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BEFORE THE CITY COUNCIL  
FOR THE CITY OF YELM

APPEAL OF THE HEARING EXAMINER'S  
DECISION GRANTING SITE PLAN  
APPROVAL FOR A WAL-MART  
SUPERCENTER, SPR-05-0091-YL

No. SPR-05-0091-YL  
WAL-MART'S RESPONSE BRIEF

**I. INTRODUCTION**

In August and September of 2005, the City of Yelm Hearing Examiner conducted a three-day hearing on the application of Wal-Mart Stores, Inc. ("Wal-Mart") for Site Plan Review for a new Wal-Mart store (the "Project"), and Yelm Commerce Group ("YCG")'s appeal of the Mitigated Determination of Nonsignificance ("MDNS") issued by the City. The Examiner concluded in a comprehensive 43-page Report and Decision ("Decision") that the Project complies with all applicable City land use regulations and will not pose significant environmental impacts.

Now, on appeal to the City Council, YCG and four Petitioners raise one narrow legal issue: whether the Examiner erred in concluding that the Project complies with City and State Growth Management Act ("GMA") transportation concurrency requirements. There is no legal

1 or factual support for this argument. The Council should uphold the Examiner's Decision and  
2 dismiss this appeal.

## 3 II. STATEMENT OF FACTS

4 Wal-Mart proposes to construct a new Wal-Mart store north of State Route 507 and east  
5 of Grove Road in the City. The site is zoned Large Lot Commercial (C-3), where the Project is  
6 permitted outright.  
7

8 The Project includes extensive traffic improvements, including the following conditions  
9 set forth in the MDNS:

- 10 • Frontage improvements along SR 507, including a sidewalk, planter strips, curb and  
11 gutter, a drop lane on the north side of SR 507, and a west bound travel lane, a two  
12 way left turn lane, and a full eastbound travel lane;
- 13 • Frontage improvements along the future SR 510 Yelm Loop, a major new roadway  
14 planned for construction by the City, to include a sidewalk, planter strip, curb and  
15 gutter, a northbound drop lane from the intersection to the northernmost entrance to  
16 the site, a northbound lane, a two way left turn lane, and a southbound lane;
- 17 • A signal at the intersection of SR 507 and the future SR 510 Yelm Loop, including a  
18 minimum 250-foot eastbound left turn lane;
- 19 • Optimization of the light at five corners (the intersection of Yelm Avenue East (SR  
20 507), Bald Hills Road and Creek Street);
- 21 • Connection of the future SR-507/510 Bypass to 103<sup>rd</sup> Street (the "103<sup>rd</sup> Street  
22 Connector") by constructing a new road with two 12-foot drive lanes and 4-foot  
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1 applicable law and the administrative record, that the Project complies with the City's  
2 transportation concurrency requirements. The Notice of Appeal does not provide a basis for  
3 overturning the Examiner's Decision.

4 **A. The Project complies with the City's transportation concurrency standards.**

5 The City's Staff Report to the Hearing Examiner explains in detail how the Project  
6 complies with all applicable City regulations and policies, including transportation concurrency  
7 standards in the City's Comprehensive Plan and zoning code. Exhibit 34.

8 **1. The City Council establishes level of service ("LOS") standards on City  
9 arterials in order to satisfy GMA concurrency requirements.**

10 The Growth Management Act ("GMA"), Chapter 36.70A RCW, requires jurisdictions to  
11 adopt a Transportation Element in their Comprehensive Plans that establishes level of service  
12 ("LOS") standards on locally-owned arterials, along with "specific actions and requirements for  
13 bringing into compliance locally owned transportation facilities or services that are below an  
14 established level of service standard." RCW 36.70A.070(6)(a)(iii)(D). Establishing LOS  
15 standards and methodology is "simply an objective way to measure traffic." *West Seattle*  
16 *Defense Fund v. City of Seattle*, CPSGMHB Case No. 94-3-0016, Final Decision and Order at  
17 60. The GMA "does not dictate what it too congested." *Id.*

18 Local LOS standards are a tool for measuring congestion and expressing the City  
19 Council's policy determination about the acceptable level of traffic congestion in the City. If a  
20 proposed development would cause LOS to fall below the standard adopted in the  
21 Comprehensive Plan, the City must prohibit that development unless "improvements or  
22 strategies are in place at the time of development, or a financial commitment is in place to  
23 complete the improvements or strategies within six years." RCW 36.70C.060(6)(b). This  
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1 “concurrency” requirement applies only to locally-owned arterials. RCW

2 36.70A.060(6)(a)(iii)(D); RCW 36.70A.060(6)(b)

3 **2. The City of Yelm has established a level of service of F in the urban core.**

4 The City of Yelm recently adopted updates to its Comprehensive Plan that establish  
5 LOS C in its residential zones and LOS D in its commercial and light industrial zones. In the  
6 urban core, however, the Comprehensive Plan states that LOS F is acceptable if mitigation  
7 measures are “being planned, funded and implemented”:  
8

9 In the urban core, LOS F is recognized as an acceptable level of service  
10 where mitigation to create traffic diversions, bypasses, and alternate routes  
11 and modes of transportation are authorized and being planned, funded and  
12 implemented.

13 2001 Comprehensive Transportation Plan Update, City of Yelm. This decision is valid and  
14 defensible under the GMA.<sup>1</sup>

15 Appellants claim that the Examiner erroneously concluded that the LOS F standard  
16 applies in the urban core because there are no mitigation measures being planned or  
17 implemented by the City that will mitigate the current traffic congestion on Yelm Avenue.  
18 Appellants’ Brief at 5. This is not true.

19 Perry Shea, the City’s transportation consultant and lead engineer on the Yelm Bypass  
20 Project, testified that the City is actively moving forward on the Bypass Project, which has  
21 progressed to the point of right-of-way acquisition. This testimony was undisputed. Mr. Shea  
22 further testified that the intent of the City’s Comprehensive Plan is to allow LOS F conditions in  
23 its urban core until the Yelm Loop is operational, at which point the standard will become LOS  
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26 <sup>1</sup> City LOS standards and methodology cannot be challenged through an appeal of a specific development proposal.  
27 Any challenge to a jurisdiction’s concurrency management system must be brought within 60 days of adoption of  
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1 D. There is no evidence in the record that the Council has changed its mind and intends to  
2 abandon the Bypass Project. In any event, the City is currently planning other transportation  
3 improvements that will improve traffic flow in the urban core.

4 Mr. Shea and Wal-Mart's traffic engineer, Erich Armbruster of Transpo, Inc., testified  
5 that Wal-Mart is required to construct a road connecting the future SR-507/510 Bypass to 103<sup>rd</sup>  
6 Street (the "103<sup>rd</sup> Street Connector"). The 103<sup>rd</sup> Connector, which was requested by the City  
7 and the Washington Department of Transportation to relieve congestion in the urban core, will  
8 create an alternative route for traffic that will divert trips from Yelm Avenue. In fact, Transpo's  
9 analysis concluded that the 103<sup>rd</sup> Connector will improve LOS, reduce delays and decrease  
10 Project-generated traffic on Yelm Avenue by 20 percent. Exhibit 123. It will also decrease  
11 background traffic on Yelm Avenue. Finally, it will reduce projected delays at side streets at  
12 Yelm Avenue, such as the intersection of Yelm Avenue/NE Creek St., where delay would  
13 decline from 940 seconds to 140 seconds. Exhibit 123. It is undisputed that this mitigation  
14 measure is being funded and implemented, and that it will improve traffic flow on Yelm  
15 Avenue. It represents a traffic diversion, bypasses, and alternate routes and modes of  
16 transportation are authorized and being planned, funded and implemented

17 Appellants do not acknowledge the 103<sup>rd</sup> Connector, but they concede that the Bypass is  
18 being planned and funded. Appellants contend, however, that "there is no evidence of full  
19 funding," or that the Bypass will be operational in six years. Appeal at 5. But the clear  
20 language of the Comprehensive Plan requires that transportation improvements must be  
21 authorized and in the process of "being planned, funded and implemented." It does not say that

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27 the Comprehensive Plan or development regulation; it cannot be challenged by appealing a project-level decision.  
RCW 36.70A.290.

1 these improvements must be in place within six years for the LOS F standard to apply.  
2 Appellants confuse the language in the Yelm Comprehensive Plan with that in the Growth  
3 Management Act, which defines “concurrent with development” to mean that “improvements or  
4 strategies are in place at the time of development, or that a financial commitment is in place to  
5 complete the improvements or strategies within six years.” RCW 36.70C.060(6)(b). There is  
6 no such definition in the Yelm Comprehensive Plan. The local government is entitled to set its  
7 own adequacy standards, as the Yelm City Council has done in its Comprehensive Plan.  
8

9 The City’s Comprehensive Plan is clear that LOS F is the applicable standard in the  
10 urban core. It is undisputed that the Project meets this standard.  
11

12 **B. State Regional Transportation Planning Organizations establish level of service  
13 standards on state highways for planning and monitoring purposes.**

14 Appellants also claim that the Examiner’s concurrency determination was flawed  
15 because it was based on the “wrong concurrency standard” for State Routes. Appeal at 3.  
16 Appellants argue that all projects that seek development approval in the City must meet LOS  
17 standards set by Regional Transportation Planning Organization (“RTPO”). Appellants are  
18 wrong as a matter of law.

19 As previously noted, the GMA requires cities to establish level of service standards for  
20 locally-owned arterials, along with specific actions and requirements for bringing locally-owned  
21 facilities into compliance with those standards. RCW 36.70A.070(6)(a)(iii)(D). Locally-  
22 established LOS standards, and the methodology used to measure them, reflect a legislative  
23 determination about what level of traffic congestion is acceptable. The GMA vests local  
24 jurisdictions with the sole discretion to make that determination.  
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1 In 1998, the State Legislature amended the GMA to require local Comprehensive Plans  
2 to “reflect” level of service standards for state highways that are established by regional  
3 transportation planning organizations (“RTPOs”) under RCW 47.80.030. Although RCW  
4 47.80.030 requires RTPOs to establish LOS standards on State Routes, it does not provide that  
5 these standards somehow “trump” locally-established standards. In fact, the GMA makes clear  
6 that LOS standards established by the RTPO are to be used solely for monitoring, planning, and  
7 inter-jurisdictional coordination:  
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9 The purposes of reflecting level of service standards for state highways in the local  
10 comprehensive plan are to monitor the performance of the system, to evaluate  
11 improvement strategies, and to facilitate coordination between the county's or city's six-  
12 year street, road, or transit program and the department of transportation's six-year  
13 investment program.

13 RCW 36.70A.070(6)(b).

14 On State Routes, therefore, LOS standards serve a completely different purpose than  
15 locally established standards. The Central Puget Sound Growth Management Hearings Board  
16 recently confirmed that “the purpose for including state LOS standards at the local  
17 level is for monitoring, evaluating and facilitating coordination between the state and local  
18 plans. Providing information to the state for its further analysis and assessment is the driver  
19 behind this section of the GMA.” See *Jody L. McVittie v. Snohomish County (“McVittie VIII”)*,  
20 CPSGMHB Case No. 01-3-0017, Final Decision and Order, January 8, 2002 at 11.  
21

22 The Thurston Regional Planning Council (“TRPC”) has established a LOS D for state  
23 roads in south Thurston County. This means that the State uses the LOS D standard to monitor  
24 the performance of the system, to evaluate improvement strategies, and to facilitate coordination  
25 of transportation improvements and strategies on state highways that run through the City of  
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1 Yelm. It does not mean that proposed development in the City has to “meet” this standard in  
2 order to comply with the City’s concurrency management system. If that were the case, the  
3 State could divest the City of its land use planning and permitting authority by establishing  
4 overly stringent LOS standards that no development could meet.<sup>2</sup> As the Board noted in  
5 *McVittie VIII*, “there is no financing or implementation ‘hook’ for binding the state to undertake  
6 any given state road project, critical or otherwise.” *Id.* For that reason, the GMA requires the  
7 RTPO to establish LOS standards on state highway for planning purposes—not to gauge  
8 whether proposed development should be approved.  
9

10 In sum, state LOS standards do not “trump” locally-established LOS standards; they  
11 serve an entirely different purpose of facilitating improvements and inter-jurisdictional  
12 coordination. The relevant standard here is the locally-established standard of LOS F in the  
13 urban core, and the record clearly demonstrates that the City standard has been met.  
14

15 **C. The City properly determined that the Project will meet concurrency standards.**

16 Relying on a misinterpretation of state law, the Appellants then misinterpret the  
17 documents in the record to argue that the project “flunks” concurrency by causing levels of  
18 service to fall below LOS D. But the chart excerpted on page 4 of Appellants’ brief cites the  
19 LOS standard for the “worst movement” rather than the “overall intersection” standard the City  
20 relies on to assess concurrency. The TIA itself notes that “overall intersection LOS . . . is the  
21 basis for comparison to the City’s LOS standard and concurrency determination” and that the  
22 “worst movement LOS . . . is provided for contextual purposes only.” Again, the City has the  
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26 <sup>2</sup> This different function of state-established LOS standards is illustrated by Mr. Shea’s testimony that the RTPO  
27 measures LOS based on a two-hour peak pm standard that results in much lower trip counts than the 15-minute  
28 peak used by the City.

1 ultimate discretion to establish concurrency standards and measurement methodologies.

2 Appellants cannot dictate the City's methodology for measuring LOS.

3         The Transpo Group, Wal-Mart's traffic consultant, prepared the Traffic Impact Analysis  
4 ("TIA") for the Project after numerous meetings with the City and its consultant, Mr. Shea.  
5 During these meetings, the City explained that it measures LOS based on overall intersection  
6 operations rather than individual turning movements or arterial segments.<sup>3</sup> Mr. Shea testified  
7 that this is because the City Council wants to facilitate east-west traffic movement on Yelm  
8 Avenue; accordingly, it has decided to accept increased delays on minor legs at unsignalized  
9 intersections. If the City were to prioritize traffic movements on minor legs, the movement of  
10 through traffic on Yelm Avenue would be impaired. This is well within the City's discretion  
11 under the GMA, and it is consistent with policy decisions made in adjoining jurisdictions.  
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14 **D. Appellants' SEPA argument is not properly before the Council.**

15         Finally, although Appellants have not appealed the Examiner's Decision upholding the  
16 MDNS, they ask the Council to "direct City staff to re-examine its SEPA decision." Appeal at  
17 6. This request is inappropriate. Only the Responsible Official can reconsider the MDNS  
18 decision. The Council has no jurisdiction over matters that are not properly before it on appeal.  
19 The Council should disregard this argument.  
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25 <sup>3</sup> The City also directed Transpo to analyze forty intersections in its TIA—more than the City has ever required in a  
26 traffic study, and to apply a conservative four percent growth rate to its assumptions, which is far larger than the  
27 two percent growth rate the City is currently experiencing. Finally, the City directed Transpo to determine whether

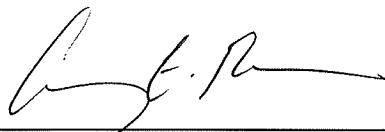
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**IV. CONCLUSION**

There is no basis for the City Council to overturn the Hearing Examiner's Decision approving the Site Plan Review. The Project complies with all applicable City standards. Wal-Mart requests that the Council uphold the Examiner's Decision.

DATED this 13th day of December, 2005.

MCCULLOUGH HILL, PS

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Project mitigation would be consistent and coordinated with the Yelm Bypass, proposed to be completed in 2010. The TIA demonstrated that the Project, as mitigated, would comply with City LOS standards. Exhibit 11.