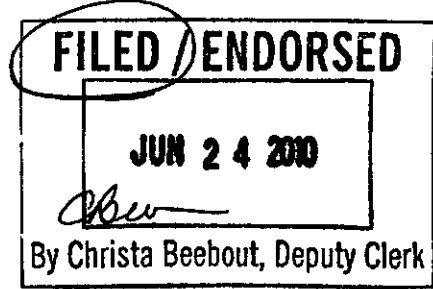


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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SACRAMENTO

10 FRIENDS OF MADEIRA, an unincorporated )  
11 association. )

12 Petitioner, )

13 vs )

14 CITY OF ELK GROVE, BY AND )  
15 THROUGH THE CITY COUNCIL, and )  
16 DOES I THROUGH XXX )

17 Respondents. )

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

21 Real Parties in Interest. )  
22 )  
23 )

Case No.: 34-2009-80000332

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

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

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

12 **PARTIES**

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

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

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

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

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

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

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

8 **GENERAL ALLEGATIONS**

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

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

1 also be found in mutual operation with a related or unrelated garden center or service station  
2 Discount stores are also sometimes found as separate parcels within a retail complex with their  
3 own dedicated parking. This use listing includes Big-Box retail uses as defined and regulated in  
4 Chapter 23 74 EGMC. There is no limit on the size of "Discount Stores," provided that they  
5 devote less than ten percent of the total sales floor area to the sale of non-taxable merchandise."  
6 Although the Zoning Code also allows "Retail Discount Superstores," which may be up to  
7 150,000 square feet in size and may dedicate any amount of floor area to the sale of "non-taxable  
8 merchandise" subject to additional studies and a different CUP, Taylor deliberately decided to  
9 seek approval of a "Retail Discount Store" which, by definition, would "devote less than ten  
10 percent of the total sales floor area to the sale of non-taxable merchandise." (These applications  
11 are collectively referred to at the "2008 Approvals.")

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

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

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 Madera, 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.

25          17.    On or about February 25, 2009, Wal-Mart submitted plans for an approximately  
26 99,999 square foot Supercenter to anchor the shopping center. As part of its application, Wal-  
27 Mart's Counsel submitted a letter to the City dated February 24, 2009, requesting "a written  
28 determination that the Wal-Mart store does not require any discretionary review because. (1) the

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

13       18     On or about March 3, 2009, Petitioner’s Counsel submitted a written letter to the  
14 City indicating the Project required further environmental review and a new CUP due to the  
15 change in retail use. Petitioner’s Counsel explained the Project was not in substantial  
16 compliance with the original project approvals since it did not fall within the Elk Grove Zoning  
17 Code’s definition of a Discount Store, but rather was a Discount Superstore since it proposes to  
18 devote more than ten percent of the sales floor area to the sale of groceries. Further, Petitioner’s  
19 Counsel explained the Zoning Code requires a CUP for a Discount Superstore in the “SC” zone.  
20 Petitioner’s Counsel also explained that a Supercenter is a unique type of use with unique  
21 environmental impacts the City is required to evaluate in a CEQA analysis. Petitioner requested  
22 that it be provided notice of any and all public hearings related to the approval of the Project, as  
23 well as the staff reports prepared for those hearings, notices of determination and/or exemption,  
24 notices of scoping meetings; notices of any public hearings regarding a negative declaration or  
25 EIR; and notices of any decisions, determinations, permits, or approvals of the proposed Project,  
26 including building permits.

27       19.     The City did not respond to Petitioner’s Counsel’s March 3, 2009 letter  
28

1           20.     On or about March 26, 2009, the City Planning Department approved the Land  
2 Use Approvals and issued a letter stating the plans for the proposed Wal-Mart Supercenter were  
3 “in substantial conformance with the previously approved plans for The Vineyard at Madeira  
4 shopping center” and thus, “no further entitlements from the Planning Department or Planning  
5 Commission are needed and the project is cleared to proceed towards construction.” (“Approval  
6 Letter”).

7           21     The City did not provide any public notice of or any opportunity for the public to  
8 comment on the Land Use Approvals

9           22     The City did not prepare an Initial Study or conduct any environmental review for  
10 the Land Use Approvals.

11          23     The City did not file a “notice of exemption” or “notice of determination” with  
12 the Office of Planning and Research regarding its decision to approve the Land Use Approvals or  
13 the Approval Letter.

14          24.     Although prior environmental documents and notices of decisions and approvals  
15 regarding the shopping center were filed with the Governor’s Office of Planning and Research  
16 “State Clearinghouse” (“OPR”) no documents regarding the Supercenter, the Land Use  
17 Approvals, or the Approval Letter were filed with OPR.

18          25.     Despite expressly requesting notice of “any decisions, determinations, permits, or  
19 approvals” for the Land Use Approvals, the City did not provide notice of the March 26, 2009  
20 Approval Letter to Petitioner’s Counsel or to any of Petitioner’s members.

21          26     On or about August 7, 2009, Petitioner’s Counsel submitted another written letter  
22 to the City requesting notice and/or information regarding the Project. Petitioner’s Counsel cited  
23 a July 17, 2009 article from the *Sacramento Business Journal* entitled “Construction on Elk  
24 Grove’s second Wal-Mart Supercenter to begin in fall”, which stated “The retail giant expects  
25 this fall to begin construction of a 99,900-square-foot Supercenter [at the Vineyard at Madeira  
26 shopping center] and open a year later, a Wal-Mart spokesman said.” Petitioner also requested  
27 the City inform it whether any approvals or permits had issued for the Project  
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1           27     In a letter dated September 9, 2009, the City responded to Petitioner stating, "no  
2 actions have been [sic] occurred that would require such notice " Further, the City confirmed  
3 that the proposed Wal-Mart Supercenter totaling 99,999 square feet "will locate in the 'Vineyard  
4 at Madeira' shopping center and will replace a previously approved 148,200 square foot Target  
5 store." Additionally, the City stated that "[b]ecause all other site development plans are virtually  
6 unchanged and the Walmart is a smaller store, no further discretionary land use entitlements are  
7 required." The City omitted any reference to the Approval Letter.

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

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

19           30     Several of Petitioner's members live in the Del Webb Glenbrooke senior living  
20 community located immediately north of the Vineyard at Madeira shopping center project and  
21 would be able to see and hear the shopping center from their homes. Petitioner's members have  
22 a direct and beneficial interest in the City fully complying with CEQA, State Planning and  
23 Zoning law, the Elk Grove Zoning Code, and all other applicable laws when considering and  
24 approving the Land Use Approvals.

25           31     The City has a mandatory and public duty to comply with CEQA, State Planning  
26 and Zoning Law, and all other applicable laws when approving the Project

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

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

4           34    Petitioner has standing to bring this action as its members include residents,  
5 property owners, voters, and taxpayers of the City of Elk Grove who seek to compel a public  
6 duty in the form of the City complying with State and local land use and environmental laws

7           35    Petitioner will comply with the requirements of Public Resources Code Section  
8 21167.5 by mailing written notice of this action to the City.

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

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

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

16          39    A clear and significant benefit will be conferred upon the general public and  
17 Petitioner by the City fully satisfying the requirements of State and local law prior to certifying  
18 the EIR and approving the Land Use Approvals. A clear and significant benefit will be  
19 independently conferred upon the general public by the City fully satisfying the requirements of  
20 CEQA, State Planning and Zoning Law, and applicable City zoning ordinances and planning  
21 documents. In instituting this action, Petitioner seeks to procure enforcement of a mandatory  
22 duty. The public of which Petitioner's members are members is vitally and beneficially  
23 interested in assuring that the mandate of law is fully satisfied and fulfilled. Granting the relief  
24 requested by Petitioner would confer a significant benefit on a large class of persons, in that  
25 fundamental rules of law would be affected.

26          40    By the authority of Code of Civil Procedure sections 1085 and 1094.5, and Public  
27 Resources Code sections 21168, 21168.5, and 21168.9, this Court has jurisdiction to issue a Writ  
28

1 of Mandate and other appropriate equitable and injunctive relief to set aside the City's approval  
2 of the Project

3 41 Venue is proper in this Court because the causes of action alleged in this Petition  
4 arose in Sacramento County where both the Project Site and the City that approved the Project  
5 are located.

6 **FIRST CAUSE OF ACTION**

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

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

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

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

15 45 Approving a development application in violation of such land use regulations is a  
16 prejudicial abuse of discretion.

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

21 47 Wal-Mart claimed the Supercenter would not require a CUP because "it does not  
22 fall within the definition of 'retail, discount' store or 'retail, discount superstore'", but rather,  
23 "falls within the 'retail, general' and 'grocery stores/supermarkets' uses, both of which are  
24 permitted as-of-right in the Shopping Center District " Wal-Mart's Counsel also disclosed that  
25 the Supercenter "will devote more than 10% percent of the sales floor area to the sale of  
26 groceries." *Id.* This interpretation of the Elk Grove Zoning Code, which was not formally  
27 adopted or endorsed by the City, is illogical and absurd, Wal-Mart argued the *addition of*

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1 groceries to a sub-100,000 sq ft Retail Discount Store (which requires a CUP) eliminates the  
2 Retail Discount Store CUP requirement altogether.

3 48. Section 23.98.030 of the Elk Grove Zoning Code defines "Retail Discount Stores"  
4 as "stores with off-street parking that usually offer a variety of customer services, centralized  
5 cashing, and a wide range of products. They usually maintain long store hours seven days a  
6 week. The stores are often the only ones on the site, but they can also be found in mutual  
7 operation with a related or unrelated garden center or service station. Discount stores are also  
8 sometimes found as separate parcels within a retail complex with their own dedicated parking.  
9 This use listing includes Big-Box retail uses as defined and regulated in Chapter 23.74 EGMC.  
10 There is no limit on the size of 'Discount Stores,' provided that they devote less than ten percent  
11 of the total sales floor area to the sale of non-taxable merchandise."

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

22 50. Table 23.32.1, footnote 14 of the Elk Grove Zoning Code requires that specific  
23 studies be prepared for a proposed "Retail Discount Superstore", including a Community Impact  
24 Analysis, an Economic/Fiscal Impact Analysis, a Crime Analysis, and an Urban Decay Analysis.

25 51. Section 23.98.030 of the Elk Grove Zoning Code defines a "Retail Large-format  
26 Discount Superstore" as "a store that is similar to a 'discount store,' except that they are 150,000  
27 square feet in size or larger and devote at least 10 percent of the total sales floor area to the sale  
28 of nontaxable merchandise. These stores usually offer a variety of customer services, centralized

1 cashing, and wide range of products. They may also contain a full service grocery department  
2 under the same roof that shares entrances and exits with the discount store area. They usually  
3 maintain long store hours seven days a week. The stores are often the only ones on the site, but  
4 they can also be found in mutual operation with a related or unrelated garden center or service  
5 station. Discount superstores are also sometimes found as separate parcels within a retail  
6 complex with their own dedicated parking. This use listing includes big-box retail uses as  
7 defined and regulated in Chapter 23.74 EGMC."

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         Section 23.98.030 of the Elk Grove Zoning Code defines "Retail, general" as  
13 "stores and shops selling multiple lines of merchandise. These stores and lines of merchandise  
14 include art galleries, artists' supplies, bakeries (all production in support of on-site sales),  
15 bicycles, books, cameras and photographic supplies, clothing and accessories, collectibles (cards,  
16 coins, comics, stamps, etc.), department stores, drug stores, dry goods, fabrics and sewing  
17 supplies, florists and houseplant stores (indoor sales only; outdoor sales are "plant nurseries"),  
18 furniture, home furnishings and equipment, general stores, gift and souvenir shops, hardware,  
19 hobby materials, jewelry, luggage and leather goods, musical instruments, parts and accessories,  
20 newsstands, orthopedic supplies, pet supplies sales with no animals but fish, religious goods,  
21 small wares, specialty shops, sporting goods and equipment, stationery, toys and games, and  
22 variety stores. This use listing includes big-box retail uses as defined and regulated in Chapter  
23 23.74 EGMC."

24         54         The Project does not fall within the Elk Grove Zoning Code's definition of a  
25 "Grocery store/supermarket" since it will not devote a majority of the floor area to food products,  
26 but rather will include a variety of other merchandise. According to the Project Description  
27 submitted to the City as part of the application materials, the Supercenter will have extended  
28 hours of operations and will include general merchandise sales, grocery sales, alcohol sales, a

1 medical clinic/vision center, photo lab, nail/hair salon, pharmacy, indoor garden center, and a  
2 fast food restaurant

3 55. Likewise, the Project does not fall within the Zoning Code's definition of "Retail,  
4 general" since it combines a full service grocery store, the sale of general merchandise, and a  
5 variety of other services. The sale of groceries is not identified in the Zoning Code's definition  
6 of "Retail, general."

7 56. The proposed Supercenter meets the definition of a "Retail Discount Superstore"  
8 since it will offer a variety of customer services and a wide range of products, including general  
9 retail merchandise and grocery items, and will maintain long store hours seven days a week, and  
10 will devote more than ten percent of the sales floor area to the sale of groceries. In the  
11 alternative, the proposed Supercenter, at a minimum, meets the definition of a "Retail Discount  
12 Store "

13 57. The Project is not permitted as-of-right as a "Grocery store/supermarket" or a  
14 "Retail, general" store in the "SC" zone. The City determined that market conditions  
15 demonstrated that a grocery store was not feasible in the shopping center, and approved the 2008  
16 Approvals expanding the size of the SC zoning designation, along with a CUP for a "drive  
17 through facility" and "Discount Retail Store" for the proposed Target Anchor which did not  
18 include over 10% of the sales floor area devoted to the sale of nontaxable merchandise.

19 58. The 2008 Approvals included a CUP for a Target Anchor "Retail Discount  
20 Store", which the City expressly stated would not be a "supermarket " The project description  
21 submitted as part of the 2008 Approvals application stated that the shopping center would  
22 provide neighborhood commercial services and the list of uses did not include grocery or food  
23 sales

24 59. The Project is not consistent with the CUP for the Target Anchor since it proposes  
25 a new "supermarket" use within the Retail Discount Store not previously identified or studied in  
26 the 2008 Approvals.

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1           68.     Public Resources Code §21166 provides, "When an environmental impact report  
2 has been prepared for a project pursuant to this division, no subsequent or supplemental  
3 environmental impact report shall be required by the lead agency or by any responsible agency,  
4 unless one or more of the following events occurs: (a) Substantial changes are proposed in the  
5 project which will require major revisions of the environmental impact report. (b) Substantial  
6 changes occur with respect to the circumstances under which the project is being undertaken  
7 which will require major revisions in the environmental impact report. (c) New information,  
8 which was not known or could not have been known at the time the environmental impact report  
9 was certified as complete, becomes available."

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

22           70.     Section 15163 of the CEQA Guidelines provides, "The lead or responsible agency  
23 may choose to prepare a supplement to an EIR rather than a subsequent EIR if: (1) Any of the  
24 conditions described in Section 15162 would require the preparation of a subsequent EIR, and  
25 (2) Only minor additions or changes would be necessary to make the previous EIR adequately  
26 apply to the project in the changed situation."

27           71     *Bakersfield Citizens for Local Control v City of Bakersfield* (2004) 124  
28 Cal App 4th 1184, 1213, notes that that specific uses may not trigger environmental review, but

1 use-type will: "[R]ecognition of the characteristics of the shopping centers' tenants is a  
2 necessary prerequisite to accurate identification and analysis of the environmental consequences  
3 that will result from approval of the proposed projects. When a particular type of retail business  
4 planned for a proposed project will have unique for additional adverse impacts, then disclosure  
5 of the type of business is necessary in order to accurately recognize and analyze the  
6 environmental impacts flowing from the proposed project. A rendering plant has different  
7 environmental impacts than a chandler In the retail context, Supercenters are similarly unique.  
8 Unlike the vast majority of stores, many Supercenters operate 24 hours per day seven days a  
9 week. Such extended operational hours raise questions concerning increased or additional  
10 adverse impacts relating to lights, noise, traffic, and crime."

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

16 73. Petitioner is informed and believes and thereon alleges that the Target Anchor had  
17 stipulated to operate only from the hours of 8.00 a.m. to 10.00 p m , but that Wal-Mart plans to  
18 operate the Supercenter from 6:00 a m. to midnight and reserves the right to operate 24 hours per  
19 day if it so chooses. The impacts of such operational hours have not been studied.

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

25 75 Petitioner is further informed and believes and thereon alleges that the  
26 Supercenter will, individually or cumulatively, contribute to store closures and lead to a series of  
27 events that ultimately cause or contribute to urban decay and other community deterioration in  
28 and around Elk Grove and that such impacts have never been addressed an any environmental

1 analysis prepared for the Supercenter, the 2008 Approvals (including the Target Anchor), or any  
2 other environmental analysis affecting the Supercenter property

3 76 The City did not prepare an Initial Study which analyzed the Project pursuant to  
4 Section 15063 of the CEQA Guidelines.

5 77 The City did not prepare and certify a Subsequent EIR which analyzed the Project  
6 pursuant to Public Resources Code Section 21166 and Section 15162 of the CEQA Guidelines  
7 prior to approving the Project.

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

10 79. The City did not make any findings that the Project was not subject to subsequent  
11 or supplemental environmental review.

12 80 Alternatively, the City did not follow any other recognized or authorized process  
13 not otherwise discussed to evaluate the environmental effects of the Project.

14 81. Consequently, the City failed to proceed in the manner required by CEQA and  
15 committed a prejudicial abuse of discretion by approving the Project without studying its  
16 potential environmental impacts pursuant to the requirements of CEQA.

17

18 WHEREFORE, Petitioner prays as follows

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

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

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

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

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- 1           2.       For a preliminary restraining order and preliminary and permanent injunctive or  
2 stay relief restraining the City and Real Party in Interest from taking any action to carry out the  
3 Project pending the outcome of this litigation,
- 4           3.       For a declaration that the Project was unlawfully approved in violation of CEQA,  
5 State Planning and Zoning Law, the Elk Grove General Plan and Zoning Code, and/or any other  
6 applicable laws and regulations;
- 7           4.       That Petitioners be awarded the cost incurred in bringing this action, and  
8 reasonable attorney fees pursuant to Code of Civil Procedure Section 1021.5, the "common  
9 benefit" theory, Government Code Section 800, or as otherwise provided by law or equity,
- 10          5.       That the Court grant such other and further relief as may be equitable and just.

11  
12 Dated: June 22, 2010

HERUM CRABTREE  
*A California Professional Corporation*

13  
14 By:   
15 BRETT S. JOLLEY  
16 Attorneys for Petitioner  
17 FRIENDS OF MADEIRA  
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HERUM CRABTREE

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VERIFICATION

I am one of the Attorneys of Record on whose behalf the foregoing First Amended 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 June 22, 2010.

  
BRETT S JOLLEY