of the ballot measure itself.

#### A. Case Studies: Contra Costa County, San Marcos, and Inglewood

The supercenter ballot measures introduced in Contra Costa and San Marcos are similar though the actors played opposite roles in each. In Contra Costa County, Wal-Mart turned to the public to overturn a county ordinance restricting supercenter development. In San Marcos, the unions acted to garner public support to reverse a city council approval of a Wal-Mart department store. Inglewood differs from both of these examples, because its city attorney rescinded an ordinance banning supercenter development. Wal-Mart then decided to by-pass city attorney review of its supercenter proposal altogether by proposing a ballot measure that would have mandated the city to approve the proposed development. Approval of the measure would have amended the city's zoning code to allow building permits for the supercenter to be issued without the requisite public hearings or environmental impact studies being conducted.<sup>208</sup>

### *1. Contra Costa County*

On June 3, 2003, the Contra Costa County Board of Supervisors passed a “Large Scale Retail Businesses Ordinance,” which prohibited stores larger than 90,000 square feet from building in unincorporated areas if they devote more than five percent of floor space to non-taxable groceries.<sup>209</sup> The ban specifically exempted wholesale clubs or other big box stores that require customer fees to access them.<sup>210</sup> After spending \$100,000 in signature gathering efforts, Wal-Mart presented a referendum petition to the board containing the required number of signatures to prevent the ordinance from going into effect.<sup>211</sup> The Board of Supervisors decided to submit the decision to voters in the March 2004 election, rather than to repeal it altogether. Ballot Measure L sought voter approval to adopt the Large Scale Retail Businesses Ordinance. A vote “yes” supported the ban, while a vote “no” opposed it. Ballot Measure L was defeated with 113,747 (53.8%) county residents voting against the measure, and 97,699 (46.2%) voting to retain the ban, with approximately 50% of voters going to the polls.<sup>212</sup>

The political campaign pitted “local control” advocates (who supported the ban) against “consumer choice” supporters (who opposed the ban), and it was the costliest county election battle since the 1990s.<sup>213</sup> Wal-Mart spent more than \$1 million to oppose the ban, more than double that spent by Measure L supporters.<sup>214</sup> The Food and Commercial Workers Union spent approximately \$100,000 to support Measure L, and despite ongoing labor strikes, received a \$300,000 donation from Safeway.<sup>215</sup> Each side used different strategies, Wal-Mart focused on mail and television advertisements, including statewide advertisements on the impact of Wal-Mart in South Central Los Angeles. Union supporters organized door-to-door walks and phone banks.<sup>216</sup> Although Wal-Mart currently has no plans to build a supercenter in Contra Costa County, a Wal-Mart spokesperson noted that “we are continuing to grow,” and commented that “the vote says to me that we may have some opportunities.”<sup>217</sup>

## 2. *The City of San Marcos*

In August 2003, the San Marcos City Council approved an amendment to the General Plan that allowed a Wal-Mart discount store to be constructed at Rancho Santa Fe Road and Melrose Drive, a residentially zoned area.<sup>218</sup> The Council amendment would have rezoned 20 acres to commercial in order to accommodate the Wal-Mart store and additional projects on a site originally slated for residential developments.<sup>219</sup> Shortly after approval of the amendment, Wal-Mart opponents gathered enough signatures to force a referendum on the general plan amendment at the March 2, 2003 election, resulting in Proposition G.<sup>220</sup> “Yes” on Proposition G would have allowed the construction of the supercenter, while “no” vote would have retained the “multi-family” zoning status of the parcel.<sup>221</sup> Proposition G passed, meaning voters rejected the City Council’s resolution to amend the general plan and change the zoning. 7,304 voters (60.4%) supported Measure G while 4,781 (39.6%) supported the City Council decision to permit the zoning variance requested by Wal-Mart.<sup>222</sup>

In the San Marcos campaign, Wal-Mart outspent its opponents in San Marcos by ten to one, according to some estimates.<sup>223</sup> San Marcos 1st!, a pro-Wal-Mart group chaired by the wife of the San Marcos Vice Mayor, reported \$86,000 in campaign contributions from January 18 to February 14, all of which came from Wal-Mart.<sup>224</sup> The opposition group, SaveSanMarcos.org, reported campaign contributions of only \$8,514 during the same period.<sup>225</sup> SaveSanMarcos.org declined union support for the campaign, after the original opposition group, Citizens for Responsible Growth in San Marcos, received negative press reports for accepting \$30,000 from the United Food & Commercial Workers for their consulting services and the hiring of signature gatherers to place the issues on the ballot.<sup>226</sup>

### 3. *The City of Inglewood*

The City Council of Inglewood, a small city located within Los Angeles County, unanimously passed an emergency ordinance, Ordinance No. 02-30, on October 22, 2002, that barred construction of retail stores that exceeded 155,000 square feet and that contained more than 20,000 square feet of nontaxable items.<sup>227</sup> The ordinance blocked Wal-Mart's proposed retail development on a 60-acre lot adjacent to the Hollywood Park racetrack. The store would have been the first supercenter in Los Angeles County.<sup>228</sup> Wal-Mart responded to the ordinance by circulating a referendum petition to overturn the City Council's supercenter ban.

Wal-Mart had successfully used this tactic elsewhere.<sup>229</sup> In Clark County, Nevada, Wal-Mart used the referendum to defeat a supercenter ban that city officials had passed at the urging of the United Food and Commercial Workers Union and urban sprawl opponents.<sup>230</sup> Clark County officials rescinded the ban when Wal-Mart collected enough signatures in nearby Las Vegas to qualify a voter referendum on the matter.<sup>231</sup> In Inglewood, Wal-Mart quickly collected the requisite number of signatures for a referendum and also threatened to sue the city. In response, the Inglewood City Council rescinded the zoning ordinance.

Concerned about the possibility of future attempts by the Inglewood City Council to block development, Wal-Mart created an initiative to circumvent the normal planning reviews for its proposed supercenter development.<sup>232</sup> In August 2003, Wal-Mart began its collection of the requisite 6,500 signatures needed to put the initiative on the ballot.<sup>233</sup> With assistance from the Citizens Committee to Welcome Wal-Mart, more than 13,000 signatures were collected.<sup>234</sup> The City Council scheduled a special election for April 6, 2004.<sup>235</sup> The resulting initiative, Measure 04-A, only applied to the Hollywood Park development and included the following language:

“the reviewing official shall be required to issue the requested permit or permits without the exercise of any discretion and no development standards, criteria requirements, procedures, mitigation, or exactions shall be imposed.”<sup>236</sup>

Approval of the initiative would have allowed Wal-Mart to obtain re-zoning without the necessity of public hearings, environmental impact statements or traffic studies. If approved, the initiative would have become effective and could not have been amended or repealed by the City Council without another vote by the voters.<sup>237</sup>

Wal-Mart’s initiative was both bold and novel. Not only did it ask voters to supersede City Council’s decision, but it also asked voters to agree to the removal of safeguards intended to protect their community. Opponents of the initiative argued that the measure would give Wal-Mart too much power. Wal-Mart countered that its actions were justified by the unfair treatment it had received from the City Council and that only the voters could fairly resolve the situation.<sup>238</sup> Proponents of the measure argued that Wal-Mart opponents only focused on the negative aspects of giving Wal-Mart the ability to by-pass the council, instead of considering to the value of cutting through unnecessary bureaucracy.

Measure 04-A was rejected by a 60-percent-to-40-percent margin, despite Wal-Mart’s outspending its opposition by an order of magnitude.<sup>239</sup> Wal-Mart had targeted Inglewood’s minority community with television advertisements and telephone calls that promised job opportunities and the revitalization of the community.<sup>240</sup> Opponents of Measure 04-A had a much tighter budget and relied heavily on community leaders and volunteers to telephone and reach out to voters with door-to-door visits.<sup>241</sup> Despite the spending differences,<sup>242</sup> Wal-Mart’s efforts did not pay off.

Success on the Inglewood initiative was pivotal to Wal-Mart’s desire to enter the lucrative Los Angeles market. Not only would Inglewood have been the first supercenter site in

Los Angeles County, but the success of the campaign could have established a precedent for Wal-Mart to circumvent local city governments by going directly to the voters.<sup>243</sup> The latter factor played a key role in influencing a broad coalition of clergy, labor, small businesses and grocery workers to join together against Wal-Mart's proposal.<sup>244</sup>

The unions were a primary motivator behind the coalition, due to serious concerns over lost wages and benefits if Wal-Mart's supercenters succeeded in entering the southern California grocery industry.<sup>245</sup> A study conducted by the University of Southern California suggested that the losses attributed to Wal-Mart's entry could reach as high as \$1.4 billion per year for the grocery industry and its workers.<sup>246</sup> The unions predict that the costs and delays resulting from the initiative failure will demonstrate to Wal-Mart the necessity of being cognizant of community opposition in deciding where to locate stores.<sup>247</sup>

Inglewood was not the first instance in which Wal-Mart lost an initiative. In 1999, Wal-Mart supported an initiative in Eureka, CA that would have enabled it to build a supercenter on waterfront property (Measure J).<sup>248</sup> Unlike the measure in Inglewood, Measure J would not have approved the development without further evaluation. Measure J asked voters to modify the City's General Plan and Zoning Map to change the zoning designation of the site to allow for a commercial/retail use of the property.<sup>249</sup> If the initiative had passed, Wal-Mart still would have needed approval from the City Council and the Coastal Commission before building permits could have been issued, both of which would have required environmental impact and traffic studies.<sup>250</sup>

Measure J was defeated by a 60% majority.<sup>251</sup> A study by the Humboldt Board of Supervisors conducted prior to the vote was influential, finding that a big box retail store would have negative fiscal impacts on the surrounding municipal entities and would not increase jobs or

the quality of jobs. The Commission also found that the supercenter project would have significantly harmed existing businesses and would have reduced the overall quality of life. In the small town of Eureka, as well as in the larger town of Inglewood, these concerns played a significant role in determining the outcome of these initiatives.

#### B. Campaign Funding: The Impact of Money and the “Specific Location” Factor

Although Wal-Mart has characterized the outcome of the Contra Costa County referendum as a victory for consumers and for limitations on government power,<sup>252</sup> Wal-Mart’s success is generally attributed to the money spent on the campaign. A Contra Costa County supervisor, who was a vocal Wal-Mart opponent, commented that the election “sends a chilling message that [Wal-Mart] will spend whatever it takes to come into a community on their terms.”<sup>253</sup>

This sentiment is supported by Wal-Mart’s behavior in other California cities. In June 2001, the City of Calexico, located near the California-Mexico border, enacted an ordinance that any store in excess of 150,000 square feet could dedicate only 7.5% of its floor space to non-taxable items.<sup>254</sup> Wal-Mart challenged the ordinance through a referendum that would have overturned the City Council ordinance (Measure B). Wal-Mart spent approximately \$156,000 in to promote the referendum, while Wal-Mart opponents, including the United Food and Commercial Workers union, raised only \$58,000 to oppose it.<sup>255</sup> Measure B was defeated 66% to 34%; the cost to Wal-Mart was the equivalent of \$56 per vote.<sup>256</sup>

The failure of the Wal-Mart effort in San Marcos and Inglewood suggests that money may not be a determinative factor. Instead, the outcomes may be a result of the specificity of the supercenter plans. In Contra Costa, Wal-Mart had not planned any supercenters; the ordinance proactively banned any supercenter development in unincorporated county areas. The issue in Contra Costa was about “general” supercenter impacts - rather than the impacts generated at a

specific location.<sup>257</sup> In San Marcos, voters mobilized around a Wal-Mart proposal that already had been approved by the city council for a specific site. Like Gilroy, San Marcos had a large amount of big box retail stores: Best Buy, Kohl's department store, a "traditional" Wal-Mart, Lowe's Home Improvement Warehouse, and Fry's Electronics.<sup>258</sup> Opponents of Proposition G were troubled by the traffic concerns of the particular proposed site, maintaining that the Wal-Mart would bring "10,000 cars visiting the store, creating noise and worsening gridlock in an already congested area."<sup>259</sup>

The failure of Wal-Mart's initiatives in Eureka and Inglewood also substantiates the theory that the success of an initiative or referendum may depend upon the specificity of Wal-Mart's proposed supercenter locations. Voters in both these cities rejected initiatives by a 60% majority, despite large contributions made by Wal-Mart in hope of swaying voters to their viewpoint. Having removed the money factor from the equation, it seems relevant that in both situations the initiatives dealt with a specific development site. This again suggests there is a greater probability of voters opposing supercenter proposals when they have concrete plots of land in mind. It is easier to imagine the potential impact of a development knowing it will be situated near one's home or work. Familiarity with one's own community also makes it easier to predict increases to traffic congestion or noise, and it gives voters a personal interest in the outcome of the planning decision. Thus, the "specific location" factor may play an important role in combating disparate campaign funding and succeed against Wal-Mart backed referendums or initiatives. However, Wal-Mart now knows that it should not propose Wal-Mart supercenter sites until local governments have passed favorable supercenter ordinances, and the effectiveness of the "specific location" factor may change.

## VI. STEP 3: THE LAWSUIT

Because there is no statewide ordinance in California that regulates supercenters, each city or county must decide whether, and in what manner, to restrict the ability of large scale retail businesses to establish stores within their area.<sup>260</sup> The resultant ordinances, which vary both in terms of their scope and range, form the basis for lawsuits that have been filed by Wal-Mart and other developers. In its litigation, Wal-Mart has focused primarily on zoning restrictions which limit building size in conjunction with limits on the percentage of non-taxable goods sold or percentage of square footage given over to non-taxable goods.<sup>261</sup> While the legal grounds used to attack these ordinances largely overlap, there are some cases that have unique characteristics giving rise to a specific legal approach.

This section will examine lawsuits filed by Wal-Mart in Turlock and Alameda County, but similar lawsuits are likely to become more common as cities and towns increasingly pass zoning ordinances directed against supercenters.<sup>262</sup> It seems likely that Wal-Mart will face problems with standing and ripeness issues in the suits discussed below.

### A. Background

Wal-Mart has a history of taking political action against big box ordinances; however, 2004 was the first time that Wal-Mart relied upon litigation in California. It sued both Alameda County and the City of Turlock, challenging the constitutionality of supercenter restrictions and the zoning authority of local governments.

#### *1. Wal-Mart's Lawsuit Against Alameda County*

In January 2004, Alameda County Supervisors unanimously passed an ordinance banning supercenters within Alameda's unincorporated areas, in response to Wal-Mart's proclaimed intention of building a supercenter there.<sup>263</sup> The "Large Scale Retail Ordinance" prohibited the construction of stores above 100,000 square feet which devote more than 10% of its sales floor

space to non-taxable goods, such as groceries or prescription drugs (Ordinance No. 2004-41).<sup>264</sup> Wal-Mart attacked the ordinance claiming that it improperly targeted a specific business and restricted consumers' ability to select where to shop.<sup>265</sup>

Three weeks later, Wal-Mart filed suit in the Superior Court of California seeking to invalidate the ordinance.<sup>266</sup> This was only the second time that Wal-Mart had brought suit to overturn an ordinance banning supercenters,<sup>267</sup> and the first suit brought in California.<sup>268</sup> Wal-Mart's complaint asserted the ban violates CEQA in that the County Board of Supervisors should have conducted an environmental review before approving the ordinance.<sup>269</sup> Wal-Mart is in the unusual position of seeking environmental reviews rather than attempting to avoid such review,<sup>270</sup> however, Wal-Mart's legal theory is not without basis, and the County's actions may be subject to CEQA requirements.

Wal-Mart's second claim was that Alameda County's ban imposed unusual and unnecessary restrictions that exclusively targeted Wal-Mart and the Supervisors did not have the authority to create such as ban.<sup>271</sup> However, the Board of Supervisors does have the right, and duty, to regulate issues that impact the local community. The Supervisors have explained that ordinance was passed based on legitimate concerns about the potential impact of supercenters on Alameda's smaller businesses and neighborhoods as well as concerns over traffic congestion and pollution.<sup>272</sup> County officials further asserted that Wal-Mart was not targeted. The county sought to create a standard that would govern all future supercenter developments, and Wal-Mart simply had the misfortune to be the first supercenter retailer planning to be affected by the ordinance.<sup>273</sup> Not surprisingly, Wal-Mart argued that the "market and the community should decide where they want to shop."<sup>274</sup> From Wal-Mart's perspective it may make sense for market

forces of supply and demand to mediate business development, but from the County's perspective it is far more difficult to rectify environmental damage than act to prevent it.

Wal-Mart's final claim was that the County Supervisors failed to conduct public hearings and comply with the state-mandated requirement that the County Planning Commission review the ordinance prior to its adoption.<sup>275</sup> Although the county denied that no public hearings were conducted, Alameda County's attorney requested that the ordinance be repealed in order to moot the lawsuit and allow for review by the Alameda County Planning Commission.<sup>276</sup> The ordinance was repealed March 30, 2004, but it is now pending before the County Planning Commission.<sup>277</sup> If approved, the ordinance banning large-scale retail stores on unincorporated lands could be re-instated on a firmer legal basis although it seems likely that Wal-Mart would refile the suit and challenge the ban on the remaining substantive grounds.

## 2. *Wal-Mart's Lawsuits Against the City of Turlock*

In January 2004, the Turlock City Council unanimously (5-0) passed an ordinance that banned any new or expanding "Discount Superstores."<sup>278</sup> According to the ordinance, the definition of a "Discount Superstore" is:

a store that is similar to a 'Discount Store' . . . with the exception that they also contain a full service grocery department under the same roof that shares entrances and exits with the discount store area. Such retail stores exceed 100,000 square feet of gross area and devote at least five (5%) percent of the total sales floor area to the sale of non-taxable merchandise.<sup>279</sup>

When the ordinance was passed, Wal-Mart had not yet submitted an application with the City of Turlock to develop a supercenter. It did however plan to build a 225,000 square foot supercenter near its smaller Turlock store.<sup>280</sup> The Turlock ordinance only addressed the supercenter format, and specifically excluded "discount clubs,"<sup>281</sup> "discount stores," "shopping centers," and "grocery stores," from the regulation.<sup>282</sup> This exemption allowed the City Council to approve construction of a Costco shortly after the ordinance became effective.<sup>283</sup>

In February 2004, Wal-Mart filed two lawsuits against the ordinance, one in state and one in federal court.<sup>284</sup> The suits, seeking declaratory and injunctive relief and asks that the ban be suspended while the cases are being heard. The City Council has authorized \$80,000 from the \$3.8 million general fund to oppose the lawsuits.<sup>285</sup>

**a. The Federal Suit**

The federal suit contends that Turlock's ordinance violates the equal protection clauses of the U.S. and California Constitutions, the Commerce Clause of the U.S. Constitution, and that it is unconstitutionally vague and uncertain. In particular, Wal-Mart argues that the ordinance improperly singles out supercenters for regulation, leaving other big box retail intact.<sup>286</sup> The City of Turlock has responded that the primary purpose in enacting the regulation arose from concern that a Wal-Mart supercenter would increase traffic within the city, create corresponding negative effects on air quality, and adversely affect the viability of small scale, pedestrian friendly commercial areas.<sup>287</sup> However, Wal-Mart's complaint asserts that supercenters are similarly situated to membership "Discount Clubs" for purposes of traffic, air quality, and blight, and that the only distinction between Discount Clubs and supercenters is that Discount Clubs charge membership fees.<sup>288</sup> Wal-Mart maintains that membership fees have no relationship to traffic patterns or environmental impacts, and that it is unconstitutional to differentiate on this basis. Wal-Mart additionally argues that it is the only retailer in California that operates, or plans to operate, a "Discount Superstore," as defined by the ordinance, and the ordinance is therefore discriminatory in its purpose against out-of-state interests in violation of the Commerce Clause of the United States Constitution.<sup>289</sup>

Alternatively, Wal-Mart claims that the ordinance is poorly drafted and therefore unconstitutionally vague. For example, the definition of "Discount Club" includes a showing

that a retailer sells many items in large quantities or bulk.<sup>290</sup> “Many items” could range anywhere between some inventory to all inventory.<sup>291</sup> Moreover, Wal-Mart has also argued under 42 U.S.C. section 1983, the City of Turlock, by discriminating against Wal-Mart while acting under color of State law, has deprived Wal-Mart of its rights, privileges, and immunities secured by the Constitution and other federal law.<sup>292</sup>

#### **b. The State Court Suit**

The state court suit was filed in Stanislaus County Superior Court and contains three causes of action.<sup>293</sup> The first mirrors a successful January 2004 lawsuit by unions in Bakersfield. Wal-Mart alleges the City of Turlock violated CEQA by declining to perform an environmental assessment,<sup>294</sup> and thus, the city council did not make an informed decision or adequately inform the public about the ordinance.<sup>295</sup> Wal-Mart’s second cause of action claims that the city violated state zoning laws by using an ordinance to regulate competition.<sup>296</sup> Wal-Mart’s final claim asserts that Turlock’s ordinance is arbitrary and capricious, lacking in evidentiary support, and that it is procedurally inequitable.<sup>297</sup> Wal-Mart has asked the judge to suspend the ban while the case is heard.<sup>298</sup> This is unlikely to occur, considering it is expected to take up to a year before the case is even brought to trial.<sup>299</sup>

#### **c. Outcome in Other Wal-Mart Lawsuits**

A similar legal battle occurred in Tucson, Arizona that provides some insight into the possible future of this issue and litigation. In September 1999, the Tucson City Council passed an ordinance, which requires an extensive review process for stores larger than 100,000 square feet, and limited the grocery area to 10 percent of the store.<sup>300</sup> The ordinance required developers of stores over 100,000 square feet to file plans with the city addressing impacts of noise, traffic, lights and hours of operation.<sup>301</sup> To gain approval, the ordinance required a public

hearing before a zoning examiner, with the final approval resting with the Mayor and City Council.<sup>302</sup> Wal-Mart challenged the constitutionality of the ordinance arguing that the law exceeded the city's power to set zoning regulations and it did not serve a "legitimate governmental purpose."<sup>303</sup>

The Arizona Superior Court upheld the law in part because the court found that Wal-Mart did not have standing to bring suit as the chain had not yet been denied approval for a store.<sup>304</sup> The court also indicated the claim was not ripe for review since the ordinance allows developers to seek an exemption from the city when their plans are not initially approved.<sup>305</sup> The court also disagreed with Wal-Mart's argument that the ordinance did not serve a legitimate government purpose, holding that "the ordinance served to protect the health, safety and welfare of local residents by mitigating the effects of economic and aesthetic blighting of residential areas when local grocery stores were forced to close due to competition from big box establishments."<sup>306</sup>

#### **d. Predictions for Wal-Mart v. City of Turlock**

As with its answer to Wal-Mart's federal complaint, Turlock has argued that Wal-Mart's state claims are not ripe, since Wal-Mart has not yet filed any application to develop a supercenter. Consequently, as in the Tucson case, Turlock may be able to prevail on similar standing arguments.

The City of Turlock also asserted that an ordinance aimed specifically at supercenter development is constitutional and related to the public welfare by combating the effects of supercenter development on local grocery stores.<sup>307</sup> The Turlock ordinance is more rigid than the Tucson regulation in that it places an all out ban on supercenters, rather than subjecting them to stricter review. Consequently, although the Arizona court found this argument compelling in the context of the Tucson ordinance, it is not clear whether it will prevail in California.

## VII. STRATEGIES FOR OPPOSITION TO AND SUPPORT OF SUPERCENTERS

### A. Procedural Challenges to Ballot Measures

In addition to the legal tactics discussed above, there are several other instances where lawsuits have been used to forward the aims of big box developers or their opponents. In particular, challenges to referendums or initiative have been made based on procedural inadequacies, such as the legitimacy of the signature gathering process.

Wal-Mart relied upon this tactic in its challenge to the San Marcos referendum. In October 2003, Wal-Mart filed suit in the California Superior Court against the county Registrar of Voters, the San Marcos City Clerk, and the San Marcos City Council and asked for an injunction to prevent the referendum and to prohibit the City Council from repealing its approval.<sup>308</sup> Wal-Mart argued that the referendum was illegitimate because the signatures gathered for the petition were collected by non-residents. Wal-Mart also contended the referendum was unlawful as the individual petitions signed by voters did not include documents such as the general plan amendments or the conditions of the City Council's approval.<sup>309</sup> The court withheld a decision and allowed the political process to proceed, noting that Wal-Mart could revive the suit after the election.<sup>310</sup>

Wal-Mart lost a challenge to its own signature gathering Tucson, Arizona. The City of Tucson passed an ordinance restricting supercenters in 1999.<sup>311</sup> In an attempt to overturn the ordinance, Wal-Mart tried to place a referendum on the ballot. Wal-Mart paid signature gatherers to collect voter signatures and spent \$30,000 to collect 14,770 signatures.<sup>312</sup> This amount was significantly more than the 7,703 signatures required to qualify the measure for the election under Tucson rules.<sup>313</sup> However, the city refused to recognize the petition and claimed that because the signatures were on the wrong forms, the petition was procedurally invalid.<sup>314</sup> Wal-Mart sued, arguing it had met state procedural requirements, which preempted municipal

rules.<sup>315</sup> The court agreed as to the state preemption, but held that both Tucson and Wal-Mart had to follow state signature requirements.<sup>316</sup> Title 19 of Arizona law requires signatures amounting to 10% of “the whole number of votes cast,” and not just ballots cast, in order for a referendum petition to be valid. The court relied upon votes tallied from a previous city council election to determine that Wal-Mart’s 14,770 signatures were under the 15,000 required under state law.<sup>317</sup>

### B. Challenges to the Adequacy of Environmental Review

Another method by which the courts have been used to resolve supercenter debates involves lawsuits that challenged the adequacy or lack of environmental review. In Hemet, California, residents recently filed a lawsuit in Riverside Superior Court in March, 2004, against Wal-Mart and the City. The suit asserts that the city failed to conduct an environmental impact study and had not properly disclosed the impact of the proposed store on the community.<sup>318</sup> Likewise in Gilroy, the union and a community group have sued the city for failing to complete a supplemental EIR that would have re-evaluate the economic impacts of the Wal-Mart supercenter that was approved in March 2004.<sup>319</sup>

Outside California, there have also been lawsuits alleging failure to adhere to proper procedures in approving or denying planned developments.

- **In Sequim, Washington** (2003), a Wal-Mart supercenter and a Home Depot were approved without a required environmental impact study. The city was sued on the basis that it failed to analyze the impact of the proposed development on the community or on the nearby Dungeness River.<sup>320</sup>
- **Lacey, New Jersey** (2004): After the city council approved a proposed 157,000 square foot Wal-Mart on a historic site, a citizens group sued the city, the developer, and Wal-Mart, challenging the approval on the grounds that no economic impact study had been conducted, and the plan failed to provide for storm water runoff, noise and light pollution.<sup>321</sup>
- **Lower Makefield, Pennsylvania** (2004): A court ruled that the city had illegally approved a big box store by failing to have the zoning board review the proposal.<sup>322</sup>

- **Front Royal, Virginia (2004):** The City Council voted to rezone a historic site for a proposed 184,000 square foot Wal-Mart supercenter.<sup>323</sup> A citizens group sued on the grounds that the council failed to consider the compatibility of the supercenter with the town's comprehensive land use plan.<sup>324</sup>

These examples have relevance to California and demonstrate importance of strictly complying with environmental review requirements prior to approving projects. Otherwise cities are open to challenges on both procedural and substantive grounds. Failure to comply with procedural regulations gives opponents an easy challenge. It also raises questions about the substantive validity of decisions such as whether the decisions were made with solid information on the potential consequences of a development.

### C. Subsidies

Although subsidies and tax breaks have not played a large role in California's supercenter controversy, they have emerged as key issues in several other states. Proponents of supercenter subsidies argue that cities and towns benefit by attracting companies that can increase jobs and revenue, while opponents consider subsidies a waste of taxpayer resources. In July 2003, Scottsdale, Arizona approved one of the largest subsidies ever offered to a big box retailer.<sup>325</sup> The subsidy provides the developer with property and sales tax breaks over the next 40 years which could reach as much as \$183 million.<sup>326</sup> Opponents plan to file a lawsuit on the basis that the provision of gifts to private developers violates the Arizona Constitution.<sup>327</sup>

In Birmingham, Alabama, a coalition of small business owners filed suit in November 2003 challenging a \$10 million subsidy given to Wal-Mart by the city,<sup>328</sup> arguing that the subsidy provided Wal-Mart with an unfair advantage against competitors. City officials countered that the subsidies were warranted due to the jobs and tax revenue expected to be generated by Wal-Mart.<sup>329</sup> However, as the BAEF and other studies suggest, cities may lose tax revenue after supercenters are built. If correct, cities may find that the costs associated with supercenters remove the incentive to provide for subsidies.

## **VIII. ALTERNATIVE STRATEGIES – FINDING BENEFIT IN BIG BOXES**

### **A. Big Box Stores as a Positive Element of Redevelopment**

Some urban planners suggest that big box development can be the impetus needed for smaller, community-oriented redevelopment projects to succeed, because it provides the money needed to finance those projects. St. Anthony Village, on the outskirts of Minneapolis, supported the inclusion of a Wal-Mart in the city's \$150 million redevelopment project in order to provide the funds needed to pursue a revitalization of the downtown area.<sup>330</sup> Selling some of the land to a developer for the construction of a big box also enabled the town to demolish the vacant shopping center currently occupying the site.<sup>331</sup>

The goal is to create a pedestrian friendly main-street in St. Anthony's Village, with restaurants, small shops, housing, and open green space, replacing the vacant enclosed shopping center. The town hopes that the proposed mix-use development will achieve this goal. In the past, retailers were reluctant to move into the downtown area as it was considered "blighted," with a 75% vacancy rate within the existing mall. The big box store is expected to act as an anchor to attract shoppers and facilitate growth to the area, and the newly designed street layout was designed to create a "main-street" appeal.

The redevelopment project in St. Anthony's Village is expected to provide needed jobs and an influx of income to the area.<sup>332</sup> The project will not be subsidized by local government. In fact, the tax revenue from this big box store is expected to help recreate the tax base that has been missing from this area in recent years.<sup>333</sup> It is important to note that this project involved a big box store rather than a much larger supercenter. Had the proposal involved a supercenter, its size could destroy the small town feel the town hoped to create. Smaller local businesses might also be hesitant to locate near a supercenter because the array of products and the low prices

offered by supercenters would make co-existence difficult. This suggests that while big box stores may not be a serious hazard, supercenters still remain a difficult and troubling harm.

#### B. Alternative Uses of Vacant Big Box Stores

Vacant big box stores or supercenters provide no benefit to the local community and can create a downward economic spiral that forces other businesses out. Re-tenanting vacant stores is in the best interest of all parties; however, the lease arrangements of many supercenter companies prohibit re-tenanting. Big box retailers may not consider relocating to stores left vacant by other chains, believing the community is not capable of supporting any store in that location. Such perceptions increase the complexity of obtaining replacement tenants when big boxes are left vacant. Because of these difficulties, some cities have begun looking at alternative uses for vacant stores other than retail development.<sup>334</sup>

In Ontario, California, the city acquired a former Fedco big box store, and transformed the site into an expanded police station.<sup>335</sup> This created a two-fold benefit: it removed a potential blight from the market, and cost the city only half of what it would have otherwise spent to build the police station.<sup>336</sup> Pomona Valley, another southern Californian city, took over the lease of a vacant mall, converting it to educational uses and housing for the Pomona Valley Educational Foundation.<sup>337</sup> This provided needed classrooms, school district facilities, and teacher housing. It also made use of a location that would otherwise have remained empty for some time. The owner of a vacant big box site located outside of Charleston, West Virginia urged the state to renovate the site and lease it to the West Virginia Lottery Commission.<sup>338</sup> These examples suggest that creative re-use may be a reasonable option for communities to consider in addressing big box blight.

## **IX. CONCLUSION**

This report began by identifying the community impacts resulting from supercenter development, which include 1) lower employee wages, 2) increases to municipal costs, 3) increased urban sprawl, 4) foreclosure of local competition, and 5) negative impact upon community character. We concluded that the benefit of increased savings to consumers seems outweighed by the overall harms, unless steps are taken to mitigate or prevent these harms from occurring.

In terms of the legal tools and political strategies available to supercenter supporters and opponents, several trends have emerged from our analysis. First, Wal-Mart appears to be far more successful if it obtains the support of local City Council Officials early on in the approval process. Although community opposition can reverse City Council approval via a referendum, this is a difficult and lengthy process that does not always succeed.

With respect to referendums or initiatives, Wal-Mart has overwhelmingly outspent its opponents in California and other states. Wal-Mart's success is often attributed to the amount of campaign money it spends, but equally important is the vagueness of the proposed supercenter site. Voters seem more inclined to approve a zoning change that will enable a supercenter to be built within the general city or county limits, rather than a zoning change for a specific development site. The inference is that voters more easily perceive the negative impact of a supercenter when they envision it in a concrete location, and are therefore more likely to reject the proposal.

Both proponents and opponents of big box development have used lawsuits to challenge procedural aspects with respect to referendums and initiatives. In attempting to overturn bans on supercenters or other restrictions, Wal-Mart has brought suits on both procedural and substantive grounds. In two cases, Wal-Mart has challenged local decision-makers' authority to restrict the

size of retail development. However, Wal-Mart has not had much success with these suits to date. It seems likely that the ripeness and standing problems Wal-Mart has encountered in earlier challenges outside of California will continue to play a role in the lawsuits that are pending.

Communities opposed to supercenter development have been most successful in deterring, or at least altering proposals to meet local demands, when community groups and local government officials present a strong, unified front. However, when these two groups stand on opposing sides, community groups stand a better chance of opposing City Council approvals on procedural grounds such as challenging environmental or economic impact studies as being inadequate.

Finally, we reviewed the differences between big box stores and supercenters in terms of alternative uses for vacant sites, as well as the possibility of including either of these as a positive element of a redevelopment project. However, because of their larger size, supercenters lack the flexibility of use that smaller big box stores retain, and thus, they may not be able to be reused to the benefit of the community.

It is clear that supercenters present a number of serious challenges for communities in California. In the absence of a statewide directive, local governments and voters best address these issues through the creation of ordinances. There has yet to be created an ordinance that stands against all attack. The pending lawsuits may help to resolve what types of zoning restrictions are appropriate when it comes to supercenters. However, it is incontrovertible that supercenter development has economic, environmental, and social implications, all of which need to be considered when evaluating supercenter proposals.

## X. APPENDIX: Database of Big Box Ordinances and Cases in California

As in other states,<sup>339</sup> community opposition to Wal-Mart's strategy of expansion has delayed Wal-Mart's alleged plan of opening a new supercenter in California every two months.<sup>340</sup> In addition to the ordinances in Alameda County, Contra Costa County, Inglewood, and Turlock discussed above, several other cities in California are considering ordinances aimed at restricting or controlling additional big box retail development. On the other hand, several cities in California have approved plans for the construction of Wal-Mart supercenters. Below is a compendium of current ordinances that restrict big box or supercenter development as well as information on recent approvals in several California cities.

<b>City/County: Alameda County</b>
<b>Statute/Proposal:</b> On Jan. 6, 2004, the county board unanimously passed an ordinance that bans retailers of more than 100,000 square feet that devote more than 10 percent of their floor space to groceries and other nontaxable goods in unincorporated county areas. <sup>341</sup>
<b>Players/Purpose:</b> County Supervisors say that the ban protects small business and will help minimize traffic concerns in unincorporated areas. <sup>342</sup>
<b>Legal/Political Issues:</b> January lawsuit by Wal-Mart. Wal-Mart argues that the ban unfairly targets Wal-Mart supercenters. The petition claims county supervisors violated the California Environmental Quality Act when they said review wasn't needed before approving the ordinance, and also asserts that the public wasn't properly notified the board was considering the action. Wal-Mart also claims the county overstepped its authority "by enacting a law that imposes unusual and unnecessary restrictions on lawful business enterprises," and didn't follow state-mandated procedures in enacting the ordinance. Wal-Mart claims the ordinance should have been reviewed by the county Planning Commission prior to adoption. The petition asks the court to block the ordinance from taking effect in February and to deem it invalid. <sup>343</sup>
<b>Comments:</b> The Alameda County suit is the first Wal-Mart has filed in California. Wal-Mart spokeswoman Amy Hill commented that a lawsuit was more appropriate than a referendum. "They were so determined to get this passed immediately," Hill said, "we felt a lawsuit was a more appropriate course of action."

<b>City/County: City of Arroyo Grande</b>
<b>Statute/Proposal:</b> City Code § 16.52.220: No new store may be constructed in excess of 90,000 square feet, nor an existing store expanded if the resulting square footage exceeds 90,000 square feet, unless it meets the standards for the sale of nontaxable merchandise set forth below:

<ol style="list-style-type: none"> <li>1. If total square footage for sales is to exceed 250,000 square feet, no more than 1% of total square footage may be devoted to nontaxable merchandise.</li> <li>2. If total square footage for sales is to exceed 140,000 square feet, no more than 2% of total square footage may be devoted to nontaxable merchandise.</li> <li>3. If total square footage for sales is to exceed 90,000 square feet, no more than 3% of total square footage may be devoted to nontaxable merchandise.<sup>344</sup></li> </ol>
<b>Players/Purpose:</b> To limit the negative impact on the rural character of the city and on the change in existing land use patterns.
<b>Legal/Political Issues:</b> N/A
<b>Comments:</b> N/A

<b>City/County:</b> City of Bakersfield
<b>Statute/Proposal:</b> City approval of two Wal-Mart supercenters
<b>Players/Purpose:</b> Unions and homeowners groups have voiced concerns that supercenters would drive local merchants out of business.
<b>Legal/Political Issues:</b> Homeowner groups, backed by union support, sued to stop construction of two Wal-Mart Supercenters. Court ordered halt of supercenter construction until city council conducts a new environmental impact assessment. <sup>345</sup>
<b>Comments:</b> N/A

<b>City/County:</b> City of Beaumont
<b>Statute/Proposal:</b> City Wal-Mart approval. Wal-Mart's plans to build a 149,500-square-foot building that could be expanded by 71,500 square feet.
<b>Legal/Political Issues:</b> 200 residents turned out for a January public hearing about the Wal-Mart and raised questions about traffic, air pollution, and urbanizing the San Gorgonio Pass.
<b>Comments:</b> After hearing out residents, planning commissioners approved the store for a site south of Interstate 10. They sent the project to the City Council, which has the final say.

<b>City/County:</b> City of Calexico
<b>Statute/Proposal:</b> June 2001 ban on any store in excess of 150,000 square feet that dedicates 7.5% of its floor space to non-taxable items. Ban overturned.
<b>Players/Purpose:</b> Wal-Mart and labor unions.
<b>Legal/Political Issues:</b> Wal-Mart spokesman Peter Kanelos noted that in March 2002 voters in the border town easily overturned a measure the city had passed to block Wal-Mart and similar retailers from doing business.
<b>Comments:</b> Measure B lost 1381 to 2651 with Wal-Mart campaign funding spending roughly \$56 per vote. <sup>346</sup>

<b>City/County:</b> Contra Costa County
<b>Statute/Proposal:</b> June Ban in unincorporated areas on store larger than 90,000 square feet that devote more than 5 percent of floor space to selling non-taxable groceries. See §§ 82-40.004(b);

82-40.006. Overturned by Ballot Measure L – 53.8% to 46.2%, March 2, 2004. <sup>347</sup>
<b>Players/Purpose:</b> Board of Supervisors stated that traffic and controlling urban sprawl in unincorporated county areas was the major purpose for the ordinance. John Gioia, a Contra Costa county supervisor, argues that there are parts of Contra Costa County outside of city limits that already have traffic congestion and are in risk of losing open space. <sup>348</sup> U.S. Rep. George Miller, contends that Wal-Mart workers could also be a drain on county health resources because the company doesn't offer adequate health insurance, an allegation Wal-Mart disputes. <sup>349</sup>
<b>Legal/Political Issues:</b> Ballot Measure L: Supporters of Measure L, who included elected county officials, community members, environmentalists, the United Food and Commercial Workers Union, and Safeway say that without sales tax revenue, the county can't make the road improvements needed to handle increased traffic and other related impacts that the huge stores would have. Opponents to Measure L pointed to the negative impact on consumer choice. Opponents argued that Measure L would unfairly restrict Wal-Mart from selling goods at lower prices to working families. <sup>350</sup>
<b>Comments:</b> Wal-Mart spokesperson Amy Hill has acknowledged that Wal-Mart has contributed about \$500,000 to the No on Measure L campaign before the end of January and could easily spend more than \$1 million. Hill said Wal-Mart does not have any plans to open a supercenter in Contra Costa County. <sup>351</sup>

<b>City/County:</b> City of Gilroy
<b>Statute/Proposal:</b> March 2004 City Approval of Wal-Mart supercenter.
<b>Players/Purpose:</b> The United Food and Commercial Workers union and Councilman Paul Correa worked to overturn the council decision. Correa notes that “if it's going to happen for sure, maybe we can sit down with Wal-Mart and talk to them about having a positive impact on this community other than delivering low-cost goods.” Correa said he'd like to discuss with Wal-Mart issues such as hiring workers from Gilroy first, using local companies to do construction work at the new site, paying livable wages to its employees and donating more to local charities. <sup>352</sup>
<b>Legal/Political Issues:</b> Wal-Mart campaign funding of supportive council members. Wal-Mart sent out last-minute mailers urging residents to vote against union-friendly candidates. <sup>353</sup>
<b>Comments:</b> A nearly 220,000-square-foot Wal-Mart may become one of California's first Supercenter sites. <sup>354</sup>

<b>City/County:</b> City of Inglewood
<b>Statute/Proposal:</b> City Council in October 2002 adopted an emergency ordinance barring construction of retail stores that exceed 155,000 square feet and sell more than 20,000 nontaxable items such as food and pharmacy products. In November, 2002, Wal-Mart acted on the defensive and gathered enough signatures to force a public vote on the council ban. Wal-Mart also threatened to sue the city for alleged procedural violations. Looking at a possible court battle or failure at the polls, Inglewood officials withdrew the ordinance they had passed a month earlier. <sup>355</sup>
<b>Players/Purpose:</b> Wal-Mart then sought to have an initiative decide whether the supercenter would be allowed.
<b>Legal/Political Issues:</b> To prevent future council action, Wal-Mart went on the offensive and

gathered signatures to force a ballot initiative, which calls for building permits to be issued without a public hearing or environmental impact study. The April ballot measure would allow voters to circumvent the city council and directly approve a supercenter the City Council turned down. In January, 2004, two community groups filed suit to stop the ballot measure.<sup>356</sup>

- Judge ruled that referendum should go forward. On April 6, 2004, voters rejected the Wal-Mart initiative by a 60% majority.<sup>357</sup>

**Comments:** Wal-Mart spokesman Peter Kanelos says supporters of the imitative have collected twice the number of voter signatures they needed to get a measure on the ballot that would allow it to open the supercenter there. Critics say it is a violation of state law for the retailer to go around elected officials to the voters and worry that the special election sets a dangerous national precedent for companies to circumvent long-established rules on matters such as environmental oversight and public hearings. Moreover, the Inglewood initiative purportedly required only a majority vote for approval, but would require a higher standard -- two-thirds of voters -- to challenge specifics of the building phase once it begins.

**City/County: City of La Quinta**

**Comments:** Home of California's first Wal-Mart "supercenter," opened March 2, 2004.

**City/County: City of Lodi**

**Statute/Proposal:** City has considered a supercenter ban.

**Players/Purpose:** Wal-Mart officials would like to replace the store on Kettleman Lane and Lower Sacramento Road in Lodi with a 219,000-square-foot supercenter. The Supercenter project has not yet reached the Planning Commission.

**Legal/Political Issues:** When the Lodi Planning Commission considered a size limit as part of its design standards in February 2004, Wal-Mart submitted a petition against the action containing more than 1,000 signatures collected at its current Kettleman Lane location. The city also received a letter from a law firm representing Wal-Mart, claiming a size limit without proper research would be a violation of state law.

**Comments:** More than 100 Lodi residents turned out for the commission's Jan. 28, 2004 meeting, asking that a size limit -- 100,000 square feet was the most common number -- be adopted by the city. At its Feb. 11, 2004 meeting, the commission considered such an option, but decided not to include it among the standards.

**City/County: City of Los Angeles**

**Statute/Proposal:** Proposal to ban any store whose stock includes grocery items from exceeding 100,000 square feet.

**Players/Purpose:** Los Angeles councilman Eric Garcetti has spearheaded the campaign against Wal-Mart. Garcetti argues that "supercenters" would drive down local wages, as rival businesses struggle to survive; wipe out more jobs than they create; and leave more residents without health insurance -- and with no choice but to use public hospitals and clinics that are already overrun by demand.

**Legal/Political Issues:** Wal-Mart spokesman Peter Kanelos has commented that "we don't have an ordinance yet so I can't say for sure what will happen."

**Comments:** Garcetti states that: "We don't believe their business model is good for the kind of economic development that we want in the places where we need it most. And we want people to realize that the 10 cents they may save on a jar of pickles could mean paying another \$5 in taxes for all the extra visits to local emergency rooms."

**City/County:** City of Manteca  
**Statute/Proposal:** Wal-Mart has proposed a supercenter project, and city officials contend that they have no plans to adopt a ban.

**City/County:** City of Martinez  
**Statute/Proposal:** A ban on supercenter format big box retail  
**Legal/Political Issues:** Wal-Mart has not challenged the ban.

**City/County:** City of Moreno Valley  
**Statute/Proposal:** City approval  
**Comments:** The Moreno Valley City Council voted November 25, 2003 to approve a shopping center, despite objections from a number of residents and environmental activists. LJC Enterprises plans to build the shopping center, including a 227,194-square-foot Wal-Mart. The project also will include as many as 300 multifamily housing units to be built later.

**City/County:** City of Oakdale  
**Statute/Proposal:** City staff will tailor a proposed ordinance after that adopted in Turlock, says Community Development Director Steve Hallam (see Turlock: limits stores selling nontaxable goods on 5 percent or more of their floor space to 100,000 square feet or less).  
**Players/Purpose:** Oakdale City Administrator Bruce Bannerman said the city's streets "are not designed to accommodate this kind of traffic." "And there is only so much retail trade in any community. And if a retailer like this comes into a small community, and Oakdale is a small community, it takes away from others."  
**Legal/Political Issues:** Amy Hill, a spokeswoman for Wal-Mart, said Oakdale is not a planned Supercenter location.  
**Comments:** The City Council voted 5-0 to refer a proposed ban on Wal-Mart supercenters to the Planning Commission, which will be heard in early April 2004. Any Planning Commission decision will serve as an advisory vote for the City Council, which would ultimately decide on the ordinance.

**City/County:** City of Oakland  
**Statute/Proposal:** City Code § 17.10.345: October 2003 ban on stores over 100,000 feet with more than 10% of sales floor area devoted to non taxable merchandise, but excluding wholesale clubs or other establishments selling primarily bulk merchandise and charging membership

dues.<sup>358</sup>

**Legal/Political Issues:** Wal-Mart has not challenged the ban.

**City/County:** City of Redding

**Statute/Proposal:** City supercenter approval

**Comments:** Planning commission has approved a Wal-Mart supercenter. Proposed development would add 93,000 square feet to an existing discount store, expanding it to 220,000 feet, including 60,000 square feet of grocery space. May be location of second California supercenter.<sup>359</sup>

**City/County:** City of Redlands

**Statute/Proposal:** No final action to develop or prohibit

**Comments:** Community Development Director Jeff Shaw has said that Wal-Mart officials approached city officials about two years ago for preliminary talks about Supercenter sites. The most recent talks took place about in November 2003 and Wal-Mart has not submitted a formal proposal or requested a preliminary review. Two Redlands sites discussed were vacant parcels on San Bernardino Avenue and Tennessee Street and California Street and Lugonia Avenue. A site in the unincorporated Donut Hole also was discussed. Redlands Mayor Susan Pepler said she was aware of Wal-Mart criticisms but hasn't heard any local outcry. "We'll always be mindful of that but because discussions are very preliminary, it's a little too early and we're not at the point where it should be a major concern," she said.

**City/County:** City of Sacramento

**Statute/Proposal:** Proposed ban on stores larger than 100,000 square feet with between 5 percent and 10 percent of nontaxable sales items.<sup>360</sup>

**Players/Purpose:** City Councilwoman Sandy Sheedy said when smaller stores are pushed out of business by the large chains, it can result in blighted property. Sheedy told the Journal big box stores are "too big for an urban setting."

**City/County:** City of San Diego

**Statute/Proposal:** Proposed city ban on retail stores that exceed 130,000 square feet with 10% or more of sales from food or other non-taxable goods, and that stock over 30,000 items.

**Players/Purpose:** Directly aimed at Wal-Mart Supercenter growth proposals. Existing retail stores in San Diego, such as Costco or Home Depot, would not be affected by the proposed ban. San Diego City Councilman Michael Zuchet, who supports the ordinance notes that "Massive-superstore-big box-sea-of-parking-lots stores have proven themselves to be detrimental to existing small businesses and to neighborhood character."

**Legal/Political Issues:** Wal-Mart spokesman Peter Kanelos, said the company would fight the proposed ordinance. If approved by the City Council, the company would consider suing the city or sponsoring a voter referendum to overturn the measure. "Are there design criteria and guidelines that cities have the right to impose? Yes, as long as they are imposed fairly on everybody and not singling out one business," Kanelos said. "This restriction is solely targeted at

preventing consumers from benefiting from lower grocery prices and protecting the market share of our competitors."<sup>361</sup>

**City/County: City and County of San Francisco**

**Statute/Proposal:** Retail Business Size-Caps: The City and County created "Neighborhood Commercial Individual Area Districts" (NCDs) in 1987 in San Francisco requiring neighborhood zoning size-caps, and subjecting structures over a given size to conditional uses as deemed appropriate by the characteristics of each district in the city (e.g. North Beach).

**Players/Purpose:** The City contends that the ordinance creates greater regulatory control over the size of nonresidential uses within the NCDs, and therefore, preserve and enhance the existing neighborhood-serving uses and enhance future opportunities for resident employment and the ownership of other neighborhood-serving business.

**City/County: City of San Marcos**

**Statute/Proposal:** August Approval of Wal-Mart store by city council.<sup>362</sup>

**Legal/Political Issues:** Wal-Mart tried unsuccessfully to stop a March referendum by voters wanting to overturn their city council's approval of a regular Wal-Mart store.<sup>363</sup>

**Comments:**

**City/County: Tuolumne County**

**Statute/Proposal:** Concerns over a proposed 120,000 square foot Home Depot prompted city officials to pass an ordinance which placed a cap on retail stores larger than 60,000 square feet, and required a conditional use permit for any store larger than 25,000 square feet (Ordinance 03TC-12).<sup>364</sup>

City Code § 17.52.190: The size of an individual indoor retail sales establishment within a shopping center shall not exceed sixty-thousand (60,000) square feet of gross floor area. The design and exterior materials of the shopping center shall reflect the traditional architectural motif of the community in which it is proposed, blend with the surrounding neighborhood, or be consistent with any applicable design standards in the general plan or as provided in this title. The shopping center shall be designed and located to be compatible with, rather than imposed on, the landscape and environment by minimizing the amount of grading and topographical alteration and shall be designed in accordance with the provisions of the Tuolumne County Hillside and Hilltop Development Guidelines.

**Players/Purpose:** To prevent the arrival of a Home Depot. Tuolumne County Community Development Director Bev Shane maintains that "visual quality is the primary issue." Gold Country visitors do not want to be confronted with the same type of development they see at home. "Tourism is a lot bigger business than our retail sales are. We have a \$230 million tourism industry," Shane said.<sup>365</sup>

**Legal/Political Issues:** No legal challenges

**Comments:** The cap of 60,000, may seem somewhat arbitrary, but reflects the largest retail store currently existing in the county. The ordinance, then, has placed a ceiling on construction based on current developments. This type of ordinance, which solely affects building size, has generally been considered in California to be immune from attack.

<b>City/County: City of Turlock</b>
<b>Statute/Proposal:</b> Turlock adopted an ordinance Jan. 13, 2004 that limits stores selling nontaxable goods on 5 percent or more of their floor space to 100,000 square feet or less. <sup>366</sup>
<b>Players/Purpose:</b> Wal-Mart v. City of Turlock <sup>367</sup>
<b>Legal/Political Issues:</b> Among other concerns, Wal-Mart has filed suits in state and federal court against the county challenging city zoning authority, and raising equal protection and commerce clause concerns. <sup>368</sup>

<b>City/County: City of West Sacramento</b>
<b>Statute/Proposal:</b> Proposed ban on new stores and expansions of more than 130,000 square feet if they had more than 5,000 linear feet of shelf space and more than 5 percent or 10 percent of its gross sales revenues came from nontaxable grocery items. <sup>369</sup> The ordinance would not apply to membership warehouse clubs such as Costco or Sam's Club.
<b>Players/Purpose:</b> West Sacramento City Councilman Mark Montemayor said an ordinance would protect businesses willing to take a chance in West Sacramento from being hurt by the arrival of a giant retailer.

<b>Additional Approved Wal-Mart Supercenter sites in California:</b>
<b>Cities:</b> Anderson, Red Bluff, Redding
<b>Comments:</b> Community groups filed a lawsuit against the Redding project citing environmental concerns, and residents of the other cities are considering similar actions. <sup>370</sup>

<b>Additional Proposed Wal-Mart Supercenter sites in California:</b>
<b>Cities:</b> Fresno, Hanford, Palm Desert, Palm Springs, Stockton, Tracy, Willows, Yuba City

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<sup>1</sup> See *infra*, Section II. A “supercenter” contains a full-sized discount retail and grocery store under the same roof.

<sup>2</sup> Anthony Bianco and Wendy Zellner, *Is Wal-Mart Too Powerful?*, BUSINESS WEEK 100, Oct. 6, 2003 [hereinafter *Bianco and Zellner*].

<sup>3</sup> Charles Williams, *Supermarket Sweepstakes: Traditional Grocery Chains Mull Responses to Wal-Mart’s Growing Dominance*, THE POST AND COURIER (Charleston, SC), Nov. 10, 2003, at 16E.

<sup>4</sup> *Bianco and Zellner*, *supra* note 2.

<sup>5</sup> Matthew Swibel, *How to Outsmart Wal-Mart*, FORBES.COM, Nov. 24, 2003, available at [http://forbes.com/2003/11/17/cx\\_jp\\_1117wegmans.html](http://forbes.com/2003/11/17/cx_jp_1117wegmans.html) (last visited June 9, 2004).

<sup>6</sup> *Bianco and Zellner*, *supra* note 2.

<sup>7</sup> *California is No Paradise for Wal-Mart*, BUSINESS WEEK ONLINE, Mar. 4, 2004.

<sup>8</sup> See *infra*, Section II for definitions of “big box” retail; see also, Appendix for a table of “big box” developments across the state.

<sup>9</sup> A.B. 178 § 1(f)(1) (Ca. 1999).

<sup>10</sup> Theodis L. Perry, *Managing Maryland’s Growth: “Big-Box” Retail Development*, MARYLAND DEPT. OF PLANNING, Oct. 2001, at 4, available at [http://www.mdp.state.md.us/msgs/bigbox/bigbox\\_v3.pdf](http://www.mdp.state.md.us/msgs/bigbox/bigbox_v3.pdf) (last visited June 10, 2004) [hereinafter *Maryland Report*].

<sup>11</sup> RODINO ASSOCIATES, *Final Report on Research for Big Box Retail/Superstore Ordinance*, Oct. 28, 2003, at 5, available at <http://lacity.org/council/cd13/c13pfdc1c.htm> (last visited June 9, 2004) [hereinafter *Rodino Report*]. This report was prepared for the City of Los Angeles, Industrial and Commercial Development Division. *Id.* at 1.

<sup>12</sup> Peter G. Pan, “Big Box” Retailing, HAWAII LEGISLATIVE REFERENCE BUREAU, Dec. 2003, at 3, available at <http://www.state.hi.us/lrb/rpts03/bbox.pdf> (last visited June 10, 2004) [hereinafter *Hawaii Report*]. This report was undertaken in response to a state legislative request to examine the effects of “big box” retailers on local small and medium retail businesses. *Id.* at iii.

<sup>13</sup> *Hawaii Report*, *supra* note 12, at 3; *Maryland Report*, *supra* note 10, at 4. The Maryland study defines discount department stores as ranging between 80,000 to 120,000 square feet, but notes that “supercenters” are much larger than the defined amount.

<sup>14</sup> See Columbia University, Graduate School of Architecture, Preservation, and Planning, *A Vision for New Rochelle: Plan for Revitalizing the City Park Neighborhood*, May 2001, at 47, available at [http://www.columbia.edu/itc/architecture/bass/newrochelle/extra/big\\_box.html](http://www.columbia.edu/itc/architecture/bass/newrochelle/extra/big_box.html) (last visited June 10, 2004) [hereinafter *Columbia Report*].

<sup>15</sup> *Maryland Report*, *supra* note 10, at 4; *Hawaii Report*, *supra* note 12, at 3.

<sup>16</sup> New Rules Project, *How Big is Big?*, available at <http://www.newrules.org/retail/howbigisbig.html> (last visited June 10, 2004) [hereinafter *How Big is Big?*].

<sup>17</sup> *Maryland Report*, *supra* note 10, at 4; *Hawaii Report*, *supra* note 12, at 3.

<sup>18</sup> *Hawaii Report*, *supra* note 12, at 3.

<sup>19</sup> *Maryland Report*, *supra* note 10, at 4; *Hawaii Report*, *supra* note 12, at 3.

<sup>20</sup> *Maryland Report*, *supra* note 10, at 4.

<sup>21</sup> *Hawaii Report*, *supra* note 12, at 3.

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- <sup>22</sup> *Maryland Report*, *supra* note 10, at 4; *Hawaii Report*, *supra* note 12, at 4.
- <sup>23</sup> *Maryland Report*, *supra* note 10, at 4.
- <sup>24</sup> *Rodino Report*, *supra* note 11, at 6-7. As an example, the Rodino Report notes, “[i]f a retailer has in stock women’s black shoes, size 5, of a particular style from a particular manufacturer, all of the shoes in this category comprise one SKU regardless of whether there are five or five hundred pairs of such shoes in stock.” *Id.* at 7.
- <sup>25</sup> *Id.* An amount much more than the 25,000 SKUs found in a traditional supermarket.
- <sup>26</sup> *Id.*
- <sup>27</sup> *Columbia Report*, *supra* note 14, at 46.
- <sup>28</sup> Chief Deputy City Attorney Terree Bowers, *Options for Regulating the Development of Superstores*, LOS ANGELES CITY ATTORNEY’S OFFICE, Dec. 16, 2003, Report No. R03-0585, at 3, available at <http://lacity.org/council/cd13/c13pfdc1c.htm> (last visited June 10, 2004) [hereinafter *Bowers Report*].
- <sup>29</sup> R. Sean Randolph, et al., *Supercenters and the Transformation of the Bay Area Grocery Industry: Issues, Trends, and Impacts*, BAY AREA ECONOMIC FORUM, Jan. 2004, at 12, 14, available at <http://againsthewal.com/studies/norcalstudy.pdf> (last visited June 10, 2004) [hereinafter *BAEF Report*].
- <sup>30</sup> *How Big is Big?*, *supra* note 16.
- <sup>31</sup> *BAEF Report*, *supra* note 29, at 26.
- <sup>32</sup> *Rodino Report*, *supra* note 11, at 5.
- <sup>33</sup> *Bowers Report*, *supra* note 28, at 2.
- <sup>34</sup> *Rodino Report*, *supra* note 11, at 5.
- <sup>35</sup> *Bowers Report*, *supra* note 28, at 2.
- <sup>36</sup> OAKLAND, CA., MUNICIPAL CODE § 17.10.345.
- <sup>37</sup> *Id.*; see also, *Supplemental Report on an Ordinance Amending the Oakland Planning Code to Define “Large Scale Combined Retail and Grocery Sales Commercial Activities to Prohibit this Activity in All Zones*, OAKLAND COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY, Sept. 23, 2003, available at <http://209.232.103.165/attachments/2412/pdf> (last visited June 16, 2004) [hereinafter *Oakland Report*]. This report was prepared for the Office of the City Manager. *Id.* at 1.
- <sup>38</sup> Gregory Freeman, *Wal-Mart Supercenters: What’s in Store for California?*, LOS ANGELES COUNTY ECONOMIC DEVELOPMENT CORPORATION, Jan. 2004, at 10, available at [http://laedc.info/pdf/Wal-Mart\\_study.pdf](http://laedc.info/pdf/Wal-Mart_study.pdf) (last visited June 11, 2004) [hereinafter *LAEDC Report*].
- <sup>39</sup> *Id.* at 1.
- <sup>40</sup> *BAEF Report*, *supra* note 29, at 1.
- <sup>41</sup> *LAEDC Report*, *supra* note 38.
- <sup>42</sup> *BAEF Report*, *supra* note 38.
- <sup>43</sup> *Id.*
- <sup>44</sup> *Report: Wal-Mart Will Create Jobs*, L.A. TIMES, Jan. 28, 2004, at C.2.
- <sup>45</sup> *Id.*
- <sup>46</sup> *Turlock should play hardball with Wal-Mart*, MODESTO BEE, Nov. 20, 2003, at B6 (“Objections have surfaced in Clovis, Hanford, Visalia, Bakersfield, Redding, and even Los Angeles”).

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<sup>47</sup> Ron Tschida, *Economic Impact Studies to be Routine for Box Stores*, BOZEMAN DAILY CHRONICLE, Dec. 19, 2001, at 1; Bay Area Economics, *Economic Impacts Analysis of Wal-Mart Expansion*, Feb. 1, 2001, at iv, available at <http://www.bozeman.net/planning/Bozeman%20Wal-Mart%20Impacts%20Study.PDF> (last visited June 8, 2004).

<sup>48</sup> *LAEDC Report*, *supra* note 38, at 2.

<sup>49</sup> *Big-Box Retail Seen as Regional Threat*, S.F. CHRON., Feb. 5, 2004, at B.1.

<sup>50</sup> *Big Box Regulation Sweeping California*, American Independent Business Alliance, Jan. 5, 2004, available at [http://amiba.net/pressroom/big\\_box\\_regulation\\_sweeping\\_california\\_1.5.04.html](http://amiba.net/pressroom/big_box_regulation_sweeping_california_1.5.04.html) (last visited June 8, 2004). Union opposition derives from Wal-Mart's refusal to hire union workers; none of Wal-Mart's 1.2 million workers in the U.S. is a union member.

<sup>51</sup> Marlon Boarnet, Ph.D., et al., *The Impact of Big Box Grocers on Southern California: Jobs, Wages, and Municipal Finances*, Sept. 1999, available at <http://www.againstthewal.com/studies/So%20Cal%20Bog%20Box%20Grocery%20Study.pdf> (last visited June 11, 2004) [hereinafter OCBC Report].

<sup>52</sup> See *Rodino Report*, *supra* note 11.

<sup>53</sup> Rep. George Miller, *Everyday Low Wages: The Hidden Price We All Pay for Wal-Mart*, Feb. 16, 2004, available at <http://againstthewal.com/studies/millerwalmartreport.pdf> (last visited June 11, 2004) [hereinafter *Miller Report*]. Congressman Miller's district includes Contra Costa County, and the report was released just weeks prior to the Wal-Mart referendum in his district.

<sup>54</sup> *LAEDC Report*, *supra* note 38, at 10-11, 15, 18, 19.

<sup>55</sup> *Id.* at 11.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 15.

<sup>58</sup> *Id.* at 10.

<sup>59</sup> *BAEF Report*, *supra* note 29, at 27.

<sup>60</sup> *Id.* at 30.

<sup>61</sup> *Id.* at 30-31.

<sup>62</sup> *Id.* at 31-32.

<sup>63</sup> *Id.* at 32-33.

<sup>64</sup> *LAEDC Report*, *supra* note 38, at 22.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 30.

<sup>70</sup> *BAEF Report*, *supra* note 29, at 39.

<sup>71</sup> *Id.* at 47.

<sup>72</sup> *Id.* at 39.

<sup>73</sup> *Id.* The study, however, notes that approximately 38% of Wal-Mart employees are part-time workers, and that no data is available to estimate the presumably smaller wages earned by this group.

<sup>74</sup> *Id.* at 40.

<sup>75</sup> *Id.*

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<sup>76</sup> *Id.* at 34.  
<sup>77</sup> *LAEDC Report, supra* note 38, at 22.  
<sup>78</sup> *Id.* at 22.  
<sup>79</sup> *BAEF Report, supra* note 29, at 50. Net economic reduction of wages and benefits would be in the range of \$770 million to \$1.48 billion per year. *Id.*  
<sup>80</sup> *Id.* at 50, n.27.  
<sup>81</sup> *Report: Wal-Mart Will Create Jobs, supra* note 44.  
<sup>82</sup> *Id.*  
<sup>83</sup> *OCBC Report, supra* note 51, at 33.  
<sup>84</sup> *Id.* at 1.  
<sup>85</sup> *Oakland Report, supra* note 37, at 5.  
<sup>86</sup> *Id.*  
<sup>87</sup> *See, e.g.,* <http://www.joehilldispatch.org/walmartbeat/archives/000543.php> (last visited June 8, 2004).  
<sup>88</sup> *Miller Report, supra* note 53, at 4.  
<sup>89</sup> *Id.*  
<sup>90</sup> *Id.*, at 6.  
<sup>91</sup> *Id.*  
<sup>92</sup> *Id.*  
<sup>93</sup> *Id.*  
<sup>94</sup> *Id.* at 4.  
<sup>95</sup> *LAEDC Report, supra* note 38, at 22.  
<sup>96</sup> *Miller Report, supra* note 53, at 7.  
<sup>97</sup> *Id.*  
<sup>98</sup> *Id.*  
<sup>99</sup> *Id.*  
<sup>100</sup> *Id.*, at 8.  
<sup>101</sup> *BAEF Report, supra* note 29, at 74-75.  
<sup>102</sup> *Id.* at 75.  
<sup>103</sup> *Id.* at 78.  
<sup>104</sup> *Id.* at 75.  
<sup>105</sup> *Id.* at 2.  
<sup>106</sup> *OCBC Report, supra* note 51, at 2.  
<sup>107</sup> *Miller Report, supra* note 53, at 9.  
<sup>108</sup> *Id.*  
<sup>109</sup> *Id.*  
<sup>110</sup> *Id.*  
<sup>111</sup> *Id.*  
<sup>112</sup> *Id.*  
<sup>113</sup> *Id.*, at 9.  
<sup>114</sup> *BAEF Report, supra* note 29.  
<sup>115</sup> *Id.* at 70, *citing* Donald Barella, planner, City of Napa, September 10, 2003 (“(f)ormer owners are sometimes reluctant to turn leases over to their direct competitors.”).  
<sup>116</sup> Strategic Economics, *Economic Analysis of the Proposed Fremont Wal-Mart: Short and Long Term Impacts on Retail and Economic Development*, Mar. 2003, available at

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<http://www.ci.turlock.ca.us/pdflink.asp?pdf=documents/communityplanning/walmart/EconomicAnalysisoftheProposedFremontWalMart.pdf> (last visited June 16, 2004). This report was prepared for the United Food and Commercial Workers Union, Local 870. *Id.* at 1.

<sup>117</sup> Ian Thompson, *Grocery Industry's Labor Woes are Rooted in Wal-Mart Expansion*, OAKLAND TRIBUNE, Dec. 21, 2003, available at [http://www.greenbelt.org/resources/press/clippings/archive/2003/clip\\_2003Dec21.html](http://www.greenbelt.org/resources/press/clippings/archive/2003/clip_2003Dec21.html) (last visited June 8, 2004).

<sup>118</sup> *Id.*

<sup>119</sup> *BAEF Report*, *supra* note 29, at 70, citing Armstrong, 2001 (“Declining populations and rising unemployment has been tied to increase in vacant and abandoned building”), citing Greenberg & Popper, 1994 (“Big box stores, which are built cheaply, tend to deteriorate faster and weaken the value of surrounding buildings.”).

<sup>120</sup> *Id.*, (“There is no reliable estimate for how long an abandoned big box or mall will sit empty, but plentiful anecdotal evidence exists to suggest that once an area is seen as obsolete, it is hard for it to recover.”).

<sup>121</sup> *Id.*, at 67.

<sup>122</sup> *Rodino Report*, *supra* note 11.

<sup>123</sup> Jesse Fanciulli, *Fighting big box blight*, May 5, 2002, available at <http://www.walmartsurvivor.com/050502.html> (last visited June 8, 2004).

<sup>124</sup> BUCKINGHAM TOWNSHIP, PA., Ordinance 98-02, § 5 (1998).

<sup>125</sup> See <http://www.wal-martrealty.com> (last visited June 8, 2004).

<sup>126</sup> *BAEF Report*, *supra* note 29, at 71.

<sup>127</sup> *Id.*

<sup>128</sup> *Empty Wal-Mart Eyesores*, [www.sprawl-busters.com](http://www.sprawl-busters.com), July 7, 2000, available at <http://www.sprawl-busters.com/search.php?readstory=663> (last visited June 8, 2004).

<sup>129</sup> EVANSTON, WY., Resolution 01-09, A Resolution of the City of Evanston, Wyoming authorizing the execution of a Memorandum of Understanding with Wal-Mart Stores, Inc., Feb. 28, 2001.

<sup>130</sup> *Empty Wal-Mart Eyesores*, *supra* note 128.

<sup>131</sup> *BAEF Report*, *supra* note 29, at 52.

<sup>132</sup> *Id.*

<sup>133</sup> *Oakland Report*, *supra* note 37.

<sup>134</sup> *Id.*

<sup>135</sup> *BAEF Report*, *supra* note 39, at 59-60.

<sup>136</sup> *Id.*, at 57.

<sup>137</sup> *Id.*

<sup>138</sup> Mike Freeman, *Supercenters not in store: Lack of land dims Wal-Mart's prospects within urban areas*, BUSINESS WEEK, Mar. 5, 2004, available at [http://www.signonsandiego.com/uniontrib/20040305/news\\_1b5walmart.html](http://www.signonsandiego.com/uniontrib/20040305/news_1b5walmart.html) (last visited June 8, 2004) [hereinafter *Supercenters Not in Store*].

<sup>139</sup> *Turlock should play hard-ball with Wal-Mart*, *supra* note 46.

<sup>140</sup> *Id.*

<sup>141</sup> *Judge halts construction on Wal-Mart Supercenters*, THE BAKERSFIELD CALIFORNIAN, Jan. 30, 2004, available at [http://www.ufcw1036.com/judge\\_halts\\_construction\\_on\\_wal.htm](http://www.ufcw1036.com/judge_halts_construction_on_wal.htm) (last visited June 8, 2004).

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- <sup>142</sup> *In re Wal-Mart Stores, Inc.*, 702 A.2d 397 (Vt. 1997).
- <sup>143</sup> Lawrence Kootnikoff, *Wal-Mart Takes on Inglewood Store*, DAILY JOURNAL, Dec. 24, 2003, available at <http://www.laane.org/pressroom/stories/walmart/031224DailyJournal.html> (last visited June 8, 2004) [hereinafter *Wal-Mart Takes on Inglewood*].
- <sup>144</sup> Gene Johnson, *Inglewood OKs Wal-Mart Ballot Measure*, WAVE Community Newspapers, Dec. 17, 2003, available at [http://www.wavenewspapers.com/print\\_this\\_story.asp?sdetail=2770](http://www.wavenewspapers.com/print_this_story.asp?sdetail=2770) (last visited June 16, 2004) [hereinafter *Inglewood OKs Wal-Mart*].
- <sup>145</sup> *Id.*
- <sup>146</sup> City of Los Angeles Housing, Community & Economic Development Committee, *Report Re: Options for Regulating the Development of Superstores*, Report No. R03-0585, Dec. 16, 2003, available at [http://www.lacity.org/council/cd13/edereports/cd13edereports66216095\\_12162003.pdf](http://www.lacity.org/council/cd13/edereports/cd13edereports66216095_12162003.pdf) (last visited June 16, 2004).
- <sup>147</sup> *Rodino Report*, *supra* note 11, at 41.
- <sup>148</sup> *BAEF Report*, *supra* note 29, at 52.
- <sup>149</sup> *Rodino Report*, *supra* note 11, at 41.
- <sup>150</sup> *Wal-Mart offers "urban" superstore with underground parking*, [www.sprawl-busters.com](http://www.sprawl-busters.com), Feb. 15, 2004, available at <http://www.sprawl-busters.com/search.php?readstory=1356> (last visited June 8, 2004).
- <sup>151</sup> *Santa Fe Releases Independent Business Study*, HOMETOWN ADVANTAGE BULLETIN, Feb. 2004, available at <http://www.newrules.org/hta/hta0204.htm> (last visited June 8, 2004).
- <sup>152</sup> *Id.*
- <sup>153</sup> *Rodino Report*, *supra* note 11, at 41.
- <sup>154</sup> *Supercenters Not in Store*, *supra* note 138.
- <sup>155</sup> *Id.*
- <sup>156</sup> Whitney Gould, *Towns can expect more-even from Wal-Mart*, MILWAUKEE JOURNAL SENTINEL, Mar. 8, 2004, at 1B, available at <http://www.jsonline.com/news/metro/mar04/213050.asp> (last visited June 8, 2004).
- <sup>157</sup> *Id.*
- <sup>158</sup> *Gilroy takes a hard look at Wal-Mart*, S.F. CHRON., Mar. 15, 2004, at A1.
- <sup>159</sup> *Id.*
- <sup>160</sup> *Id.*
- <sup>161</sup> Eric Leins, *5-2: Wal-Mart Deal Done*, GILROY DISPATCH, Mar. 16, 2004, available at <http://www.gilroydispatch.com/news/newsview.asp?c=86049> (last visited June 8, 2004) [hereinafter *Wal-Mart Deal Done*]. Comments are those of Gilroy Councilman Bob Dillon.
- <sup>162</sup> *Id.* Comments are those of Roger Rivera, president of the United Food and Commercial Workers union.
- <sup>163</sup> Eric Leins, *Super Wal-Mart nears approval*, GILROY DISPATCH, Dec. 10, 2003, available at <http://www.gilroydispatch.com/news/newsview.asp?c=86049> (last visited June 8, 2004) [hereinafter *Super Wal-Mart Nears Approval*].
- <sup>164</sup> *Id.*
- <sup>165</sup> *Wal-Mart Deal Done*, *supra* note 161. Despite approval, the community gained some concessions from Wal-Mart. Wal-Mart has agreed to establish a first-ever Community Advisory Board to decide how to spend a single \$ 10,000 grant from the Wal-Mart Foundation each year, and will also sponsor seminars on how to compete against large scale retailers. *Id.*

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- <sup>166</sup> *Campaign Contributions Help Move Wal-Mart Forward*, [www.sprawl-busters.com](http://www.sprawl-busters.com), Aug. 9, 2004, available at <http://www.sprawl-busters.com/search.php?readstory=1007> (last visited June 8, 2004).
- <sup>167</sup> *Id.*
- <sup>168</sup> *Id.*
- <sup>169</sup> *Miller Report*, *supra* note 53, at 19.
- <sup>170</sup> *Id.*
- <sup>171</sup> Eric Leins, *What's it all about: Wal-Mart?*, GILROY DISPATCH, Oct. 31, 2003, available at <http://www.gilroydispatch.com/news/newsview.asp?c=80622> (last visited June 9, 2004).
- <sup>172</sup> *Id.*
- <sup>173</sup> *Id.*
- <sup>174</sup> *Super Wal-Mart Nears Approval*, *supra* note 163.
- <sup>175</sup> *Id.*
- <sup>176</sup> Eric Leins, *Wal-Mart Fight Brewing*, GILROY DISPATCH, Jan. 29, 2004, available at <http://www.gilroydispatch.com/news/newsview.asp?c=92987> (last visited June 8, 2004) [hereinafter *Fight Brewing*]; Paul Correa, Editorial, *Delay the Wal-Mart Supercenter*, GILROY DISPATCH, Feb. 16, 2004, available at <http://www.gilroydispatch.com/opinionview.asp?c=95699> (last visited June 9, 2004) [hereinafter *Delay the Wal-Mart Superstore*].
- <sup>177</sup> *Delay the Wal-Mart Supercenter*, *supra* note 176.
- <sup>178</sup> *Wal-Mart Deal Done*, *supra* note 161. United Food and Commercial Workers Union President Roger Rivera commented that “[w]e lost this decision back on Election night.” *Id.*
- <sup>179</sup> *Fight Brewing*, *supra* note 176.
- <sup>180</sup> *Id.*
- <sup>181</sup> *Super Wal-Mart Nears Approval*, *supra* note 163.
- <sup>182</sup> *Fight Brewing*, *supra* note 176. By the end of January 2004, Wal-Mart spokeswoman Amy Hill commented that opposition to the Gilroy supercenter proposal has “been amazingly quiet so far, given the amount of attention this project has received.” *Id.*
- <sup>183</sup> *Delay the Wal-Mart Supercenter*, *supra* note 176.
- <sup>184</sup> Eric Leins, *Petition Drive to Halt Wal-Mart*, GILROY DISPATCH, Feb. 26, 2004, available at <http://www.gilroydispatch.com/news/newsview.asp?c=97464> (last visited June 8, 2004). Supervisor Gage called the effort “a waste of time,” noting that he “never heard of any request to build that kind of project in the county’s unincorporated land.” *Id.*
- <sup>185</sup> *Id.*
- <sup>186</sup> *Wal-Mart Deal Done*, *supra* note 161.
- <sup>187</sup> *Referendum Abandoned*, GILROY DISPATCH, May, 2, 2004, available at <http://www.gilroydispatch.com/news/newsview.asp?c=56667> (last visited June 15, 2004).
- <sup>188</sup> *Super Size Suit Over Wal-Mart*, GILROY DISPATCH, May, 10, 2004, available at <http://www.gilroydispatch.com/news/newsview.asp?c=107349> (last visited June 15, 2004).
- <sup>189</sup> *City Sued Over Effects of 2 Wal-Mart Stores*, L.A. TIMES, Mar. 22, 2003, Metro, at 8; *see also Grocery Unions Battle to Stop Invasion of Giant Stores*, L.A. TIMES, Nov. 25, 2003, at A1.
- <sup>190</sup> *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal.3d 376, 392 (1988).
- <sup>191</sup> *Citizens of Goleta Valley v. Bd. of Supervisors of Santa Barbara Co.*, 52 Cal. 3d 553, 564 (1990) (emphasis in original).
- <sup>192</sup> *Id.* at 565.

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- <sup>193</sup> *Id.*; see CAL. PUB. RESOURCES CODE § 21168.5 (2004). Thus, the reviewing court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document.
- <sup>194</sup> *Judge halts construction on Wal-Mart Supercenters*, THE BAKERSFIELD CALIFORNIAN, Jan. 30, 2004, available at [http://www.uncw1036.com/judge\\_halts\\_construction\\_on\\_wal.htm](http://www.uncw1036.com/judge_halts_construction_on_wal.htm) (last visited June 8, 2004) [hereinafter *Judge Halts Construction*].
- <sup>195</sup> *Id.*
- <sup>196</sup> *Id.*
- <sup>197</sup> *Id.*
- <sup>198</sup> Paul Shigley, *Big Box Regulations Sweep Across The State*, CALIFORNIA PLANNING & DEVELOPMENT REPORT, VOL. 19, NO. 1, JAN. 2004.
- <sup>199</sup> David Sirota, *The High Price of Wal-Mart*, THE PROGRESS REPORT, Feb. 5, 2004, available at <http://www.alternet.org/story.html?StoryID=17761> (last visited June 8, 2004).
- <sup>200</sup> *Id.*
- <sup>201</sup> *Id.*
- <sup>202</sup> Available at <http://www.hyperdictionary.com/dictionary/referendum> (last visited June 8, 2004).
- <sup>203</sup> Available at <http://www.legal-definitions.com/I,%20J,%20K/initiative.htm> (last visited June 8, 2004).
- <sup>204</sup> *O'Loane v. O'Rourke*, 231 Cal.App.2d 774, 784 (1965).
- <sup>205</sup> See *Arnel Development Co. v. City of Costa Mesa*, 28 Cal. 3d 511, 514 (1980); see also *Merritt v. City of Pleasanton*, 89 Cal. App. 4th 1032, 1036 (2001).
- <sup>206</sup> *O'Loane*, 231 Cal.App.2d at 784.
- <sup>207</sup> *DeVita v. County of Napa*, 9 Cal.4th 763, 770 (1995).
- <sup>208</sup> *Wal-Mart Initiative Petition Challenged in Court*, [www.sprawl-busters.com](http://www.sprawl-busters.com), Dec. 24, 2004, available at <http://www.sprawl-busters.com/search.php?readstory=1316> (last visited June 8, 2004).
- <sup>209</sup> See CONTRA COSTA, CA., Ordinance No. 2003-18, Measure L (Mar. 2, 2004).
- <sup>210</sup> *Id.*
- <sup>211</sup> *Id.*; Inga Miller, *Wal-Mart aims to roll back ban: Voters will have opportunity to repeal or support ordinance*, TRI-VALLEY HERALD (MARTINEZ), Oct. 13, 2003, available at [http://www.greenbelt.org/resources/press/clippings/archive/2003/clip\\_2003Oct13\\_wal.html](http://www.greenbelt.org/resources/press/clippings/archive/2003/clip_2003Oct13_wal.html) (last visited June 8, 2004).
- <sup>212</sup> See <http://abclocal.go.com/kgo/news/election2004/race456.html> (last visited June 9, 2004).
- <sup>213</sup> *Wal-Mart Ban Loses in Contra Costa*, S.F. CHRON., Mar. 3, 2004, at A19.
- <sup>214</sup> *California is No Paradise for Wal-Mart*, supra note 7.
- <sup>215</sup> *Id.*
- <sup>216</sup> *Wal-Mart Ban Loses in Contra Costa*, S.F. CHRON., Mar. 3, 2004, at A19.
- <sup>217</sup> *Wal-Mart Win Sends Strong Message, Giant Retailer Warns Local Communities on Future Ordinances*, S.F. CHRON., Mar. 4, 2004, at A21 [hereinafter *Wal-Mart Win Sends Strong Message*].
- <sup>218</sup> Katherine Marks, *Wal-Mart Traffic Estimates Stir Controversy in San Marcos*, NORTH COUNTY TIMES (SAN MARCOS), Feb. 15, 2004, available at [http://nctimes.com/articles/2004/02/15/news/inland/2\\_14\\_0420\\_20\\_17.txt](http://nctimes.com/articles/2004/02/15/news/inland/2_14_0420_20_17.txt) (last visited June 10, 2004).

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- <sup>219</sup> *Id.*
- <sup>220</sup> See SAN MARCOS, CA., City Council Resolution No. 2003-6174, Proposition G (Mar. 2, 2004).
- <sup>221</sup> *Id.*
- <sup>222</sup> *San Marcos Vote Puts End to Second Wal-Mart*, THE SAN DIEGO TRIBUNE, Mar. 4, 2004, at NC-1.
- <sup>223</sup> Katherine Marks, *Wal-Mart Gives \$ 86K to Political Campaign*, NORTH COUNTY TIMES (SAN MARCOS), Feb. 21, 2004, available at [http://nctimes.com/articles/2004/02/21/news/inland/2\\_20\\_0422\\_56\\_13.txt](http://nctimes.com/articles/2004/02/21/news/inland/2_20_0422_56_13.txt) (last visited June 10, 2004).
- <sup>224</sup> *Id.* Luanne Hulsizer, the chairwoman of San Marcos 1st! stated that “[w]e’ve been upfront that our campaign would be supported by Wal-Mart.” *Id.*
- <sup>225</sup> *Id.*
- <sup>226</sup> Katherine Marks, *Wal-Mart Opponents Digging into Own Pockets*, NORTH COUNTY TIMES (SAN MARCOS), Feb. 15, 2004, available at [http://nctimes.com/articles/2004/02/21/news/inland/2\\_19\\_0423\\_04\\_31.txt](http://nctimes.com/articles/2004/02/21/news/inland/2_19_0423_04_31.txt) (last visited June 10, 2004).
- <sup>227</sup> *City Adopts Ordinance that Keeps Out Wal-Mart Supercenters*, [www.sprawl-busters.com](http://www.sprawl-busters.com), Oct. 27, 2002, available at <http://www.sprawl-busters.com/search.php?readstory=1067> (last visited June 10, 2004).
- <sup>228</sup> Nancy Cleeland & Abigail Goldman, *Wal-Mart’s Bane: Organized Labor*, SALT LAKE CITY TRIBUNE, Jan. 4, 2004, available at [http://sltrib.com/2004/Jan/01042004/nation\\_w/126081.asp](http://sltrib.com/2004/Jan/01042004/nation_w/126081.asp) (last visited June 9, 2004) [hereinafter *Wal-Mart’s Bane*].
- <sup>229</sup> *Wal-Mart Takes on Inglewood*, *supra* note 143.
- <sup>230</sup> John Ritter, *California tries to slam lid on big-boxed Wal-Mart*, USA TODAY, Mar. 2, 2004, available at [http://www.usatoday.com/money/industries/retail/2004-03-02-wal-mart\\_x.htm](http://www.usatoday.com/money/industries/retail/2004-03-02-wal-mart_x.htm) (last visited June 10, 2004) [hereinafter *California Tries to Slam Lid*].
- <sup>231</sup> *Id.*
- <sup>232</sup> *Wal-Mart’s Bane*, *supra* note 228.
- <sup>233</sup> *Wal-Mart Takes on Inglewood*, *supra* note 143.
- <sup>234</sup> *Wal-Mart’s Bane*, *supra* note 228.
- <sup>235</sup> *Wal-Mart proposition to go forward*, NORTH COUNTY TIMES (SAN MARCOS), Feb. 27, 2004, available at [http://www.nctimes.com/articles/2004/02/27/news/state/2\\_27\\_0418\\_16\\_31.txt](http://www.nctimes.com/articles/2004/02/27/news/state/2_27_0418_16_31.txt) (last visited June 10, 2004).
- <sup>236</sup> *Inglewood OKs Wal-Mart*, *supra* note 144.
- <sup>237</sup> *A History of California Initiatives*, December 2002, available at [www.ss.ca.gov/elections/init\\_history.pdf](http://www.ss.ca.gov/elections/init_history.pdf) (last visited June 10, 2004) [hereinafter *History of California Initiatives*].
- <sup>238</sup> Nancy Cleeland & Abigail Goldman, *Wal-Mart Trying to Put Plan on Ballot*, L.A. TIMES, Aug. 30, 2003, available at <http://www.laane.org/pressroom/stories/walmart/030830lat.html> (last visited June 10, 2004) [hereinafter *Wal-Mart Proposition*].
- <sup>239</sup> Jessica Garrison, Abigail Goldman & David Pierson, *Wal-Mart to push Southland agenda*, L.A. TIMES, Apr. 8, 2004, Metro, at 1 [hereinafter *Southland Agenda*].

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- <sup>240</sup> John M. Broder, *Stymied by Politicians, Wal-Mart Turns to Voters*, N.Y. TIMES, Apr. 5, 2004, available at <http://www.nytimes.com/2004/04/05/national/05WALM.html> (last visited June 10, 2004).
- <sup>241</sup> Sara Lin, *Activists Blast Wal-Mart Bid in Inglewood*, L.A. TIMES, Mar. 30, 2004, Metro, at 3.
- <sup>242</sup> *Id.*
- <sup>243</sup> *Wal-Mart Proposition*, *supra* note 238.
- <sup>244</sup> *Southland Agenda*, *supra* note 239.
- <sup>245</sup> *Wal-Mart's Bane*, *supra* note 228.
- <sup>246</sup> *Wal-Mart Takes on Inglewood*, *supra* note 143.
- <sup>247</sup> *Anti-Big Box Ordinances Spread like California Wildfire*, SACRAMENTO BEE, Mar. 2, 2004, available at [www.sprawl-busters.com/search.php?readstory=1365](http://www.sprawl-busters.com/search.php?readstory=1365) (last visited June 10, 2004) [hereinafter *Anti-Big Box Ordinances*]. A delay of one year could cost the company up to \$100 million in lost sales at that location. *Id.*
- <sup>248</sup> *Wal-Mart's Corporate Democracy*, [www.sprawl-busters.com](http://www.sprawl-busters.com), Mar. 16, 1999, available at [www.sprawl-busters.com/search.php?readstory=195](http://www.sprawl-busters.com/search.php?readstory=195) (last visited June 14, 2004) [hereinafter *Corporate Democracy*].
- <sup>249</sup> Andrew Bird, *Wal-Mart's Waterloo on the North Coast*, EUREKA TIMES-STANDARD, May 2, 2004, at A1.
- <sup>250</sup> *Corporate Democracy*, *supra* note 248.
- <sup>251</sup> Jerry Andrews, *'David' slays 'Goliath' in Humboldt County*, THE DOWNEY EAGLE, (Humboldt County, CA), Sept. 17, 1999, available at <http://www.redevelopment.com/jerryart/1999/99sept17.htm> (last visited June 14, 2004).
- <sup>252</sup> *Id.*
- <sup>253</sup> *California is No Paradise for Wal-Mart*, *supra* note 7 (statements of Contra Costa County Supervisor John Gioia).
- <sup>254</sup> *Calexico & Mountain View, Two Big Box Ballot Questions on March 5*, [www.sprawl-busters.com](http://www.sprawl-busters.com), Mar. 2, 2002, available at <http://www.sprawl-busters.com/search.php?readstory=897> (last visited June 10, 2004) [hereinafter *Two Ballot Questions*].
- <sup>255</sup> *Wal-Mart Out Spends Residents on Ballot*, [www.sprawl-busters.com](http://www.sprawl-busters.com), Mar. 7, 2002, available at <http://www.sprawl-busters.com/search.php?readstory=907> (last visited June 10, 2004).
- <sup>256</sup> *Id.*
- <sup>257</sup> *Id.* Statement is Dee Dee Ferro, president of the Bay Point chapter of Assn. of Community Organizations for Reform Now. *Id.*
- <sup>258</sup> *Big box Retailers are Opening, and San Marcos Reaps Serious Dollars*, THE SAN DIEGO TRIBUNE, Jan. 24, 2004, at NI-1.
- <sup>259</sup> *Id.*
- <sup>260</sup> *Wal-Mart Sues County over Zoning Ordinance*, [www.sprawlbusters.com](http://www.sprawlbusters.com), Feb. 4, 2004, available at [www.sprawl-busters.com/search.php?readstory=135](http://www.sprawl-busters.com/search.php?readstory=135) (last visited June 10, 2004). Former Governor Gray Davis vetoed a statewide measure passed by the General Assembly that would have established a statewide restriction on supercenter size. *Id.*
- <sup>261</sup> *Anti-Big Box Ordinances*, *supra* note 247. The Sacramento ordinance bans stores larger than 100,000 square feet with between 5-10% of nontaxable sales items. *Id.*
- <sup>262</sup> *Alameda County Bans Big Box Retailers*, [www.abc7news.com](http://www.abc7news.com), Jan. 6, 2004, available at [http://abclocal.go.com/kg0/news/010604\\_nW\\_alameda\\_bigbox.html](http://abclocal.go.com/kg0/news/010604_nW_alameda_bigbox.html) (last visited June 30,

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2004). Alameda's ordinance is similar to ordinances previously adopted by the cities of Oakland and Martinez, and the counties of Contra Costa and San Luis Obispo. *Id.*

<sup>263</sup> Guy Ashley, 'Big box' ban gets supervisors' vote, *CONTRA COSTA TIMES*, Mar. 10, 2004, at A03 [hereinafter *Big Box Ban*].

<sup>264</sup> *Wal-Mart Challenges Alameda County Supercenter Ban*, *SAN FRANCISCO BUSINESS JOURNAL*, Jan. 26, 2004, available at <http://www.bizjournals.com/sanfrancisco/stories/2004/01/26/daily9.html> (last visited June 12, 2004) [hereinafter *Wal-Mart Challenges Ban*].

<sup>265</sup> *Id.*

<sup>266</sup> *Big Box Ban*, *supra* note 263.

<sup>267</sup> Michael Liedtke, *Wal-Mart sues to overturn county's ban on Supercenters*, Jan. 26, 2004, [www.sfgate.com](http://www.sfgate.com), available at <http://lists.iww.org/pipermail/iww-news/2004-January/004309.html> (last visited June 12, 2004) [hereinafter *Wal-Mart Sues*]. Wal-Mart previously filed suit in Tucson, Arizona. *Id.*

<sup>268</sup> Michelle Maitre, *Wal-Mart is suing Alameda County*, *CONTRA COSTA TIMES*, available at <http://www.contracostatimes.com/ml/cctimes/news/editorial/8328204.htm> (last visited June 14, 2004) [hereinafter *Wal-Mart is Suing Alameda*]. See also, *Wal-Mart Stores Inc. v. The County of Alameda*, No. RG04137960 (Superior Court of California, County of Alameda, filed Jan. 26, 2004).

<sup>269</sup> *Wal-Mart is suing Alameda County*, *supra* note 268.

<sup>270</sup> See e.g., *California Tries to Slam Lid*, *supra* note 230.

<sup>271</sup> *Wal-Mart Sues*, *supra* note 267. See also, *Wal-Mart Sues County over Zoning Ordinance*, [www.sprawl-busters.com](http://www.sprawl-busters.com), Feb. 4, 2004, available at [www.sprawl-busters.com/search.php?readstory=7370](http://www.sprawl-busters.com/search.php?readstory=7370) (last visited June 12, 2004) [hereinafter *Wal-Mart Sues County*].

<sup>272</sup> *Wal-Mart Sues County*, *supra* note 271.

<sup>273</sup> *Alameda County Supervisors Ban Big Box Stores*, [www.nacsonline.com](http://www.nacsonline.com), Jan. 9, 2004, available at [http://www.nacsonline.com/nacs/news/daily\\_news\\_archives/january2004/nd0109041.htm](http://www.nacsonline.com/nacs/news/daily_news_archives/january2004/nd0109041.htm) (last visited June 14, 2004).

<sup>274</sup> *Wal-Mart Challenges Ban*, *supra* note 264.

<sup>275</sup> Karen Holzmeister, *Big Box Store Ban May Be Repealed*, *OAKLAND TRIBUNE*, Mar. 28, 2004 [hereinafter *Ban May Be Repealed*].

<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

<sup>278</sup> *Wal-Mart Sues Turlock Over Ban, City Will "Vigorously Defend" Action Outlawing Supercenters*, *MODESTO BEE*, Feb. 12, 2004, at A1 [hereinafter *Wal-Mart Sues Turlock Over Ban*].

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> The ordinance states that "[d]iscount [c]lubs shall mean a discount store or warehouse where shoppers pay a membership fee in order to take advantage of discounted prices on a wide variety of items such as food, clothing, tires, and appliances, and many items are sold in large quantities or bulk." *Id.*

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- <sup>282</sup> Defendant's Answer to Complaint for Damages, Declaratory and Injunctive Relief, and Demand for Jury Trial at 6-7, *Wal-Mart Stores, Inc. v. City of Turlock*, No. 04-5278 (E.D. Cal. 2004) [hereinafter *Answer*].
- <sup>283</sup> *Wal-Mart Sues Turlock Over Ban*, *supra* note 278.; *see also* Complaint for Damages, Declaratory & Injunctive Relief; Demand for Jury Trial at 6, *Wal-Mart Stores, Inc. v. City of Turlock*, No. 04-5278 (E.D. Cal. 2004) [hereinafter *Complaint*].
- <sup>284</sup> *Wal-Mart Sues Turlock Over Ban*, *supra* note 278.
- <sup>285</sup> *Turlock Council Puts up Funds for Wal-Mart Fight*, MODESTO BEE, Feb. 25, 2004, at A1 [hereinafter *Turlock Council Puts Up Funds*].
- <sup>286</sup> *Id.*
- <sup>287</sup> *Complaint*, *supra* note 283, at 6.
- <sup>288</sup> *Id.* at 7-9.
- <sup>289</sup> *Id.* at 11.
- <sup>290</sup> *Id.*
- <sup>291</sup> *Id.* at 11-12.
- <sup>292</sup> *Id.* at 12-13.
- <sup>293</sup> *Turlock Council Puts Up Funds*, *supra* note 285.
- <sup>294</sup> *Wal-Mart Files Challenge to City of Turlock's Ban on Supercenters*, BUSINESS WIRE, Feb. 12, 2004, available at [http://articles/findarticles.com/p/articles/mi\\_mOEIN/is\\_2004\\_Feb\\_11/ai\\_11316/603](http://articles.findarticles.com/p/articles/mi_mOEIN/is_2004_Feb_11/ai_11316/603) (last visited June 14, 2004).
- <sup>295</sup> *Id.*
- <sup>296</sup> *Id.*
- <sup>297</sup> *Id.*
- <sup>298</sup> John Holland, *Wal-Mart Inc. Claims the 14th Amendment*, MODESTO BEE, Feb. 12, 2004, available at [http://www.reclaimdemocracy.org/articles\\_2004/walmart\\_claims\\_14th\\_amendment\\_corporation\\_s.html](http://www.reclaimdemocracy.org/articles_2004/walmart_claims_14th_amendment_corporation_s.html) (last visited June 14, 2004).
- <sup>299</sup> Brandon Bowers, *Defending against Wal-Mart's lawsuits will cost \$80,000*, TURLOCK JOURNAL, Feb. 21, 2004, available at <http://www.turlockjournal.com/news/newsview.asp?c=96681> (last visited June 14, 2004).
- <sup>300</sup> *Council Wants Ban on Superstores*, [www.sprawl-busters.com](http://www.sprawl-busters.com), Aug. 8, 1999, available at <http://www.sprawl-busters.com/search.php?readstory=271> (last visited June 14, 2004).
- <sup>301</sup> *New Ordinance Limits Superstores*, [www.sprawl-busters.com](http://www.sprawl-busters.com), Sept. 28, 1999, available at <http://www.sprawl-busters.com/search.php?readstory=302> (last visited June 14, 2004).
- <sup>302</sup> *Id.*
- <sup>303</sup> Eric Swedlund, "Big Box" Ordinance is OK'd by judge, ARIZONA DAILY STAR, Sept. 22, 2003, at B.2.
- <sup>304</sup> *Id.*
- <sup>305</sup> *Id.*; *see also*, *Wal-Mart Lawsuit Against Tucson Big Box Law Is Thrown Out*, [www.sprawl-busters.com](http://www.sprawl-busters.com), Sept. 9, 2003, available at <http://www.sprawl-busters.com/search.php?readstory=1256> (last visited June 14, 2004).
- <sup>306</sup> *Id.*
- <sup>307</sup> *Answer*, *supra* note 282, at 5-7.
- <sup>308</sup> *Wal-Mart sues over San Marcos Store*, SAN DIEGO BUSINESS JOURNAL, Oct. 27, 2003, at 18.

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- <sup>309</sup> *Id.*
- <sup>310</sup> *Id.*
- <sup>311</sup> *See infra*, at 55.
- <sup>312</sup> *Court "Surprises" Wal-Mart*, [www.sprawl-busters.com](http://www.sprawl-busters.com), Feb. 5, 2000, available at <http://www.sprawl-busters.com/search.php?readstory=433> (last visited June 14, 2004) [hereinafter *Court Surprises Wal-Mart*].
- <sup>313</sup> *Wal-Mart Loses Second Court Case*, [www.sprawl-busters.com](http://www.sprawl-busters.com), June 26, 2000, available at <http://www.sprawl-busters.com/search.php?readstory=675> (last visited June 14, 2004).
- <sup>314</sup> *Id.*
- <sup>315</sup> *Court Surprises Wal-Mart*, *supra* note 312.
- <sup>316</sup> *Id.*
- <sup>317</sup> *Id.*
- <sup>318</sup> *Citizens file lawsuit to stop Wal-Mart superstore*, [www.sprawl-busters.com](http://www.sprawl-busters.com), Mar. 27, 2004, available at <http://www.sprawl-busters.com/search.php?readstory=1386> (last visited June 10, 2004).
- <sup>319</sup> *Super Size Suit Over Wal-Mart*, GILROY DISPATCH, May, 10, 2004, available at <http://www.gilroydispatch.com/news/newsview.asp?c=107349> (last visited June 29, 2004).
- <sup>320</sup> *Citizens turn to courts to block Wal-Mart*, [www.sprawl-busters.com](http://www.sprawl-busters.com), Feb. 22, 2004, available at <http://www.sprawl-buster.com/search.php?readstory=1362> (last visited June 29, 2004).
- <sup>321</sup> *First Home Depot, Now a Wal-Mart Lawsuit*, [www.sprawl-busters.com](http://www.sprawl-busters.com), Feb. 2, 2004, available at <http://www.sprawl-busters.com/search.php?readstory=1350> (last visited June 29, 2004).
- <sup>322</sup> *Court blocks Lowe's plan, affirms Citizen's Group*, [www.sprawl-busters.com](http://www.sprawl-busters.com), Feb. 16, 2004, available at <http://www.sprawl-busters.com/search.php?readstory=1358> (last visited June 29, 2004).
- <sup>323</sup> *Residents in court over Wal-Mart supercenter*, [www.sprawl-busters.com](http://www.sprawl-busters.com), Mar. 3 2004, available at <http://www.sprawl-busters.com/search.php?readstory=1379> (last visited June 29, 2004).
- <sup>324</sup> *Id.*
- <sup>325</sup> *Coalition fights massive big box subsidy in Arizona*, HOME TOWN ADVANTAGE BULLETIN, Nov. 2004, available at <http://www.newrules.org/hta/hta1103.htm> (last visited June 14, 2004).
- <sup>326</sup> *Id.*
- <sup>327</sup> *Id.*
- <sup>328</sup> *Alabama citizens sue to block Wal-Mart giveaways*, HOME TOWN ADVANTAGE BULLETIN, Nov. 2004, available at <http://www.newrules.org/hta/hta1103.htm> (last visited June 14, 2004).
- <sup>329</sup> *Id.*
- <sup>330</sup> Larry Werner, *Big box paradox*, STAR TRIBUNE (Minneapolis), Mar. 2, 2003, available at <http://www.startribune.com/stories/418/3725697.html> (last visited June 14, 2004).
- <sup>331</sup> *Id.*
- <sup>332</sup> *Id.*
- <sup>333</sup> *Id.*
- <sup>334</sup> Packy Moran, *Filling Vacant Big Box Space May Take More Than Change of Perspective*, Oct. 2001, available at, <http://www.specialtyrealestate.com/issues/october01/bigbox.htm> (last visited June 14, 1004).
- <sup>335</sup> *Id.*

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336 *Id.*  
337 *Id.*  
338 *Id.*  
339 *See, e.g., Target developer sues over town's size cap ordinance, [www.sprawl-busters.com](http://www.sprawl-busters.com), Mar. 11, 2004, available at <http://www.sprawl-busters.com/search.php?readstory=1372> (last visited June 29, 2004). In Peachtree City, Georgia, an ordinance was adopted in 2000 limiting retail buildings to 32,000 square feet. *Id.* The ordinance is currently being challenged by a developer who plans to build a Target supercenter within city limits, on the grounds that the size-cap is arbitrary. *Id.* *See also, Maine citizens fight Wal-Mart expansion, HOME TOWN ADVANTAGE BULLETIN, available at <http://www.newrules.org/hta/hta1100.htm> (last visited June 29, 2004). In Rockland, Maine, strong community opposition persuaded Wal-Mart to drop a plan to build an 186,000 square foot supercenter. *Id.**  
340 *California Tries to Slam Lid, supra note 230.*  
341 *Big Box Ban, supra note 263.*  
342 *Wal-Mart Sues County, supra note 271.*  
343 *Complaint, supra note 283.*  
344 ARROYO GRANDE, CA., CITY CODE § 16.52.220.  
345 *Judge Halts Construction, supra note 194.*  
346 *Two Ballot Questions, supra note 254*  
347 *See, supra note 209.*  
348 *California Is No Paradise For Wal-Mart, supra note 7.*  
349 *Miller Report, supra note 53.*  
350 *California Is No Paradise For Wal-Mart, supra note 7.*  
351 *Wal-Mart Win Sends Strong Message, supra note 217.*  
352 *Super Wal-Mart Nears Approval, supra note 163.*  
353 *Fight Brewing, supra note 176.*  
354 *Gilroy Takes a Hard Look at Wal-Mart, supra note 158.*  
355 *Wal-Mart Takes On Inglewood, supra note 143.*  
356 *Id.*  
357 *Southland Agenda, supra note 239.*  
358 *See, supra note 36.*  
359 *Big Box Regulations Sweep Across the State, supra note 198.*  
360 *Anti-Big Box Ordinances, supra note 247.*  
361 Penni Crabtree, Big Box Ban Considered, SAN DIEGO UNION-TRIBUNE, Nov. 20, 2003, at C.1.  
362 *Wal-Mart Traffic Estimates Stir Controversy in San Marcos, supra note 218.*  
363 *Wal-Mart Sues Over San Marcos Store, supra note 308.*  
364 *Anti-Big Box Ordinances, supra note 247.*  
365 *Big Box Regulations Sweep Across the State, supra note 198.*  
366 *Wal-Mart Sues Turlock Over Ban, supra note 278*  
367 *Id.; see also, Complaint, supra note 283.*  
368 *Id.*  
369 *Anti-Big Box Ordinances, supra note 247.*  
370 Scott Mobly, *City Council considers Wal-Mart expansion, RECORD SEARCHLIGHT (Redding, CA), Oct. 5, 2003, at 1.**