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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

FRIENDS OF MADEIRA, an unincorporated)
association.)

Petitioner,

vs.

CITY OF ELK GROVE, BY AND)
THROUGH THE CITY COUNCIL; and)
DOES I THROUGH XXX.)

Respondents.

WAL-MART STORES, INC., a Delaware)
corporation; and DOES XXXI-XXXXX,)
inclusive.)

Real Parties in Interest.

Case No.:

PETITION FOR WRIT OF MANDATE
(Code of Civ. Proc. Sections 1085 and
1094.5; California Environmental Quality
Act; State Planning and Zoning Law)

Petitioner, Friends of Madeira (“Petitioner”) respectfully petitions this Court for a Writ of Mandate pursuant to Code of Civil Procedure sections 1085 and 1094.5, and for a declaration of rights directed at the City of Elk Grove (“City” or “Elk Grove”), by and through the City Council, to set aside the City’s approval of an approximately 99,999± square foot Wal-Mart Supercenter (“Supercenter”) and other improvements permitted by a March 26, 2009 letter issued by the City of Elk Grove Planning Department approving Wal-Mart’s application to

1 modify the Vineyard at Madeira shopping center project (the "Land Use Approvals" or
2 "Project"). The City's actions violate State and local land use and environmental laws and
3 amount to a prejudicial abuse of discretion. A writ of mandate and preliminary and permanent
4 injunctions are necessary to remedy the City's failure to adequately address the Project's
5 environmental impacts; to ensure that the City complies with all applicable Federal, State, and
6 local laws; and to ensure proper review and disclosure, and mitigation of the potential
7 environmental impacts resulting from the approval and development of the Project pursuant to
8 the California Environmental Quality Act ("CEQA") and to ensure the subordinate Project is
9 consistent with the requirements of Elk Grove General Plan and Zoning Code. By this Verified
10 Petition, Petitioner represents the following:

11 **PARTIES**

12 1. Petitioner Friends of Madeira is an unincorporated association of Elk Grove
13 residents, voters, taxpayers, and property owners formed after the City's approval of the Land
14 Use Approvals. Petitioner's members live in close proximity to the Project in the Del Webb
15 Glenbrooke neighborhood, located in the Madeira community of Elk Grove.

16 2. The City is, and all times mentioned herein was, a general law city existing under
17 the laws of the State of California. The City has a duty under state law to comply with state law
18 requirements, including CEQA and State Planning and Zoning Law, when considering land use
19 requests.

20 3. Petitioner is informed and believes and thereon alleges that Real Party in Interest,
21 Wal-Mart Stores, Inc. ("Wal-Mart"), is a Delaware corporation authorized to do business in
22 California.

23 4. Petitioner is informed and believes and thereon alleges that Wal-Mart was the
24 applicant for the requested Supercenter Land Use Approvals from the City.

25 5. Petitioner does not know the true names or capacities, whether individual,
26 corporate, or otherwise, of those Respondents and Real Parties in Interest sued herein as Does I
27 through XXXXX. Petitioner is informed and believes and thereon alleges that said Respondents
28 and Real Parties in Interest are in some manner responsible for the adoption of, imposition of, or

1 administration of those laws, ordinances, regulations of which Petitioner complains herein.
2 Petitioner will amend this Petition to set forth the true names and capacities of the fictitiously
3 named Respondents and Real Parties in Interest when such information has been ascertained.

4 6. Petitioner is informed and believes and thereon alleges that each fictitiously
5 named Respondent and Real Party in Interest is responsible in some manner for the occurrences
6 herein alleged.

7 **GENERAL ALLEGATIONS**

8 7. Petitioner is informed or believes and thereon alleges that in or about 2008,
9 Taylor Village Sacramento Investments Partners LP ("Taylor") proposed to develop a 16-acre
10 shopping center, known as The Vineyard at Madeira ("shopping center"), consisting of
11 approximately 189,035 square feet of new retail space, including several shops, buildings and a
12 large format anchor tenant, located at the southeast corner of Bruceville Road and Whitelock
13 Parkway in the City of Elk Grove. The main anchor tenant proposed for the shopping center was
14 an approximately 148,200 square foot Target store anchor ("Target Anchor").

15 8. According to City Council Resolution 2008-152 ("Resolution") dated June 25,
16 2008 approving the shopping center, Taylor applied for several entitlements including: an
17 amendment to the Laguna Ridge Specific Plan to change the land use designation of
18 approximately 2.5 acres from Residential-15 units per acre ("RD-15") to Shopping Center
19 ("SC"); a Tentative Parcel Map to create 6 commercial parcels; and Design Review to determine
20 building materials, color palette, lighting standards, pedestrian amenities, parking and signage
21 for the shopping center. Taylor also applied for a Conditional Use Permit ("CUP") to allow the
22 operation of a drive-through facility within 300 feet of residential property and construction of a
23 building for a "Retail Discount Store" use. This CUP was necessary for the Target Anchor
24 because the Elk Grove Zoning Code requires conditional use permits for "Retail Discount
25 Stores" which are defined as: "stores with off-street parking that usually offer a variety of
26 customer services, centralized cashing, and a wide range of products. They usually maintain
27 long store hours seven days a week. The stores are often the only ones on the site, but they can
28 also be found in mutual operation with a related or unrelated garden center or service station.

1 Discount stores are also sometimes found as separate parcels within a retail complex with their
2 own dedicated parking. This use listing includes Big-Box retail uses as defined and regulated in
3 Chapter 23.74 EGMC. **There is no limit on the size of "Discount Stores," provided that they**
4 **devote less than ten percent of the total sales floor area to the sale of non-taxable**
5 **merchandise."** Although the Zoning Code also allows "Retail Discount Superstores," which
6 may be up to 150,000 square feet in size and may dedicate any amount of floor area to the sale of
7 "non-taxable merchandise" subject to additional studies and a different CUP, Taylor deliberately
8 decided to seek approval of a "Retail Discount Store" which, by definition, would "devote less
9 than ten percent of the total sales floor area to the sale of non-taxable merchandise." (These
10 applications are collectively referred to at the "2008 Approvals.")

11 9. According to the Resolution, an amendment to the Laguna Ridge Specific Plan
12 was necessary and appropriate to provide a larger commercial site to accommodate a Retail
13 Discount Store at the shopping center, such as the proposed Target Anchor. According to the
14 Resolution, "The area and configuration of the existing commercial land use designation was
15 predicted on an assumed development of a shopping center anchored by a grocery store. Market
16 conditions have demonstrated that a grocery store is not feasible. A larger commercial site is
17 needed to accommodate a larger retail anchor tenant."

18 10. According to the Resolution, after conducting an Initial Study, City staff
19 determined that the shopping center, as proposed with the Target Anchor, was exempt from
20 environmental review under CEQA pursuant to Section 15183 of the CEQA Guidelines. The
21 City alleged the shopping center's environmental impacts were properly addressed in the
22 previously certified Laguna Ridge Specific Plan Environmental Impact Report and its associated
23 Mitigation Monitoring and Reporting Plan. Petitioner is informed and believes and thereon
24 alleges that none of the earlier environmental review documents including the Initial Study for
25 the 2008 Approvals considered, addressed, disclosed, or mitigated the specific impacts locating a
26 "superstore" or "supercenter" use at the shopping center. Such impacts include but are not
27 limited to urban decay, and increased traffic and air pollution.

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1 11. On or about June 5, 2008, the Elk Grove Planning Commission considered the
2 2008 Approvals at a public hearing and forwarded the project to the City Council with a
3 recommendation for approval.

4 12. On or about June 25, 2008, the Elk Grove City Council considered the 2008
5 Approvals at a public hearing. Through Resolution 2008-152, the City Council approved the
6 Laguna Ridge Specific Plan Amendment, Tentative Parcel Map, Design Review, and CUP
7 allowing development of a Retail Discount Store within the shopping center. Neither the
8 Resolution nor the conditions of approval placed any restrictions on the hours of operation for
9 the Target Anchor.

10 13. Subsequent to the approvals, for reasons unknown to Petitioner, Target decided
11 not to pursue development of the Target Anchor store within the shopping center.

12 14. Petitioner is informed and believes and thereon alleges that in or around January
13 2009, Wal-Mart purchased the parcel of property proposed for the Target Anchor.

14 15. On or about February 11, 2009, prior to Wal-Mart submitting any application, the
15 City Council held a special meeting to discuss the proposed Wal-Mart Supercenter.

16 16. The City Council received testimony in opposition to the proposed Supercenter
17 based on the store's extended hours of operation as well as other "quality of life" issues, and
18 potentially significant environmental impacts, including, but not limited to, impacts from traffic,
19 noise, and public safety. Several Members of Friends of Madeira, including but not limited to
20 Peter and Nancy Gaffney, Rose and Harold Dye, Debbie Sareeram, and Kathy Mendenhall,
21 raised objections to approving Supercenter at the Project site during this public hearing. No
22 action was taken at this City Council meeting but instead the Council considered the public
23 testimony and indicated that the Council members would discuss the numerous concerns with
24 Wal-Mart representatives. A true and correct copy of the minutes of that meeting are attached
25 hereto and incorporated herein as **Exhibit A**.

26 17. On or about February 25, 2009, Wal-Mart submitted plans for an approximately
27 99,999 square foot Supercenter to anchor the shopping center. As part of its application, Wal-
28 Mart's Counsel submitted a letter to the City dated February 24, 2009, requesting "a written

1 determination that the Wal-Mart store does not require any discretionary review because: (1) the
2 proposal substantially conforms to the existing Design Review permit; and (2) the Wal-Mart
3 store does not require a Conditional Use Permit since the use is permitted as-of-right in the
4 Shopping Center district.” Wal-Mart’s Counsel disclosed that the store “will devote more than
5 10% percent of the sales floor area to the sale of groceries.” Wal-Mart’s Counsel alleged that the
6 store does not require a CUP because “it does not fall within the definition of ‘retail, discount’
7 store or ‘retail, discount superstore’”, but rather, “falls within the ‘retail, general’ and grocery
8 stores/supermarkets’ uses, both of which are permitted as-of-right in the Shopping Center
9 District.” According to the Project Description included in the Project application materials, the
10 store may include general merchandise sales, grocery sales, alcohol sales, a medical clinic/vision
11 center, photo lab, nail/hair salon, pharmacy, indoor garden center, and a fast food restaurant.
12 Additionally, the proposed hours of operation are 6 am to midnight, seven days per week, but
13 Wal-Mart reserves the right to extend the hours of operation. A true and correct copy of Wal-
14 Mart’s Request for Determination Letter and Project Description is attached hereto and
15 incorporated herein as **Exhibit B**.

16 18. On or about March 3, 2009, Petitioner’s Counsel submitted a written letter to the
17 City indicating the Project required further environmental review and a new CUP due to the
18 change in retail use. Petitioner’s Counsel explained the Project was not in substantial
19 compliance with the original project approvals since it did not fall within the Elk Grove Zoning
20 Code’s definition of a Discount Store, but rather was a Discount Superstore since it proposes to
21 devote more than ten percent of the sales floor area to the sale of groceries. Further, Petitioner’s
22 Counsel explained the Zoning Code requires a CUP for a Discount Superstore in the “SC” zone.
23 Petitioner’s Counsel also explained that a Supercenter is a unique type of use with unique
24 environmental impacts the City is required to evaluate in a CEQA analysis. Petitioner requested
25 that it be provided notice of any and all public hearings related to the approval of the Project, as
26 well as the staff reports prepared for those hearings; notices of determination and/or exemption;
27 notices of scoping meetings; notices of any public hearings regarding a negative declaration or
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1 EIR; and notices of any decisions, determinations, permits, or approvals of the proposed Project,
2 including building permits.

3 19. The City did not respond to Petitioner's Counsel's March 3, 2009 letter.

4 20. On or about March 26, 2009, the City Planning Department approved the Land
5 Use Approvals and issued a letter stating the plans for the proposed Wal-Mart Supercenter were
6 "in substantial conformance with the previously approved plans for The Vineyard at Madeira
7 shopping center" and thus, "no further entitlements from the Planning Department or Planning
8 Commission are needed and the project is cleared to proceed towards construction." ("Approval
9 Letter"). A true and correct copy of the Approval Letter is attached hereto and incorporated
10 herein as **Exhibit C**.

11 21. The City did not provide any public notice of or any opportunity for the public to
12 comment on the Land Use Approvals.

13 22. The City did not prepare an Initial Study or conduct any environmental review for
14 the Land Use Approvals.

15 23. The City did not file a "notice of exemption" or "notice of determination" with
16 the Office of Planning and Research regarding its decision to approve the Land Use Approvals or
17 the Approval Letter.

18 24. Although prior environmental documents and notices of decisions and approvals
19 regarding the shopping center were filed with the Governor's Office of Planning and Research
20 "State Clearinghouse" ("OPR") no documents regarding the Supercenter, the Land Use
21 Approvals, or the Approval Letter were filed with OPR.

22 25. Despite expressly requesting notice of "any decisions, determinations, permits, or
23 approvals" for the Land Use Approvals, the City did not provide notice of the March 26, 2009
24 Approval Letter to Petitioner's Counsel.

25 26. On or about August 7, 2009, Petitioner's Counsel submitted another written letter
26 to the City requesting notice and/or information regarding the Project. Petitioner's Counsel cited
27 a July 17, 2009 article from the *Sacramento Business Journal* entitled "Construction on Elk
28 Grove's second Wal-Mart Supercenter to begin in fall", which stated "The retail giant expects

1 this fall to begin construction of a 99,900-square-foot Supercenter [at the Vineyard at Madeira
2 shopping center] and open a year later, a Wal-Mart spokesman said.” Petitioner also requested
3 the City inform it whether any approvals or permits had issued for the Project.

4 27. In a letter dated September 9, 2009, the City responded to Petitioner stating, “no
5 actions have been [sic] occurred that would require such notice.” Further, the City confirmed
6 that the proposed Wal-Mart Supercenter totaling 99,999 square feet “will locate in the ‘Vineyard
7 at Madeira’ shopping center and will replace a previously approved 148,200 square foot Target
8 store.” Additionally, the City stated that “[b]ecause all other site development plans are virtually
9 unchanged and the Walmart is a smaller store, no further discretionary land use entitlements are
10 required.” The City omitted any reference to the Approval Letter.

11 28. Because the City did not conduct any environmental review for the Land Use
12 Approvals, hold public hearings for the Land Use Approvals, provide any notice of the Land Use
13 Approvals, or otherwise provide an opportunity for Petitioner or other members of the public to
14 raise objections to the Land Use Approvals, and because the City does not have an appeals
15 procedure to challenge the Approval Letter, Petitioner was not required to exhaust any particular
16 administrative remedies prior to commencing this action. Nevertheless, as noted in Paragraph
17 16, several of Petitioner’s Members appeared in front of the City Council and objected to the
18 Land Use Approvals before Wal-Mart filed its application.

19 29. Moreover, Petitioner was not required to exhaust any particular appeals
20 procedures prior to commencing this action. Even if such appeals procedures existed, the failure
21 to provide notice of the Approval Letter waives any appeal process.

22 30. Several of Petitioner’s members live in the Del Webb Glenbrooke senior living
23 community located immediately north of the Vineyard at Madeira shopping center project and
24 would be able to see and hear the shopping center from their homes. Petitioner’s members have
25 a direct and beneficial interest in the City fully complying with CEQA, State Planning and
26 Zoning law, the Elk Grove Zoning Code, and all other applicable laws when considering and
27 approving the Land Use Approvals.

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1 31. The City has a mandatory and public duty to comply with CEQA, State Planning
2 and Zoning Law, and all other applicable laws when approving the Project.

3 32. Because the City issued the Approval Letter in March 2009, Petitioner's claim is
4 ripe for review.

5 33. Due to Petitioner's members' proximity to the Vineyard at Madeira shopping
6 center, Petitioner's members will be directly and substantially affected by the adverse
7 environmental impacts that may result from the Project.

8 34. Petitioner has standing to bring this action as its members include residents,
9 property owners, voters, and taxpayers of the City of Elk Grove who seek to compel a public
10 duty in the form of the City complying with State and local land use and environmental laws.

11 35. Petitioner will comply with the requirements of Public Resources Code Section
12 21167.5 by mailing written notice of this action to the City.

13 36. Petitioner will comply with Public Resources Code Section 21167.7 and Code of
14 Civil Procedure Section 388 by notifying the Attorney General of California of the
15 commencement of this action.

16 37. Petitioner has a right to enforce the City's mandatory duties under State and local
17 law related to the Project approval.

18 38. Petitioner does not have a plain, speedy, or adequate remedy in the ordinary
19 course of law.

20 39. A clear and significant benefit will be conferred upon the general public and
21 Petitioner by the City fully satisfying the requirements of State and local law prior to certifying
22 the EIR and approving the Land Use Approvals. A clear and significant benefit will be
23 independently conferred upon the general public by the City fully satisfying the requirements of
24 CEQA, State Planning and Zoning Law, and applicable City zoning ordinances and planning
25 documents. In instituting this action, Petitioner seeks to procure enforcement of a mandatory
26 duty. The public of which Petitioner's members are members is vitally and beneficially
27 interested in assuring that the mandate of law is fully satisfied and fulfilled. Granting the relief
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1 requested by Petitioner would confer a significant benefit on a large class of persons, in that
2 fundamental rules of law would be affected.

3 40. By the authority of Code of Civil Procedure sections 1085 and 1094.5, and Public
4 Resources Code sections 21168, 21168.5, and 21168.9, this Court has jurisdiction to issue a Writ
5 of Mandate and other appropriate equitable and injunctive relief to set aside the City's approval
6 of the Project.

7 41. Venue is proper in this Court because the causes of action alleged in this Petition
8 arose in Sacramento County where both the Project Site and the City that approved the Project
9 are located.

10 **FIRST CAUSE OF ACTION**

11 **(Prejudicial Abuse of Discretion: Violation of the City's Zoning Code)**

12 42. Petitioner realleges and incorporates herein by reference the allegations contained
13 in Paragraphs 1 through 41, above.

14 43. The City's approval of the Supercenter and issuance of the Approval Letter
15 violates the Elk Grove Zoning Code and therefore is a prejudicial abuse of discretion.

16 44. Under state law a city is "powerless" to approve a development application that is
17 not consistent with superior governing planning and land use regulations such as the General
18 Plan, Specific Plan, and Zoning Code.

19 45. Approving a development application in violation of such land use regulations is a
20 prejudicial abuse of discretion.

21 46. Pursuant to Section 23.32.030, Table 23.32.1 of the Elk Grove Zoning Code,
22 "Discount Stores" and "Discount Superstores" are allowed in the "SC" zone subject to a
23 Conditional Use Permit, but "Large-format Discount Superstores" are not permitted in the City at
24 all.

25 47. Section 23.98.030 of the Elk Grove Zoning Code defines "Retail Discount Stores"
26 as "stores with off-street parking that usually offer a variety of customer services, centralized
27 cashing, and a wide range of products. They usually maintain long store hours seven days a
28 week. The stores are often the only ones on the site, but they can also be found in mutual

1 operation with a related or unrelated garden center or service station. Discount stores are also
2 sometimes found as separate parcels within a retail complex with their own dedicated parking.
3 This use listing includes Big-Box retail uses as defined and regulated in Chapter 23.74 EGMC.
4 **There is no limit on the size of "Discount Stores," provided that they devote less than ten**
5 **percent of the total sales floor area to the sale of non-taxable merchandise."**

6 48. Section 23.98.030 of the Elk Grove Zoning Code defines a "Retail Discount
7 Superstore" as "a store that is similar to a 'discount store,' except that **they range in size from**
8 **100,000 to 149,999 square feet and devote at least 10 percent of the total sales floor area to**
9 **the sale of nontaxable merchandise.** These stores usually offer a variety of customer services,
10 centralized cashing, and wide range of products. They usually maintain long store hours seven
11 days a week. The stores are often the only ones on the site, but they can also be found in mutual
12 operation with a related or unrelated garden center or service station. Discount superstores are
13 also sometimes found as separate parcels within a retail complex with their own dedicated
14 parking. This use listing includes big-box retail uses as defined and regulated in Chapter 23.74
15 EGMC."

16 49. Section 23.98.030 of the Elk Grove Zoning Code defines a "Retail Large-format
17 Discount Superstore" as "a store that is similar to a 'discount store,' except that they are 150,000
18 square feet in size or larger and devote at least 10 percent of the total sales floor area to the sale
19 of nontaxable merchandise. These stores usually offer a variety of customer services, centralized
20 cashing, and wide range of products. The may also contain a full service grocery department
21 under the same roof that shares entrances and exits with the discount store area. They usually
22 maintain long store hours seven days a week. The stores are often the only ones on the site, but
23 they can also be found in mutual operation with a related or unrelated garden center or service
24 station. Discount superstores are also sometimes found as separate parcels within a retail
25 complex with their own dedicated parking. This use listing includes big-box retail uses as
26 defined and regulated in Chapter 23.74 EGMC."

27 50. The Elk Grove Zoning Code expressly recognizes that a "Retail Discount
28 Superstore" is unique from "Retail Discount Store". Table 23.32.1, footnote 14 of the Elk Grove

1 Zoning Code requires that specific studies be prepared for a proposed "Retail Discount
2 Superstore", including a Community Impact Analysis, an Economic/Fiscal Impact Analysis, a
3 Crime Analysis, and an Urban Decay Analysis.

4 51. The proposed Project does not fall within the Elk Grove Zoning Code's definition
5 of a "Retail Discount Store", and therefore is not consistent with the CUP for the Target Anchor
6 but falls within the definition of a "Retail Discount Superstore" because it will devote more than
7 ten percent of the sales floor area to the sale of "non-taxable merchandise" (e.g. groceries).

8 52. Section 23.98.030 of the Elk Grove Zoning Code defines "Grocery
9 store/supermarket" as "a retail business where the majority of the floor area open to the public is
10 occupied by food products packaged for preparation and consumption away from the site of the
11 store. These full-service businesses do not typically have limited hours of operation."

12 53. The proposed Project does not fall within the Elk Grove Zoning Code's definition
13 of a "Grocery store/supermarket" since it will not devote a majority of the floor area to food
14 products, but rather will include a variety of other merchandise. According to the Project
15 Description submitted to the City as part of the application materials, the store may include
16 general merchandise sales, grocery sales, alcohol sales, a medical clinic/vision center, photo lab,
17 nail/hair salon, pharmacy, indoor garden center, and a fast food restaurant.

18 54. The Project is not permitted as-of-right as a "Grocery store/supermarket" in the
19 "SC" zone since this anchor use type was superseded by the "Retail Discount Store" use permit
20 and other land use entitlements approved for The Vineyard at Madeira shopping center. The
21 City determined that market conditions demonstrated that a grocery store was not feasible in the
22 shopping center, and approved the 2008 Approvals expanding the size of the SC zoning
23 designation, along with a CUP for a "drive through facility" and "Discount Retail Store" for the
24 proposed Target Anchor.

25 55. Section 23.98.030 of the Elk Grove Zoning Code defines "Retail, general" as
26 "stores and shops selling multiple lines of merchandise. These stores and lines of merchandise
27 include art galleries, artists' supplies, bakeries (all production in support of on-site sales),
28 bicycles, books, cameras and photographic supplies, clothing and accessories, collectibles (cards,

1 coins, comics, stamps, etc.), department stores, drug stores, dry goods, fabrics and sewing
2 supplies, florists and houseplant stores (indoor sales only; outdoor sales are “plant nurseries”),
3 furniture, home furnishings and equipment, general stores, gift and souvenir shops, hardware,
4 hobby materials, jewelry, luggage and leather goods, musical instruments, parts and accessories,
5 newsstands, orthopedic supplies, pet supplies sales with no animals but fish, religious goods,
6 small wares, specialty shops, sporting goods and equipment, stationery, toys and games, and
7 variety stores. This use listing includes big-box retail uses as defined and regulated in Chapter
8 23.74 EGMC.”

9 56. The proposed Project does not fall within the Elk Grove Zoning Code’s definition
10 of “Retail, general”, but rather falls within the more specific definition of a “Retail Discount
11 Superstore” since it will devote more than ten percent of the sales floor area to the sale of
12 groceries.

13 57. The Project is not permitted as-of-right as a “Retail, general” store in the “SC”
14 zone since this anchor use type was superseded by the “Retail Discount Store” use permit and
15 other land use entitlements approved for the Vineyard at Madeira shopping center.

16 58. The 2008 Approvals included a CUP for a Target Anchor “Retail Discount
17 Store”, not a “Retail Discount Superstore” which the City expressly stated would not be a
18 “supermarket.”

19 59. The City did not make any findings that the Supercenter is within the scope of the
20 Target Anchor CUP or is otherwise a Retail Discount Store or Supermarket.

21 60. Since the proposed Wal-Mart Supercenter does not fall within the Elk Gove
22 Zoning Code’s definition of a “Retail Discount Store” or “Supermarket”, but rather is a “Retail
23 Discount Superstore” under the Zoning Code because it will devote more than ten percent of the
24 sales floor area to the sale of groceries, it is not in substantial conformance with the previously
25 approved plans for the Vineyard at Madeira shopping center and is required to obtain a new
26 CUP.

27 61. No CUP has been sought or granted for the Project.

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1 which was not known or could not have been known at the time the environmental impact report
2 was certified as complete, becomes available.”

3 68. Section 15162(a) of the CEQA Guidelines provides. “When an EIR has been
4 certified...for a project, no subsequent EIR shall be prepared for that project unless the lead
5 agency determines, on the basis of substantial evidence in light of the whole record, one or more
6 of the following: (1) Substantial changes are proposed in the project which will require major
7 revisions of the previous EIR...due to the involvement of new significant environmental effects
8 or a substantial increase in the severity of previously identified significant effects; (2) Substantial
9 changes occur with respect to the circumstances under which the project is being undertaken
10 which will require major revisions of the previous EIR...due to the involvement of new
11 significant environmental effects or a substantial increase in the severity of previously identified
12 significant effects; or (3) New information of substantial importance, which was not known and
13 could not have been known with the exercise of reasonable diligence at the time the previous
14 EIR was certified as complete ...”

15 69. Section 15163 of the CEQA Guidelines provides, “The lead or responsible agency
16 may choose to prepare a supplement to an EIR rather than a subsequent EIR if: (1) Any of the
17 conditions described in Section 15162 would require the preparation of a subsequent EIR, and
18 (2) Only minor additions or changes would be necessary to make the previous EIR adequately
19 apply to the project in the changed situation.”

20 70. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124
21 Cal.App.4th 1184, 1213, notes that that specific uses may not trigger environmental review, but
22 use-type will: “[R]ecognition of the characteristics of the shopping centers’ tenants is a
23 necessary prerequisite to accurate identification and analysis of the environmental consequences
24 that will result from approval of the proposed projects. When a particular type of retail business
25 planned for a proposed project will have unique for additional adverse impacts, then disclosure
26 of the type of business is necessary in order to accurately recognize and analyze the
27 environmental impacts flowing from the proposed project. A rendering plant has different
28 environmental impacts than a chandler. In the retail context, Supercenters are similarly unique.

1 Unlike the vast majority of stores, many Supercenters operate 24 hours per day seven days a
2 week. Such extended operational hours raise questions concerning increased or additional
3 adverse impacts relating to lights, noise, traffic, and crime.”

4 71. *American Canyon Community United for Responsible Growth v. City of American*
5 *Canyon* (2006) 145 Cal.App.4th 1062, 1075 further explains: “A Supercenter is a unique type of
6 retail operation” and evidence demonstrates that “supercenters draw from a larger regional
7 market than more typical shopping centers with the same total square footage of retail space and
8 thus may have unique traffic impacts.”

9 72. Petitioner is informed and believes and thereon alleges that the Target Anchor had
10 stipulated to operate only from the hours of 8:00 a.m. to 10:00 p.m., but that Wal-Mart plans to
11 operate the Supercenter from 6:00 a.m. to midnight and reserves the right to operate 24 hours per
12 day if it so chooses. The impacts of such operational hours have not been studied.

13 73. Petitioner is informed and believes and thereon alleges that substituting the Target
14 Anchor Retail Discount Store with a Supercenter will cause specific and unique environmental
15 effects such as increased traffic impacts, air quality impacts, energy impacts, public safety
16 impacts and other potentially significant environmental effects that have not been studied or
17 mitigated as required by CEQA.

18 74. Petitioner is further informed and believes and thereon alleges that the
19 Supercenter will, individually or cumulatively, contribute to store closures and lead to a series of
20 events that ultimately cause or contribute to urban decay in and around Elk Grove and that such
21 impacts have never been addressed in any environmental analysis prepared for the Supercenter,
22 the 2008 Approvals (including the Target Anchor), or any other environmental analysis affecting
23 the Supercenter property.

24 75. The City did not prepare an Initial Study which analyzed the Project pursuant to
25 Section 15063 of the CEQA Guidelines.

26 76. The City did not prepare and certify a Subsequent EIR which analyzed the Project
27 pursuant to Public Resources Code Section 21166 and Section 15162 of the CEQA Guidelines
28 prior to approving the Project.

1 77. The City did not prepare and certify a Supplement to an EIR which analyzed the
2 Project pursuant to Section 15163 of the CEQA Guidelines prior to approving the Project.

3 78. The City did not make any findings that the Project was not subject to subsequent
4 or supplemental environmental review.

5 79. Alternatively, the City did not follow any other recognized or authorized process
6 not otherwise discussed to evaluate the environmental effects of the Project.

7 80. Consequently, the City failed to proceed in the manner required by CEQA and
8 committed a prejudicial abuse of discretion by approving the Project without studying its
9 potential environmental impacts pursuant to the requirements of CEQA.

10
11 WHEREFORE, Petitioner prays as follows:

12 1. That this Court issue a peremptory writ of mandate:

13 a. Commanding the City to immediately set aside its approval of the Project;

14 b. Commanding the City to immediately suspend all activities in furtherance
15 of the Project, including but not limited to issuing grading permits, building permits, certificates
16 of occupancy and engaging in any construction in furtherance of the development of the Project;

17 c. Commanding the City to conduct environmental review for the Project and
18 otherwise comply with CEQA and State Planning and Zoning Law in any subsequent action
19 taken to approve the Project;

20 2. For a preliminary restraining order and preliminary and permanent injunctive or
21 stay relief restraining the City and Real Party in Interest from taking any action to carry out the
22 Project pending the outcome of this litigation;

23 3. For a declaration that the Project was unlawfully approved in violation of CEQA,
24 State Planning and Zoning Law, the Elk Grove General Plan and Zoning Code, and/or any other
25 applicable laws and regulations;

26 4. That Petitioners be awarded the cost incurred in bringing this action, and
27 reasonable attorney fees pursuant to Code of Civil Procedure Section 1021.5, the "common
28 benefit" theory, Government Code Section 800, or as otherwise provided by law or equity;

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5. That the Court grant such other and further relief as may be equitable and just.

Dated: September 22, 2009

HERUM CRABTREE
A California Professional Corporation

By: *Kerri K Foote*
KERRI K. FOOTE
Attorneys for Petitioner
FRIENDS OF MADEIRA

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VERIFICATION

I am one of the Attorneys of Record on whose behalf the foregoing Petition for Writ of Mandate is verified. I have read it and know the content thereof. I am informed and believe the matters therein to be true and on that ground allege the matters stated therein are true. I make this Verification because the party I represent is absent from the County of San Joaquin where I have my office.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed at Stockton, California on September 22, 2009.



KERRI K. FOOTE

**MINUTES OF THE CITY COUNCIL
SPECIAL MEETING
Wednesday, February 11, 2009**

CALL TO ORDER/ROLL CALL

Mayor Hume called the Special City Council meeting of February 11, 2009 to order at 5:03 p.m.

Present: Mayor Hume, Vice Mayor Scherman, Council Members Cooper, Davis and Detrick

Absent: None

CLOSED SESSION

There were no public requests to speak.

The City Clerk announced the following closed session items prior to Council adjourning to closed session at 5:05 p.m.:

A) CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code § 54956.8

Property Description: 8821 E. Stockton Boulevard
Elk Grove, CA 95624
APN: 116-0030-001-0000

City Negotiators: John Almazan, Real Property Manager

Negotiating parties: Brian Manning of Desmond, Nolan, Livaich
& Cunningham, representing S & S
Fencing

Under negotiation: Price and Terms

B) CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code § 54956.8

Property Description: 8821 East Stockton Blvd.
Elk Grove, California
APN: 116-0030-001-0000

City Negotiators: John Almazan, Real Property Manager

Negotiating parties: Brian Manning of Desmond, Nolan, Livaich & Cunningham, representing Stockmens Supply

Under negotiation: Price and Terms

C) CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code § 54956.8

Property Description: 9679 Johnston Road
Elk Grove, CA 95757
APN: 132-0270-022-0000

City Negotiators: John Almazan, Real Property Manager

Negotiating parties:

- Barbara J. Foster, Trustee Foster Family Trust (undivided 9/27th);
- William M. Foster, Trustee William M. Foster Revocable Living Trust (undivided 6/27th);
- Keith Elwood Foster, Successor Trustee Foster Trust (undivided 6/27th);
- Keith Foster, sole and separate property (undivided 3/27th);
- Lester Foster, sole and separate property (undivided 3/27th)

Under negotiation: Price and Terms

D) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Government Code §54956.9(a):

One (1) matter:

1. City of Elk Grove v. ISE Corporation, et al.
Sacramento County Superior Court
Case No. 34-2008-00011409-CU-BC-GDS

E) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Initiation of litigation pursuant to Government Code §54956.9(c):

Five (5) matters

F) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code §54956.9(b):

One (1) matter

The City Council reconvened at 6:23 p.m. with all Members present. In reference to closed session Item E), Mayor Hume reported that the following actions were taken:

Motion #1: **M/S Cooper/Scherman** authorizing Susan Feller of Sherman & Feller to initiate litigation against Reynan and Bardis, and any of its successors, to foreclose the City's tax lien for unpaid special taxes from CFD 2005-1 in Laguna Ridge. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

Motion #2: **M/S Cooper/Scherman** authorizing the City Attorney to commence litigation against Elk Grove Water Service for unpaid fees for work done in the City's roads and rights-of-way. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

No other reportable action was taken in closed session.

REGULAR AGENDA ACTION ITEMS/RECOMMENDATIONS

Agenda Item No. 3.1: Discuss Wal-Mart proposal in Laguna Ridge

RECOMMENDATION:

Discuss Wal-Mart proposal in Laguna Ridge and provide direction.

Mayor Hume read a summary of facts related to the Wal-Mart store proposed to be constructed on the southeast corner of Bruceville Road and Whitelock Parkway (filed). He explained that, along with the entitlements for the project, certain assumptions were made, such as the size of the store and hours of operation. Mr. Hume reported that he would be meeting with developer and Wal-Mart representatives. Additionally, he stated that the City would be pursuing an urgency ordinance to establish a Zoning Code amendment making it a requirement that certain commercially zoned properties citywide obtain a Conditional Use Permit for extended hours of operation.

Vice Mayor Scherman reported that she also had a meeting scheduled tomorrow with corporate and local Wal-Mart representatives.

Council Member Detrick mentioned that he had been working for the past two weeks on this matter with citizens, staff, and Wal-Mart representatives.

Council Member Davis ensured the large number of meeting attendees that he would vigorously fight for their interests.

PUBLIC COMMENTS:

The following individuals, many of whom identified themselves as Glenbrooke (Del Webb age-restricted community) residents, spoke in opposition to the proposed Wal-Mart project, voicing concerns about its intent to operate the store 24 hours a

day, seven days a week, increased traffic, lighting, noise, crime, litter, transient overnight vehicle parking, sale of firearms and liquor, and general negative effects on the quality of life for adjacent residents; preferred hours of operation offered during the comments included 8:00 a.m. to 10:00 p.m. Monday through Saturday and 8:00 a.m. to 9:00 p.m. on Sunday, or 7:00 a.m. to 10:00 p.m., or 5:00 a.m. to 11:00 p.m.:

Linda Hargan
Peter Gaffney
Howard Perlman
Les McCargo
*Richard Huff
Ronald Larson
Bill Elliott
Betsy Elliott

Jeff Olsen
*Alex Gould
*Steve Lee
Leo Plumley
Harold Dye
Sonja Shurr
Linda Ford
*Debbie Sareeram

Kathy Lee
Laurye Gage
Nichole Munoz-Murrillo
Rob Meyer
Donna Munoz
William Moser
Margaret Moser

***Notes:**

- Steve Lee submitted a three page document entitled *Target Site Criteria* (filed);
- Richard Huff, Debbie Sareeram, and Alex Gould, submitted written statements (all filed).
- 29 letters of opposition to the Wal-Mart proposal from Glenbrooke Community residents were submitted (filed).

City Manager Laura Gill stated that email updates would be sent to interested persons and notices would be posted on the City's website as progress proceeds.

Mayor Hume asked that communications be sent to the Glenbrooke lodge to disseminate to its members.

Council Member Davis pointed out that, due to current difficult economic conditions, there is pressure to accept any kind of economic stimulus; however, he believed the City should demand better than what has been proposed in this project. He pledged to meet with Wal-Mart representatives and ask them to choose a more suitable site for the store and, at a minimum, for its representatives to meet with surrounding residents.

Council Member Cooper expressed a concern regarding public safety and reported that the number of calls for service and arrests for shoplifting were greater at Wal-Mart than any other retail establishment. He did not believe the site was a good location for the proposed store.

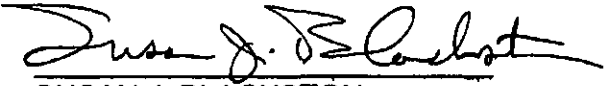
Vice Mayor Scherman was opposed to the store's proposal to operate 24 hours a day and resultant increased litter that would be generated. She suggested hours of

operation to be 6:00 a.m. to 10:00 p.m. Ms. Scherman explained that she was unavailable to attend Sunday's community meeting, due to a medical condition.

Council Member Detrick stated that he also would be asking Wal-Mart to relocate the project. Additionally, he stated that restricting the hours of operation would be his highest priority.

ADJOURNMENT

With no additional business to conduct, the February 11, 2009 Special City Council meeting was adjourned at 7:30 p.m.


SUSAN J. BLACKSTON,
CITY CLERK

ATTEST:


PATRICK HUME, MAYOR



17th Floor | Four Embarcadero Center | San Francisco, CA 94111-4106
415-434-9100 office | 415-434-3947 fax | www.sheppardmullin.com

Writer's Direct Line: 415-774-2980
mmontesinos@sheppardmullin.com

Our File Number 15CM-138843

February 24, 2009

VIA HAND DELIVERY

Mr. Don Hazen
Planning Director
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758

Re: Request for Written Determination Regarding Wal-Mart Store in the Vineyards at Madeira Shopping Center

Dear Mr. Hazen:

We write on behalf of our client, Wal-Mart Stores, Inc. ("Wal-Mart"), we hereby submit this letter with supporting materials to request a written determination that the proposed Wal-Mart store in the Vineyards at Madeira shopping center ("Project") substantially conforms with the entitlements granted by the City of Elk Grove ("City") for the Project. Accordingly, the Wal-Mart store does not require any additional discretionary entitlements, including Design Review. Further, the proposed use is permitted as-of-right and therefore does not require a Conditional Use Permit.

I. Background Regarding Existing Entitlements And Wal-Mart Proposal

The Project consists of an approximately 189,035 square foot shopping center located on 16.47 acres. On June 25, 2008, the City Council unanimously approved the Project entitlements. The entitlements included an amendment to the Laguna Ridge Specific Plan, a rezone, a Tentative Parcel Map, a Conditional Use Permit (to allow the operation of a drive-thru facility within 300 feet of a residential property and allow construction of a Retail Discount Store), and Design Review (to allow development of the shopping center). The City determined that the Project was exempt from environmental review under the California Environmental Quality Act. No legal challenges were filed against the City's exemption determination or its approval of the Project entitlements. As such, the entitlements are final.

The submittals made to the Planning Department during processing anticipated that the main anchor would be an approximately 148,200 square foot Target store. Subsequently, Target decided not to pursue development of an anchor store within the Project.

Mr. Don Hazen
February 24, 2009
Page 2

Wal-Mart now proposes to develop the main anchor at the Project. The proposal includes a Wal-Mart store that is under 100,000 square feet. The proposed architecture, site design, and landscaping substantially conform to the Target store when the Project was approved.

Wal-Mart's proposal would not impact the approved Laguna Ridge Specific Plan amendment, rezone, or Tentative Parcel Map. Further, as discussed directly below, it would substantially conform with the approved Design Review permit and would not require a Conditional Use Permit.

II. No Additional Entitlements Required

As set forth below, the Wal-Mart store substantially conforms to the Design Review permit granted by the City for the Project. As such, a modification of the Design Review permit is not required. Further, the proposed Wal-Mart store is permitted as-of-right by the Zoning Code. Accordingly, a Conditional Use Permit (or modification of the existing Conditional Use Permit) is not required.

A. The Wal-Mart store substantially conforms to the approved Design Review permit.

According to Zoning Code Section 23.20.10, once a permit has been granted, if the Planning Director determines that a proposed project is not in substantial conformance with the permit, the project will require a permit modification for consideration and action by the same approving body as the original permit.

In this case, however, the Wal-Mart Site Plan (dated February 4, 2009), Elevations (dated February 17, 2009), Sign Program (dated February 18, 2009), and Preliminary Landscape Plan (dated February 4, 2009) substantially conform to the Design Review permit. Therefore, a modification to the approved Design Review permit is not required.

As illustrated in the enclosed Site Plan, Preliminary Landscape Plan, Elevations, and Sign Program the Wal-Mart store substantially conforms with the approved Design Review permit in the following respects:

- The Wal-Mart site plan substantially conforms with the Target site plan.
- The Wal-Mart building footprint falls almost entirely within the Target building footprint except for minor deviations due to relocation of the vestibule area and a minor deviation in the northwest corner of the building. The Wal-Mart building is oriented to the north, like the Target building.

Mr. Don Hazen
February 24, 2009
Page 3

- The site plan continues to provide setbacks between the building and property lines. The Wal-Mart store maintains slightly greater setbacks between the building and property lines, resulting in more buffer area to Bruceville Road, Poppy Ridge Road, and the planned residential uses to the east.
- The site plan continues to provide landscaping in the parking lot. The Wal-Mart proposal provides slightly larger landscape islands in the parking lot, providing a higher percentage of shading (over 60% in 15 years), and more square feet of landscape area than Target.
- The Wal-Mart parking lot design mirrors the Target parking lot design, including the design of the landscape planters and the location of the two interior pedestrian walkways that connect the Wal-Mart store to two outparcels to the north. A minor change is that the Wal-Mart site plan eliminates head-in parking along the eastern boundary, creating an additional buffer between the shopping center and the residential community to the east. Within the new buffer area, Wal-Mart proposes to include an additional sidewalk for pedestrian connectivity along the eastern boundary of the site.
- The site plan includes adequate parking. Wal-Mart will provide 450 parking spaces, which meets the City's parking requirement of 4.5 parking spaces per 1,000 square feet. Target was not able to meet this requirement therefore the City approved a reduction in parking for the Project. Wal-Mart will not need to take advantage of such a reduction in parking. Wal-Mart will provide 9.5-foot wide parking spaces, which is slightly wider than the 9-foot wide Target parking spaces. The Wal-Mart proposal also includes less compact spaces and such compact spaces are wider than those proposed by Target (Wal-Mart proposes 80 compact spaces that would be 9.5 feet wide while Target included 120 compact spaces that were 8 feet wide). This results in easier vehicle accessibility.
- The Wal-Mart loading area is located in the same area as the Target loading area. The Wal-Mart proposal includes a larger truck maneuvering area to provide more efficient truck access to the loading bays
- The architecture and signage proposed for the Wal-Mart store substantially conforms to the Target store.
- The Wal-Mart store also uses variations in wall plane, similar earth-tone colors, and similar materials (including rock treatment)

Mr. Don Hazen
February 24, 2009
Page 4

- The Wal-Mart store continues to provide features that add visual interest to address scale and massing.
- The Wal-Mart store continues to comply with the Uniform Sign Program that the City approved as part of the Design Review permit. Specifically, Wal-Mart will include approximately 236.45 square feet of on-building signage and approximately 140 square feet of monument signage (based upon two multi-tenant monument signs and one single-tenant monument sign), both of which are less than the amount of signage allowed in the Uniform Sign Program.

Based upon this information, the Wal-Mart store clearly substantially conforms with the approved Design Review permit. As such, a modification to the permit is not required.

B. The Wal-Mart store does not require a Conditional Use Permit.

The Wal-Mart store will be less than 100,000 square feet and will devote more than 10% of the sales floor area to the sale of groceries. Therefore, the store falls within the "retail, general" and "grocery stores/supermarkets" uses, both of which are permitted as-of-right in the Shopping Center district. (Zoning Code Table 23.32-1.) The store does not fall within the definition of "retail, discount store" or "retail, discount superstore", which require a Conditional Use Permit in the Shopping Center district. Accordingly, a Conditional Use Permit is not required for the store.

* * *

We respectfully request a written determination that the Wal-Mart store does not require any discretionary review because: (1) the proposal substantially conforms to the existing Design Review permit; and (2) the Wal-Mart store does not require a Conditional Use Permit since the use is permitted as-of-right in the Shopping Center district.

Finally, we understand the Planning Director's determination is a ministerial approval exempt from environmental review under the California Environmental Quality Act. Therefore, a Notice of Exemption will be filed when the determination is issued.

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Mr Don Hazen
February 24, 2009
Page 5

Thank you in advance for your time and consideration. Please do not hesitate to contact me if you have any questions.

Sincerely,

Miriam Montesinos/ESA

Miriam Montesinos

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST1-SMIM2401336973 3

cc: Laura Gill, City Manager
Patrick Blacklock, Assistant City Manager
Susan Cochran, City Attorney
Jessica Shalamunec, Planner
Carr Thomson, Wal-Mart Stores, Inc.

ELK GROVE WAL-MART PROJECT

Project Description

The Project is an approximately 99,585 square foot Wal-Mart store. The Wal-Mart store would be located within the approximately 189,035 square foot Vineyards at Madeira shopping center development.

1. Proposed Uses

The Wal-Mart store may include the following components:

- General merchandise sales
- Grocery sales
- Alcohol sales
- Medical clinic/vision center
- Photo lab
- Nail/hair salon
- Pharmacy
- Indoor garden center
- Trash compactors
- Loading docks
- HVAC equipment and condensing towers/units on the roof
- Signage
- Lighting (parking lot and on-building)
- Fast food restaurant
- Branded retail tenant

2. Building Design

Wal-Mart believes that the exterior design of its building is its first welcoming impression. Wal-Mart has made a commitment to design its new Elk Grove store with sensitivity toward its new community and its neighbors' needs as shoppers and pedestrians. The store exterior is designed in an eclectic contemporary style reminiscent of California's renowned

wine country. It uses a combination of strong modern lines and forms with both contemporary and traditional, rustic materials. The goal is to fit seamlessly into the architecture of the Vineyards at Madeira Shopping Center.

To humanize the scale and enhance the experience of walking close to the front elevation of the single story building, variety in massing, architectural detailing, trellises and canopies, and rich natural colors will be used. The building design follows the previously approved proposal closely, using similar materials, elements, and colors.

Signage is used for information and not for product promotion or decorative reasons. The main "Wal-Mart" sign identifies the building to vehicular traffic and the secondary signage identifies the entrance. The featured "Wal-Mart" sign wall near the northwest corner of the building is clad in the environmentally friendly Trespa Meteor Wall Panel System, contemporary looking and weather, impact, vandal, and fire resistant.

The entire building uses parapet walls to screen the limited rooftop mechanical equipment from neighborhood view. Truck docks are screened by attractive masonry walls.

3. Parking Lot Design

The Wal-Mart store will provide 470 parking spaces, including 20 spaces that may be used for moveable cart corrals. After subtracting the spaces that may be occupied by cart corrals, the Wal-Mart store will provide 4.5 parking spaces per 1,000 square feet of floor area, which meets the Zoning Code requirement.

The Wal-Mart site will include internal pedestrian pathways that will accommodate pedestrian movement throughout the parcel and will connect the Wal-Mart store to the remainder of the shopping center. This includes two pedestrian pathways down the center of the Wal-Mart site and an additional sidewalk for pedestrian connectivity along the eastern boundary of the site. Cart storage areas will be interspersed throughout the parking area.

4. Hours of Operation

Wal-Mart currently proposes to operate the store from 6 am to midnight, seven days per week, which is allowed per the City's Municipal Code. Wal-Mart reserves the right to extend the hours of operation as allowed by the Code.

5. Deliveries and Loading

The proposed Wal-Mart store will have a four-door truck dock at the rear of the building, which will be accessed by roll-up doors. The Wal-Mart store will receive deliveries throughout the day, with most deliveries occurring during the daytime.

The Wal-Mart store will provide many features that will mitigate noise impacts. Importantly, a sound wall will be provided along the Wal-Mart parcel. Adjacent to the Wal-Mart store, the wall will be comprised of an 8-foot solid wall on top of a 2-foot earthen berm, for an overall height of 10 feet. This wall is consistent with the recommendations in the Environmental

Noise Assessment prepared for the Target store as part of the Vineyards at Madeira shopping center entitlement process.

The assessment analyzed the noise impacts of delivery and loading operations for the loading docks at the same location as proposed with the Wal-Mart store. It considered on-site heavy truck movements and loading dock activities that would be expected to occur at any time of day. Based upon these operations, the assessment concluded that a 10-foot high noise barrier (comprised of earthen berm, solid wall, or a combination of the two) would mitigate noise impacts at the closest future residences to the east. As a result, the mitigated noise exposure at the closest neighboring properties would not be expected to exceed City noise exposure standards. Since the sound wall included with the Wal-Mart proposal meets these recommendations, it will mitigate any noise associated with loading and delivery operations. (Bollard Acoustical Consultants, November 28, 2007.)

In addition, Wal-Mart will provide many additional features that will further mitigate noise impacts. For instance, the store will provide sealed rubber gaskets at the truck docks. Further, unloading will occur directly from the truck to the building. Also, engine idling by delivery trucks will be prohibited – in fact, Wal-Mart truck engines shut off automatically after three minutes of idling. (If a truck includes a refrigeration unit, the unit remains refrigerated by a motor in the front of the trailer, which sounds similar to a window A/C unit.)

Moreover, Wal-Mart will comply with the City's noise ordinance, further ensuring that noise impacts will be minimal.

6. **Building Green Features**

The store will incorporate many sustainability features, which continues to establish Wal-Mart as a leader in the retail industry in implementing sustainable business practices that address global warming and reduce the energy demand footprint of its stores. Wal-Mart's environmental goals are simple and straightforward: To be supplied 100 percent by renewable energy, create zero waste, and sell products that sustain our environment.

Wal-Mart is passionately committed to finding ways to build stores that can reduce its impact on the environment. The store sustainability features may include the following:

- a. **Daylighting**: The store will include a daylight harvesting system (skylights, electronic dimming ballasts, computer controlled daylight sensors, etc.).
- b. **Night Dimming**: Lights will dim to about 75% illumination during the late night hours.
- c. **Energy Efficient HVAC Units**: Wal-Mart utilizes high efficiency HVAC units. While the industry standard EER (Energy Efficiency Ratio) is 9.0, Wal-Mart units are rated at between 12.1 to 14.3. These units range between 4-17% more efficient than required by CA Title 24.

- d. Dehumidifying: Wal-Mart actively dehumidifies its buildings, allowing them to operate at a higher temperature and use less energy. It also allows the refrigeration systems to operate more efficiently.
- e. Central Energy Management: The store will be equipped with an energy management system that will be monitored and controlled from the Home Office in Bentonville, Arkansas.
- f. Water Heating: The store will capture waste heat from the refrigeration equipment to heat water for the kitchen preparation areas of the store.
- g. White Roofs: Wal-Mart uses a white membrane roof versus most applications that are darker in color. The high solar reflectivity of this membrane results in lowering the cooling load by about 10%.
- h. Non-PVC Roofs: Recognizing environmental concerns with the manufacture and disposal of PVC, Wal-Mart has eliminated all PVC roofing.
- i. Interior Lighting: The Wal-Mart store will utilize T-8 fluorescent lamps and electronic ballasts, which comprise the most efficient lighting system on the market. Wal-Mart also uses low mercury lamps, the bulbs of which, unlike all other fluorescent lamps, are not considered to be hazardous material and can be disposed of in any landfill. Also, Wal-Mart installs occupancy sensors in non-sales areas that detect activity in a room and automatically turn off the lights when the space is unoccupied.
- j. LED Signage Illumination: Wal-Mart uses LED lighting in all of the internally illuminated building signage for all new construction. With longer lamp life, using LEDs significantly reduces need to manufacture and dispose of fluorescent lamps.
- k. Integrally Colored Concrete Floors: Wal-Mart uses exposed concrete floors in newly constructed stores to reduce surface applied flooring materials. This approach eliminates the need for most chemical cleaners. The exposed concrete slabs are integrally colored.
- l. Recycling: Wal-Mart stores are designed and equipped to recycle oil, tires, auto batteries, cardboard, vegetable oil, single-use cameras, plastic waste, and silver from photo processing. In addition, Wal-Mart buildings include significant amounts of recycled materials, including steel and plastic.
- m. Water-Conserving Fixtures: The restroom sinks use sensor-activated low-flow faucets. The faucets reduce usage by 84%. The sensors save approximately 20% usage over similar manual operated systems. Urinals use 0.125 gpf which is an 87.5% reduction. Toilets use 1.28 gpf which is a 25% reduction.

- n. Ozone-Friendly Refrigerants: Wal-Mart is converting to less ozone-depleting refrigerants as they become available, using R404a for refrigeration equipment and R410a refrigerant for air conditioning equipment.

Phone 916 683 7111
Fax 916 691 3175

Web www.elkgrovecity.org

8401 Laguna Palms Way
Elk Grove, California 95758



March 26, 2009

Mr. Shell MacPherson
PACLAND
2901 Douglas Blvd., Suite 295
Roseville, CA 95661

RE: Elk Grove Walmart

Dear Shell:

The attached plans for the proposed Walmart store located at the northeast corner of Bruceville and Poppy Ridge Roads have been determined to be in substantial conformance with the previously approved plans for the Vineyard at Madeira shopping center. Therefore, no further entitlements from the Planning Department or Planning Commission are needed and the project is cleared to proceed towards construction in accordance with the attached conditions and mitigation measures for the shopping center.

If you have any further questions, please call me at 916-478-2264.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Hazen", written over a horizontal line.

Don Hazen
Planning Director

Encl: Conditions of Approval

CC: Miriam Montesinos, Sheppard Mullin
Lux Taylor, Potter-Taylor & Co.
Susan Cochran, City Attorney
Rick Renfro, Building Official
Richard Shepard, Public Works Director