

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
A Limited Liability Partnership  
2 Including Professional Corporations  
ROBERT J. URAM, Cal. Bar No. 122956  
3 JUDY V. DAVIDOFF, Cal. Bar No. 103434  
ELIZABETH S. ANDERSON, Cal. Bar No. 239047  
4 Four Embarcadero Center, 17th Floor  
San Francisco, California 94111  
5 Telephone: 415-434-9100  
Facsimile: 415-434-3947  
6

7 Attorneys for Petitioner  
Wal-Mart Stores, Inc.  
8

9 BEFORE THE CALIFORNIA  
10 STATE WATER RESOURCES CONTROL BOARD  
11

12 In the Matter of the April 23, 2010, Second  
13 Denial Without Prejudice of the  
Application for Water Quality Certification  
14 for the Walters Road West Development  
Project  
15

**PETITION FOR RECONSIDERATION**

[Petition Filed: May 21, 2010]

16 Pursuant to California Code of Regulations, Title 23, Section 3867, Wal-Mart Stores, Inc.,  
17 ("Petitioner") hereby petitions the State Water Resources Control Board ("State Board") to  
18 reconsider the San Francisco Bay Region Water Quality Control Board's ("Regional Board")  
19 Second Denial Without Prejudice of the Application for Water Quality Certification for the  
20 Walters Road West Development Project, in the City of Suisun City ("City"), Site No. 02-48-  
21 C0394 (WBH) ("Second Denial," attached as Attachment 1).  
22

23 **1. Name, Address, and Telephone Number of the Petitioner**  
24

25 Petitioner: Wal-Mart Stores, Inc.  
26 Attn: Carr Thomson  
27 2001 Southeast 10th Street  
28

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Bentonville, AR 72716-0550  
(479) 204-0060

Agent: Robert A. Karn & Associates, Inc.  
Attn: Todd Anderson  
707 Beck Avenue  
Fairfield, CA 94533  
(707) 435-9999  
tanderson@rakengineers.com

**2. Specific Action which the State Board is Requested to Reconsider**

Issuance of the Second Denial

**3. Date of the Second Denial**

April 23, 2010

**4. Full and Complete Statement of Reasons Why the Action was Improper or Inappropriate**

a. Background

In July 2006, the Petitioner filed an application with the City requesting approval to develop a shopping center on an approximately 20.8 acre site at the corner of Walters Road and State Route 12 in the City. Specifically, the Petitioner requested approval of an approximately 215,000 square foot supercenter, a restaurant, gas station, and associated parking and

1 infrastructure ("Project," site plan is attached as Attachment 2). The City prepared an  
2 Environmental Impact Report in compliance with the California Environmental Quality Act to  
3 analyze the impacts of the Project. The City certified the Environmental Impact Report and  
4 approved all the necessary City entitlements for the Project on February 12, 2008. The City  
5 determined that the impacts to water quality, biology, and wetlands were not significant after  
6 mitigation. The California Superior Court, County of Solano, upheld the City's certification of the  
7 Environmental Impact Report.

8  
9         The Project will service the currently unmet needs of the residents of Suisun City and  
10 regional consumers as well as the future demand from planned residential development in the  
11 Suisun City/Fairfield region of Solano County. The Project will provide a large range of general  
12 and specialized merchandise for the City's residents. The planned gas station and restaurant  
13 increase the viability of the Project and the revenue generated for the City. The Project will  
14 provide 375 permanent jobs and 200 construction jobs and will provide an estimated \$800,000 in  
15 sales tax revenue to Suisun City in the initial year of operation, which will increase to nearly  
16 \$1,600,000 annually in 20 years. Attachment 3. While the City has experienced a dramatic rise in  
17 population in recent years, the City has not experienced a commensurate increase in employment  
18 centers and services and most residents need to commute outside the City for work and for many  
19 services. Attachment 3. Studies conducted by the City found that the City is leaking sales to other  
20 jurisdictions. Attachment 3. This results in a lack of sales tax revenue, which contributes to the  
21 City's structural budget deficit, leads to a reduction of critical City services, and has other severe  
22 consequences. Attachment 3.

23

24         The Project site contains approximately 2.996 acres of waters of the United States, of  
25 which 0.433 acres is an approximately 1,100 linear foot man-made ditch. The remainder are  
26 seasonal wetlands. The hydrology feeding these wetlands originates mostly from intercepted

27

28

1 rainfall. Historical records show that the wetlands have been regularly disturbed by disking and  
2 farming.

3  
4 The man-made ditch bisects the Project site from north to south. It collects urban runoff  
5 from development north of the Project site and discharges into an underground culvert at the  
6 corner of Walters Road and State Route 12. Attachment 2. Both the former upstream and  
7 downstream segments of the ditch have been filled as the result of prior development. It is part of  
8 the City's storm water system and provides little functions to the ecosystem.

9  
10 Surveys completed in 2007 and 2008 found that no federally or state listed threatened or  
11 endangered species are located on the site. A sliver of the eastern edge of the site is located within  
12 federally designated critical habitat for Contra Costa Goldfields, vernal pool fairy shrimp, and  
13 vernal pool tadpole shrimp, probably as a result of a mapping error.

14  
15 Given the presence of the aforementioned aquatic features, the Petitioner filed the  
16 following applications on November 20, 2007: (1) an application for a Section 404 Individual  
17 Permit from the United States Army Corps of Engineers ("Corps") to fill the jurisdictional  
18 wetlands (including a request that the Corps initiate consultation with the United States Fish and  
19 Wildlife Service to obtain concurrence that the Project would not adversely impact the survival or  
20 maintenance of vernal pool crustaceans or Contra Costa Goldfields); (2) an application for a  
21 Streambed Alteration Agreement with the California Department of Fish and Game to place the  
22 man-made ditch in an underground culvert; and (3) an application for a Section 401 water quality  
23 certification from the Regional Board to fill the jurisdictional wetlands. The Department of Fish  
24 and Game approved the Streambed Alteration Agreement on July 28, 2008. Attachment 4. The  
25 Streambed Alteration Agreement requires that the Petitioner mitigate for permanent impacts to the  
26 man-made ditch at a 2:1 ratio by purchasing stream replacement credits from the Elsie Gridley  
27 Mitigation Bank, or other bank if approved by the California Department of Fish and Game.

1           The Regional Board denied the Petitioner's original request for certification without  
2 prejudice on November 19, 2008. ("First Denial," Attachment 5.) The Petitioner re-submitted its  
3 application for water quality certification to the Regional Board on January 22, 2009. Attachment  
4 6. As shown in Attachment 7, it was received on January 22, 2009. The Regional Board's first  
5 response to the application was on March 12, 2009. ("March 2009 Additional Information  
6 Request," Attachment 7.) The March 2009 Additional Information Request sought to have the  
7 applicant clarify, amplify, correct, or otherwise supplement the contents of the complete  
8 application. On March 13, 2009, the Petitioner met with the Regional Board to discuss the  
9 application and the Alternatives Analysis, and the parties agreed that the Petitioner would supply  
10 the information sought in the March 2009 Additional Information Request. On March 25, 2009,  
11 the Petitioner submitted an Addendum to the second Alternatives Analysis, including the specific  
12 additional information.

13  
14           On April 24, 2009, the Regional Board sent the Petitioner a second letter asking for further  
15 additional information to clarify, amplify, correct or otherwise supplement the previously  
16 submitted filings. ("April 2009 Additional Information Request," Attachment 8.) The parties  
17 entered into negotiations to identify a development plan and mitigation plan that would be  
18 mutually satisfactory. The Petitioner provided additional information concerning the practicability  
19 of further avoidance to Regional Board Executive Director Bruce Wolfe in a series of meetings,  
20 phone calls, and e-mails commencing on September 28, 2009. These discussions culminated in an  
21 agreement with Mr. Wolfe that the Petitioner would reduce the proposed impacts by not proposing  
22 to develop the gas station parcel, which is located at the southern corner of the Project site, at the  
23 intersection of Walters Road and State Route 12 (site plan showing proposed agreement with the  
24 Regional Board is included as Attachment 9). This would result in the avoidance of  
25 approximately 0.22 acres of wetlands (including 0.06 acres of the man-made ditch that would not  
26 be filled). The Petitioner also agreed to mitigate for the loss of seasonal wetlands at the Elsie  
27 Gridley Mitigation Bank and to mitigate for the loss of linear feet of riparian feature in a  
28

1 constructed channel within and adjacent to the Noonan Ranch Mitigation Bank. The Petitioner  
2 memorialized the agreement in an e-mail to Mr. Wolfe and others on February 25, 2010.

3  
4 On April 23, 2010, the Regional Board denied the Petitioner's application without  
5 prejudice due to the purported lack of a complete application and, specifically, because the  
6 Petitioner failed to provide the "supplemental application materials addressing the deficiencies  
7 described in [the Regional Board's] April 24, 2009, letter."

8  
9 b. The Second Denial is ineffective because the Regional Board had waived  
10 certification as a matter of law.

11  
12 Under federal law, the state has one year after receipt of a valid application to certify that  
13 federal activity will not violate state water quality standards. This time limit is strictly applied.  
14 Here, the Petitioner submitted a complete application for certification and the Regional Board did  
15 not act on the certification within the one-year time limit. Accordingly, the Regional Board  
16 waived its certification as a matter of law.

17  
18 i. *Petitioner's application was complete.*

19  
20 (1) Petitioner submitted all information required for a complete  
21 application.

22  
23 Section 3856 of Title 23 of the California Code of Regulations lists the contents of a  
24 complete application for a water quality certification. The Petitioner's application included all the  
25 materials identified in Section 3856. Attachment 6. Neither the April 2009 Additional  
26 Information Request nor the Second Denial identified any information required under Section  
27 3856 that was missing from the Petitioner's application. Instead, the Regional Board states in the  
28

1 Second Denial that the application is incomplete because the Petitioner had not addressed the  
2 issues presented in the April 2009 Additional Information Request. (As explained above, the  
3 Petitioner did in fact respond to the April 2009 Additional Information Request.) But the issues  
4 identified in the April 2009 Additional Information Request have nothing to do with whether the  
5 Petitioner's application was complete. Instead, the Regional Board's April 2009 Additional  
6 Information Request focused on the application of the Environmental Protection Agency's  
7 Section 404(b)(1) Guidelines ("404(b)(1) Guidelines") to the Project and whether the Petitioner  
8 had demonstrated that it had avoided and minimized impacts to the extent practicable.  
9 Information related the 404(b)(1) Guidelines is not a requirement for a complete application under  
10 Section 3856. Rather, the regulation requires only that the application provide "a description of  
11 any other steps that have been taken to avoid, minimize, or compensate for loss of or significant  
12 adverse impacts to beneficial uses of waters of the state." 23 C.C.R. § 3856(h)(6). The  
13 Petitioner's Alternatives Analysis and mitigation proposal that were submitted with its application  
14 materials provided this information. An application cannot be deemed incomplete merely because  
15 the Regional Board disagrees with the results of the Alternatives Analysis or the elements of the  
16 proposed mitigation, as submitted.

17

18 (2) Petitioner's application was deemed complete because the Regional  
19 Board failed to identify any missing information within the statutory  
20 time period.

21

22 In any case, the Petitioner's application was deemed complete as a matter of state law. As  
23 noted above, the Petitioner re-submitted its application for water quality certification to the  
24 Regional Board on January 22, 2009, and the application was received on the same day. Under  
25 state law, the Regional Board has 30 days to review an application for completeness and to notify  
26 the applicant if the application is incomplete. 23 C.C.R. § 3835(a); Cal. Gov. Code § 65943(a). If  
27 no action is taken within 30 days, the application is deemed complete as a matter of law. Cal.

28

1 Gov. Code § 65943(a). The Regional Board took no action on the Petitioner's January 22, 2009,  
2 application within this 30-day period. As noted above, the first response to the application was on  
3 March 12, 2009. Attachment 7. Accordingly, the Petitioner's application was deemed complete  
4 on February 21, 2009, 30 days after receipt, and was therefore valid under state law. 23 C.C.R.  
5 § 3835(d); Cal. Gov. Code § 65943(a).

6  
7 The Regional Board is allowed to ask for additional information after an application is  
8 complete, 23 C.C.R. § 3836(a), but this request for additional information does not change the fact  
9 that the application was previously deemed complete. Cal. Gov. Code § 65943(a). This is clear  
10 from the regulation itself. Section 3836 is captioned "Additional Information," and subsection (a)  
11 states "Once . . . an application is complete, [the Regional Board] may request further  
12 information." Nor does a Section 3836(a) request in any way extend the federal period for  
13 certification. 23 C.C.R. § 3836(b).

14  
15 ii. *Federal law establishes a strict one-year time limit for certification.*

16  
17 Under Section 401 of the Clean Water Act, a state must act on a request for certification  
18 within a reasonable time period, not to exceed one year, or be deemed to have waived the right to  
19 act. 33 U.S.C. § 1341(a)(1). The waiver and one-year time limit are mandatory under federal law:  
20 If a state "fails or refuses to act on a request for certification, within a reasonable period of time  
21 (*which shall not exceed one year*) after receipt of such request, the certification requirements of  
22 this subsection shall be deemed waived." *Id.* (emphasis added). The Corps' regulations state that  
23 certification will be deemed to be waived if the certifying agency fails to act within 60 days of  
24 receipt of a request for certification, although this period can be extended to a period of up to one  
25 year if required by "special circumstances." 33 C.F.R. § 325.2(b)(1)(ii). However, the extension  
26 is "not to exceed one year, at which time a waiver will be deemed to occur." *Id.* The Petitioner  
27 has no record that the District Engineer made such a finding, so certification was waived on March  
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1 22, 2009, 60 days after receipt of a complete application. Even if the Corps allowed the maximum  
2 period of one year, certification is waived because the Regional Board failed to act on the  
3 certification request by January 22, 2010, one year after receipt of the application for certification.

4  
5           iii.     *The Second Denial is ineffective because the Regional Board had no*  
6                     *authority to act on the application at the time of issuance of the Second*  
7                     *Denial.*

8  
9           The Regional Board issued the Second Denial on April 23, 2010. The Second Denial was  
10 ineffective because water quality certification had been waived under Section 401 of the Clean  
11 Water Act because the Regional Board failed to act, as describe above, by either March 22, 2009,  
12 or January 22, 2010. The Regional Board is aware of this one-year time frame because the  
13 Regional Board had previously denied the Petitioner's original request for certification without  
14 prejudice on November 19, 2008, due to the pending expiration of the one-year period from the  
15 date of the first complete application. Attachment 5. The Regional Board denied certification "to  
16 preserve our ability to act on a water quality certification for this Project," indicating that the  
17 Regional Board recognized that failure to act on the Petitioner's application within a year of  
18 receipt would constitute a waiver of certification. Under the State Board's rules, this First Denial  
19 was valid because it was done within the one year federal period for certification. By contrast, the  
20 Second Denial was clearly beyond the one year period.

21  
22           The Second Denial appears to raise the novel theory that the April 2009 Additional  
23 Information Request issued under 23 C.C.R. § 3836(a) somehow restarted both the 60-day and  
24 one-year clock for acting on a valid certification. This argument is both factually and legally  
25 flawed. It is not supported by the facts in the record because there is no assertion in the  
26 April 2009 Additional Information Request that the requested information is needed for a  
27 complete application. Instead, this argument is raised for the first time in the Second Denial, in a  
28

1 clear attempt to avoid waiver by re-characterizing the substantive concerns identified in the  
2 April 2009 Additional Information Request as elements needed for a complete project description.  
3 Similarly, the theory lacks any legal foundation because the regulation cannot be read to allow a  
4 regional board to alter the requirements of federal law. The Regional Board cannot rely on  
5 23 C.C.R. § 3836(b) because the regulation does no more than to allow a regional board to deny  
6 an application without prejudice if the regional board does so within the time periods allowed  
7 under the Clean Water Act and the Corps rules.<sup>1</sup> Any attempt to read 23 C.C.R. § 3836(b) to  
8 extend the time for acting on a request for certification beyond the strict one-year time limit  
9 imposed under Section 401 of the Clean Water Act is invalid because it is inconsistent with  
10 federal law. 33 U.S.C. § 1341(a)(1) (describing the time period “which shall not exceed one  
11 year”). Allowing the Regional Board to request additional information, beyond what was required  
12 for a complete application, and then to deny the application solely because the Regional Board has  
13 not yet completed its review of supplemental information would result in an end-run around the  
14 one-year time limit Congress set for states to certify that pending federal actions would not violate  
15 state water quality standards. *See, e.g.*, 33 U.S.C. § 1251(f) (declaring the national policy of  
16 avoiding unnecessary delays at all levels of government in implementing the Clean Water Act);  
17 115 Cong. Rec. 9264 (Apr. 16, 1969) (stating that purpose of time limit in section 401 is “to do  
18 away with dalliance or unreasonable delay and to require a ‘yes’ or ‘no’”) (statement of Rep.  
19 Edmondson).

20  
21 iv. *The Regional Board's attempt to apply the 404(b)(1) Guidelines to the*  
22 *application is inconsistent with the Basin Plan and the Clean Water*  
23 *Act.*  
24  
25

26  
27 <sup>1</sup> The provisions of Section 3836(b) that suggest that an extension of the one-year time limit for certification  
28 can be obtained is inconsistent with federal law. *Airport Communities Coalition v. Graves*, 280 F.Supp.2d  
1207 (W.D. Wash. 2003) (describing the one-year time limit as mandatory).

1           The Regional Board's attempt to apply the 404(b)(1) Guidelines in a water quality  
2 certification is improper because the 404(b)(1) Guidelines are not water quality standards. Under  
3 Section 404 of the Clean Water Act, the Corps may only issue permits for the discharge of  
4 dredged or fill materials that are certified by the state as being in compliance with state water  
5 quality standards. 33 U.S.C. § 1341(a). In California, water quality standards include: (1)  
6 Beneficial Uses; (2) Water Quality Objectives; and (3) the Anti-Degradation Policy. The  
7 404(b)(1) Guidelines are not beneficial uses, objectives, or the anti-degradation policy. Beneficial  
8 Uses define the resources, services, and qualities of aquatic systems that are the ultimate goals of  
9 protecting and achieving high water quality. They apply statewide and are listed in Chapter 2 of  
10 the Basin Plan. The 404(b)(1) Guidelines are neither listed as a Beneficial Use nor described in  
11 any of the Beneficial Uses described in more detail. Similarly, the 404(b)(1) Guidelines are not  
12 listed in Chapter 4 of the Basin Plan as Water Quality Objectives, which are numeric and narrative  
13 limits on water characteristics or bans on substances that affect water quality. The Anti-  
14 Degradation Policy works in tandem with Water Quality Objectives. In instances where existing  
15 water quality is better than that prescribed by the Water Quality Objectives, the state Anti-  
16 Degradation Policy applies (State Board Resolution 68-16: Statement of Policy With Respect to  
17 Maintaining High Quality of Waters in California). Accordingly, the 404(b)(1) Guidelines are not  
18 related to the Anti-Degradation Policy.

19  
20           Indeed, the Basin Plan does not contemplate application of the 404(b)(1) Guidelines to  
21 water quality certifications. Chapter 4 of the Basin Plan sets forth the policies and programs the  
22 Regional Board will implement to achieve the water quality standards articulated in other sections  
23 of the Basin Plan. Section 4.23.4 describes the Regional Board's measures for wetlands fill and  
24 describes the Regional Board's authority under both federal and state law. The Basin Plan states  
25 "[t]he Water Board uses the U.S. EPA's Section 404(b)(1), 'Guidelines for Specification of  
26 Disposal Sites for Dredge or Fill Material,' dated December 24, 1980, which is incorporated by  
27 reference into this plan, in determining the circumstances under which wetlands filling may be

28

1 permitted.” Basin Plan, at 148. This passage, which is the only reference to the 404(b)(1)  
2 Guidelines in the entire Basin Plan, is clearly limited to Regional Board actions under state law.  
3 Water quality certification under Section 401 is not a permitting program, but rather, as the Basin  
4 Plan describes earlier, is a means for the state to “certify that any permit issued by the Corps  
5 pursuant to Section 404 [of the Federal Clean Water Act] will comply with water quality standards  
6 established by the state (e.g., Basin Plans or statewide plans).” Basin Plan, at 147.

7  
8 In addition to these legal restrictions under federal law and guidance under the Basin Plan,  
9 there are strong policy reasons for limiting application of the 404(b)(1) Guidelines to instances  
10 where the Regional Board is acting under state law. Any activity requiring a Section 401 water  
11 quality certification is already subject to compliance with the 404(b)(1) Guidelines. 33 U.S.C.  
12 § 1344(b)(1). Application by the Regional Board in such instances is, therefore, unnecessary and  
13 in fact runs the risk that two agencies applying the same regulations would reach different  
14 outcomes. The Clean Water Act provides a mechanism for the Regional Board to apply the  
15 404(b)(1) Guidelines to actions that require a federal permit. The state has the ability under  
16 404(g)(1) to administer its own permitting program for discharge of dredged and fill materials into  
17 federal jurisdictional waters. 33 U.S.C. § 1344(g)(1). If the Regional Board disagrees with how  
18 the Federal agencies are applying the 404(b)(1) Guidelines, it must follow the procedures required  
19 under 404(g) and (h) to establish such a regulatory program under the Clean Water Act, rather  
20 than attempting to apply the 404(b)(1) Guidelines through its water quality certification program.

21  
22 **5. Manner in which the Petitioner is Aggrieved**

23  
24 The Regional Board issuance of the Second Denial is ineffective because: (1) the  
25 Petitioner's application was complete; (2) federal law establishes a strict one-year time limit for  
26 certification; (3) the Regional Board had no authority to act on the application at the time of  
27 issuance of the Second Denial; and (4) the Regional Board's attempt to apply the 404(b)(1)

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1 Guidelines to the application for water quality certification is inconsistent with the Basin Plan and  
2 the Clean Water Act. The Petitioner is aggrieved because continuation of the Section 401  
3 Certification process as contemplated by the Second Denial will delay the issuance of the Section  
4 404 permit until that process is complete and will delay the economic benefits of development to  
5 the Petitioner and the City.

6

7 **6. Specific Action by the State Board Which the Petitioner Requests**

8

9 The Petitioner requests that the State Board confirm that the Regional Board waived its  
10 opportunity for state certification under Section 401 of the Clean Water Act. If the State Board  
11 does not agree that the Regional Board waived its opportunity to act, then the Petitioner requests  
12 that the State Board direct the Regional Board to act on the application without applying the  
13 404(b)(1) Guidelines.

14

15 **7. List of Persons other than Petitioner, if any, Known to Have an Interest in the**  
16 **Subject Matter of the Petition**

17

18 None

19

20 **8. Statement that the Petition has Been Sent to the Appropriate Regional Board**

21

22 A copy of this petition is being filed simultaneously to the Executive Officer of the  
23 Regional Board.

24

25 **9. Copy of a Request to Executive Officer for Preparation of Regional Board Staff**  
26 **Record**

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28

1 A copy of the request to the Executive Officer of the Regional Board to prepare the staff  
2 record is attached as Attachment 10 to this Petition.

3

4 **10. Summary of Manner Petitioner Participated in Certification Process**

5

6 The Petitioner is the Applicant for the water quality certification. Please see section (4)(a)  
7 above for a summary of the manner in which the Petitioner participated in the certification  
8 process. In addition to the above, the Petitioner contacted the Regional Board numerous times by  
9 telephone and e-mail.

10

11 **11. Conclusion**

12

13 The Petitioner requests that the State Board confirm that the Regional Board waived its  
14 opportunity for state certification under Section 401 of the Clean Water Act. If the State Board  
15 does not agree that the Regional Board waived its opportunity to act, then the Petitioner requests  
16 that the State Board direct the Regional Board to act on the application without applying the  
17 Section 404(b)(1) Guidelines.

18

19

DATED: May 21, 2010

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Respectfully submitted,

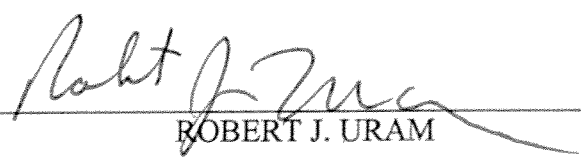
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SHEPPARD MULLIN RICHTER & HAMPTON LLP

22

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By

  
ROBERT J. URAM

24

25

Attorneys for Petitioner  
Wal-Mart Stores, Inc.

26

27

28

# **ATTACHMENT 1**



Linda Adams  
Agency Secretary

# California Regional Water Quality Control Board

## San Francisco Bay Region

1515 Clay Street, Suite 1400, Oakland, California 94612  
(510) 622-2300 • Fax (510) 622-2460  
<http://www.waterboards.ca.gov/sanfranciscobay>



Arnold Schwarzenegger  
Governor

April 23, 2010  
Site No. 02-48-C0394 (WBH)  
CIWQS Place No.: 722750

**Certified Mail No. 7007 2560 0001 7506 6675**  
**Return Receipt Requested**

Wal-Mart Stores, Inc.  
Robert A. Karn & Associates  
707 Beck Avenue  
Fairfield, CA 94333  
Attention: Mr. Todd Anderson  
[TAnderson@RAKengineers.com](mailto:TAnderson@RAKengineers.com)

**SUBJECT: Second Denial without Prejudice of the Application for Clean Water Act Section 401 Water Quality Certification for the Walters Road West Development Project, City of Suisun, Solano County; Corps File No. 2006-303520N**

Dear Mr. Anderson:

Wal-Mart Stores, Inc., (Wal-Mart) has applied for a federal Clean Water Act section 401 water quality certification (certification) for the Walters Road West Development Project (Project) in Suisun City. The Project proposes to develop approximately 18.34 acres for a commercial retail center on a 20.8-acre parcel and discharge fill material into approximately 2.9 acres of jurisdictional waters.

The Water Board first received an application for certification for the Project on November 20, 2007. Due to the lack of a complete application detailing the Project proposal and to preserve the Water Board's ability to act on a certification for the Project, on November 19, 2008, I denied certification without prejudice.

On January 22, 2009, the Water Board received a new certification application for the Project. Water Board staff also received supplemental application materials in the form of an Addendum to the Alternatives Analysis on March 27, 2009. Staff reviewed these application materials and provided comments describing the application's deficiencies in letters dated March 12, and April 24, 2009. Staff has also met with Wal-Mart's representatives to discuss the Project and its certification application. However, to date, staff has not received any supplemental application materials addressing the deficiencies described in our April 24, 2009, letter (attached). Thus, the Project's certification application remains incomplete as described in our April 24 letter. Due to the lack of a complete application detailing the Project proposal, the Water Board cannot certify that

*Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years*



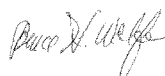
the Project as proposed will not violate State water quality standards. Accordingly, to preserve the Water Board's ability to act on a certification for the Project, I am denying certification of the Project without prejudice.

Water quality certification for this Project is hereby denied without prejudice.

Wal-Mart may reapply for certification by submitting a revised certification application to the Water Board. Staff will work with Wal-Mart's representatives to develop a certifiable Project design.

If you have any questions, please contact Jolanta Uchman of my staff at (510) 622-2432 or via email to [JUchman@waterboards.ca.gov](mailto:JUchman@waterboards.ca.gov).

Sincerely,



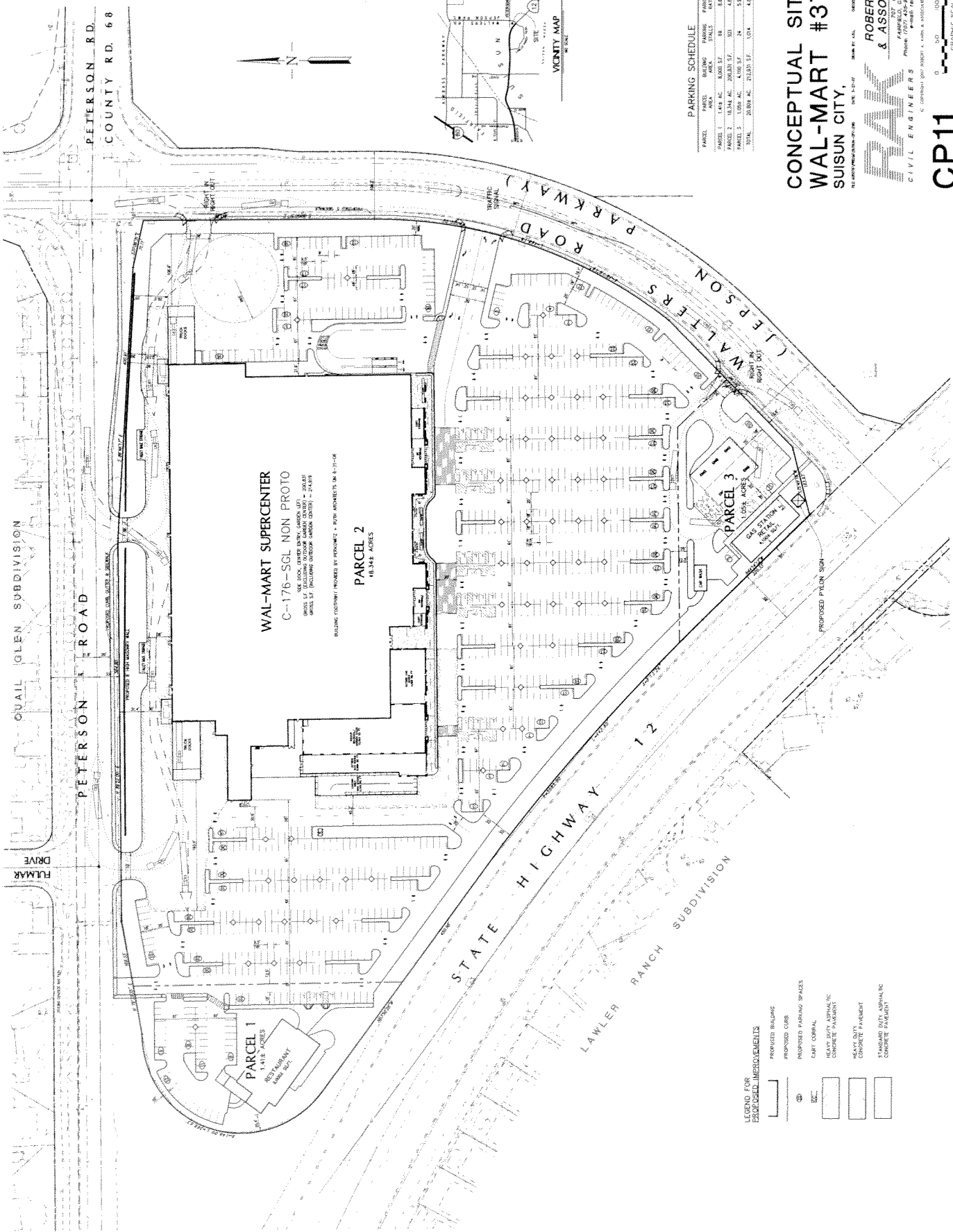
Digitally signed  
by Bruce Wolfe  
Date:  
2010.04.23  
14:47:39 -07'00'

Bruce H. Wolfe  
Executive Officer

Attachment: Water Board correspondence dated April 24, 2009

Cc: SWRCB-DWQ, [401Stateboard@waterboards.ca.gov](mailto:401Stateboard@waterboards.ca.gov)  
U.S. EPA, [R9-WTR8-Mailbox@epa.gov](mailto:R9-WTR8-Mailbox@epa.gov)  
Bryan Matsumoto [bryan.t.matsumoto@usace.army.mil](mailto:bryan.t.matsumoto@usace.army.mil)  
Jane Hicks [jane.m.hicks@usace.army.mil](mailto:jane.m.hicks@usace.army.mil)  
Laurie Monarres [laurie.a.monarres@usace.army.mil](mailto:laurie.a.monarres@usace.army.mil)  
Cameron Johnson [cameron.l.johnson@usace.army.mil](mailto:cameron.l.johnson@usace.army.mil)  
Michelle Tovar [Michelle\\_Tovar@fws.gov](mailto:Michelle_Tovar@fws.gov)  
Brenda Blinn [BBLINN@dfg.ca.gov](mailto:BBLINN@dfg.ca.gov)  
Robert Uram [RUram@sheppardmullin.com](mailto:RUram@sheppardmullin.com)  
Jeff Olberding [Jeff@olberdingenv.com](mailto:Jeff@olberdingenv.com)  
Daniel Kasperson [dan@suisun.com](mailto:dan@suisun.com)  
Anthony Moscarelli [archerone@comcast.net](mailto:archerone@comcast.net)  
Phil Tucker [pgtucker@aol.com](mailto:pgtucker@aol.com)  
Beth Garber [egarber@ufcw5.org](mailto:egarber@ufcw5.org)  
George Guynn, Jr. [georgejr@hotmail.com](mailto:georgejr@hotmail.com)  
Wayne Monger [wmonger@comcast.net](mailto:wmonger@comcast.net)  
Richard Hanson [hansonra@sbcglobal.net](mailto:hansonra@sbcglobal.net)

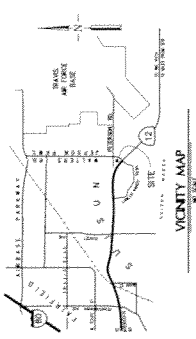
# **ATTACHMENT 2**



**WAL-MART SUPERCENTER**  
 C-176-SGL NON PROTO  
 18.344 ACRES  
 BUILDING FOOTPRINT PROVIDED BY ARCHITECTS + RUSH ARCHITECTS, INC. 10-11-06

**PARKING SCHEDULE**

PARCEL	BUILDING	PARKING
PARCEL 1	1.418 AC.	800 SF
PARCEL 2	18.344 AC.	200,000 SF
PARCEL 3	1.028 AC.	4,100 SF
TOTAL	20.800 AC.	214,900 SF



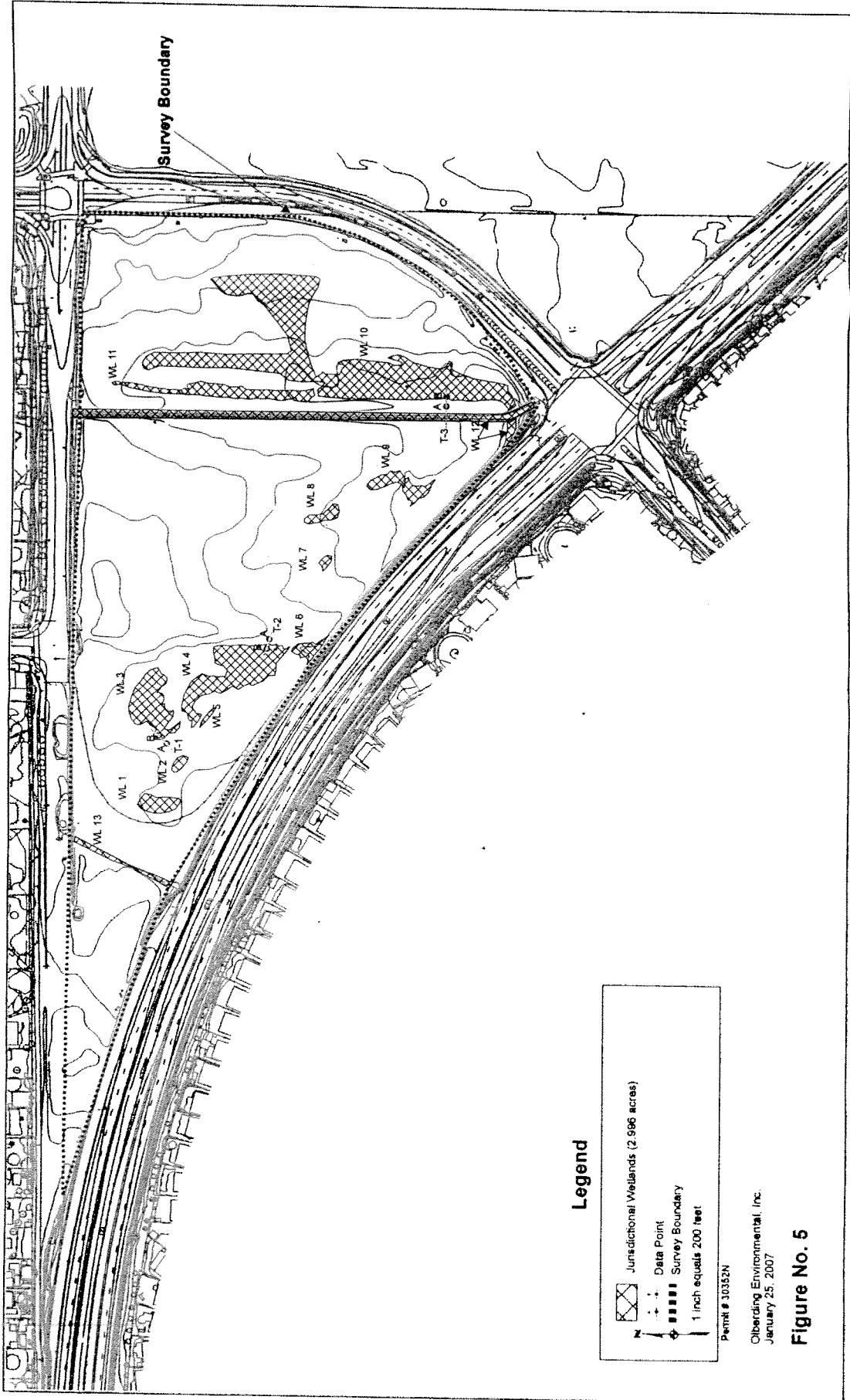
**CONCEPTUAL SITE PLAN**  
**WAL-MART #3708-01**  
**SUISUN CITY, CALIFORNIA**

**RAK**  
 CIVIL ENGINEERS  
 12100 PULMAR DRIVE, SUITE 100  
 SUISUN CITY, CA 94588  
 PHONE: (707) 426-2888 FAX: (707) 426-8888  
 WWW: @RAKENGINEERS.COM

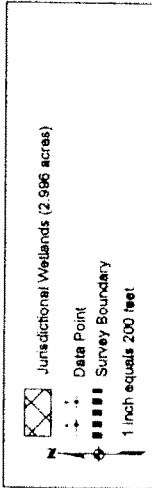
**ROBERT A. KARN & ASSOCIATES, INC.**  
 207 BECA AVENUE #4513  
 SUISUN CITY, CA 94588  
 PHONE: (707) 426-2888 FAX: (707) 426-8888  
 WWW: @RAKENGINEERS.COM

**CP11**  
 GRAPHIC SCALE: 0 100 200  
 DISTANCE

# Walters Road Wetland Delineation Map



## Legend



Permit # 30352N

Olberding Environmental, Inc.  
January 25, 2007

Figure No. 5

# **ATTACHMENT 3**

CITY COUNCIL

Pedro "Pete" M. Sanchez, Mayor  
Jane Day, Mayor Pro-Tem  
Sam Derting  
Michael J. Hudson  
Michael A. Segala



CITY COUNCIL MEETING

First and Third Tuesday  
Every Month

CITY OF SUISUN CITY

701 Civic Center Blvd.  
Suisun City, California 94585

Incorporated October 9, 1868

March 25, 2009

Bruce Wolfe  
Regional Water Quality Control Board  
1515 Clay Street  
Suite 1400  
Oakland, CA 94612

Re: Walters Road Development Project, City of Suisun City, Solano County: Site No. 02-48-C0394(JGU) (Corps File No. 2006-303520N)

Dear Mr. Wolfe:

I write on behalf of the City of Suisun City ("City") in response to your request for additional information regarding the unmet retail and economic needs of the City. I understand that representatives of the Walters Road Development Project ("Project") team, City staff, and Regional Water Quality Control Board ("RWQCB") staff met on March 13, 2009, to discuss the Project's application for water quality certification. I further understand that based upon discussions at that meeting, RWQCB staff requested that the City provide a letter to supplement the statement in the January 2009 Alternatives Analysis that the City has unmet retail and economic needs, and that the purpose of the Project is to serve those needs. This letter provides the supplemental information you have requested.

**Background**

In recent years, the City has seen a significant increase in population, but has not experienced a similar growth in retail and commercial development. The City's population has increased from 11,087 in 1980 to 26,917 in 2006, but the City has not experienced a commensurate increase in services and employment centers. Approximately 92% of the City's residents need to commute outside the City for work and for many services, including basic retail needs. Consequently, the City has experienced an increase in demand for City services, but has not seen an equivalent increase in City revenue, which is largely dependent upon sales tax revenue from retail sales. The lack of commercial services provided in the City has also resulted in the need for the City's residents to travel longer distances to purchase goods. The paucity of commercial services in the area has also contributed to the City's jobs-housing imbalance.

DEPARTMENTS: AREA CODE (707)

ADMINISTRATION 421-7300 ■ PLANNING 421-7335 ■ BUILDING 421-7310 ■ FINANCE 421-7320  
FIRE 425-9133 ■ RECREATION & COMMUNITY SERVICES 421-7200 ■ POLICE 421-7373 ■ PUBLIC WORKS 421-7340  
REDEVELOPMENT AGENCY 421-7309 FAX 421-7366

In adopting its most recent General Plan, the City recognized that to retain its fiscal well being and to continue to improve the level of services provided to its residents, it would need to expand its commercial base. Thus, the City General Plan has designated the Project site for commercial development since 1992. Furthermore, the City has undertaken a number of studies to assist in understanding and ultimately finding the right “balance” and need between residential and commercial land uses and development in the community. Specifically, the City recently conducted a number of studies regarding the need for and potential location of commercial services in the area including the *Revenue Based Land Use Study* (Applied Economic Development, 2006) and *Retail Site Assessment* (Buxton, 2006). Based on these studies, the City Council adopted a Revenue Based Land Use Policy Directive in July of 2006 aimed at ensuring that viable commercial development occurs at appropriate locations in the City to ensure “the long-term fiscal health of the City of Suisun City.” The City also prepared the *Retail Market Impact Analysis for the Proposed Wal-Mart Supercenter in Suisun City, CA* (Bay Area Economics, 2007) to analyze the potential impacts of the Project. It should be noted that these studies were conducted nearly three years ago, when the national, state and local economies were considerably stronger than they are now.

### **The City Has Unmet Retail and Economic Needs**

The City lacks sufficient retail businesses to serve the needs of its residents. With limited shopping and other retail opportunities in the City, Suisun City loses upwards of 70% of potential sales tax revenue to neighboring cities. When Suisun City residents shop in Fairfield, Vacaville or other communities, the sales taxes they pay go toward meeting the police, fire, maintenance and other service demands of those communities – not Suisun City’s service demands.

To illustrate, a comparison of per capita retail sales figures between Suisun City and the region and State has been completed. Per capita retail sales are an indicator of the relative strength of a city as a retail destination. Other factors being equal, higher per capita sales relative to the region point toward attraction of shoppers from outside a community. Suisun City’s performance in overall per capita taxable retail sales and in most major store categories is very poor compared with the County and the State, while Fairfield is a strong performer overall and in most categories.

Consider the following comparison of annual per capita taxable retail sales for the most recent annual period available:

- Suisun City \$ 2,875/per capita taxable sales
- Fairfield 12,693/per capita taxable sales
- Solano County Avg. (all cities) 9,892/per capita taxable sales
- State Avg. (all cities) 10,068/per capita taxable sales.

These data are a strong indicator that Suisun City residents are shopping outside their City, while Fairfield is capturing sales from beyond its borders, with much of that capture likely from Suisun City. In fact, Suisun City and Fairfield combined show total per capita taxable sales of \$10,622, closer to the figures countywide and statewide.

Another way of assessing the unmet needs retail and economic needs of the City, is to assess retail leakage outside Suisun City. Through an assessment undertaken as part of the EIR process, the certified EIR confirms that the Suisun City Trade Area experiences significant leakage in all major retail categories except service stations, with total net retail taxable sales leakage of slightly more than \$236 million annually. Through this analysis, studies show that there is a critical need to establish community-wide retail facilities at locations at or near major arterial streets, especially along Highway 12 and Sunset Avenue. They also demonstrate that, in order to successfully compete with regional commercial centers located in Fairfield and elsewhere in the vicinity, the areas designated as General Commercial districts, such as the Project site, should provide a wide-variety of goods and services at single locations.

In looking how the Project will help alleviate this leakage, it is anticipated that the Project will capture leakage for apparel stores, general merchandise stores, food stores, eating and drinking places, home furnishings and appliances, building materials outlets, and other retail stores. Specifically, the certified EIR estimates that the Project could capture approximately \$60.9 million of the total \$236 million in sales leakage from the trade area.

### **Suisun City Budget Impacts Resulting from Unmet Retail and Economic Needs**

Given that City residents are shopping outside the City, the City is losing its residents' sales tax dollars. The City's lack of sales tax revenue was a major contributing factor to the City's structural budget deficit of approximately \$800,000 at the time that the EIR was prepared. [This structural budget deficit has risen to nearly \$1,200,000 in the past two years, due largely to the downturn in the economy and continued price escalation.] There are three ways to address a structural deficit:

- Increase revenues.
- Decrease expenditures.
- Some combination of the two.

There are very few options available to cities to increase revenues other than attracting retail developments such as the Project, so historically structural deficits have resulted in service reductions. In fact, we have determined that if the Project does not move forward soon, the City may be forced to conduct staffing layoffs. In short, the City simply lacks the funds to pay for the services its residents need.



Based on the results of the Bay Area Economics study identified earlier, and as indicated in the certified EIR, the Project is expected to generate approximately \$800,000 in sales taxes the first full year of operation, which would increase to \$1.6 million per year after 20 years. Other significant ongoing revenues generated from this project include property taxes, in the form of tax increment for the Redevelopment Agency, and community facility fees. Tax increment monies support further economic development and revitalization efforts, with 20% of the monies set aside to address housing needs of low-income residents. Community facility fees are ongoing charges that go toward funding police, fire and maintenance services. Overall, the net fiscal impact to the General Fund from this project is a positive of roughly \$965,000 per year. This is after costs to serve the project are deducted from gross revenues generated.

Considering all revenue generated from this project, the importance of the sales tax monies expected from this project cannot be under estimated.

### **The Project Will Begin to Address the City's Unmet Retail and Economic Needs**

The City believes that one of the most important objectives of the Project is to foster much-needed commercial retail development that can help reduce retail sales leakage. As explained above, the data indicates that City residents are shopping outside the City because the City does not have sufficient retail options. This is particularly true in the category of general merchandise sales. The Project would provide a major retail destination within the City.

The economic analysis prepared for the Project indicates that the Project could capture about \$60.9 million of the total projected \$236 million in sales leaking from the City. The Project would accomplish this by offering 24-hour shopping opportunities for a variety of goods within the City. The majority of the sales floor area of the Wal-Mart Supercenter would be dedicated to the sale of general merchandise, which is an area in which the City's weakness as a retail destination is extremely pronounced. The Supercenter will also offer other goods and services including apparel, home supplies, groceries, home furnishing, a photography studio, and garden center. These uses will be complemented by the adjacent gas station and sit-down restaurant. Wal-Mart's experience and studies show that the provision of this range of services in a single location is critical to capturing a significant portion of the sales from the local residents and the region. The Project will also add to the convenience of the City's shoppers and potentially reduce travel lengths for those shoppers.

The Project would provide retail services that are currently lacking in the City, which in turn will provide significant sales tax revenue. The additional sales tax revenue will help to correct the City's existing structural budget deficit and help the City provide basic services such as police and fire protection. Sales tax revenue is extremely important to the City's ability to provide essential services to its residents.

To illustrate, the loss of approximately \$320,000 in ongoing General Fund revenues alone translates into the loss of a myriad of service options for the community including:

- Two-person Police Officer gang/drug suppression team or two-person Traffic detail *and* a two-person Maintenance team to address routine maintenance needs – litter pick-up, complaints and median maintenance; *or*
- A two-person Traffic Officer enforcement team *and* one-firefighter to cover day shift *and* an afterschool program for up to 140 kids; *or*
- Two-firefighters to cover day shift *and* two-person Maintenance team to address routine maintenance *and* an afterschool program; *or*
- A full three-person Maintenance Worker Crew to address street maintenance, new park development maintenance, landscaping and pent-up litter control *and* a new Recreation Supervisor to expand community services programs *and* an afterschool program; *or*
- If used for street maintenance, these funds represent an opportunity to slurry-seal nearly 15% of the City's street system on an ongoing basis or the entire City every seven years; *or*
- Accumulating the money in three-year increments would allow for one mile of significant street repair work to be completed over this same three-year time period.
- For the Redevelopment Agency, the nearly \$60,000 in tax increment translates into a full-time new business development/marketing position or a part-time position along with 50% of a professionally developed and managed marketing and branding campaign – monies that would be leveraged with dollars from the private sector.

Finally, the Project will also provide local jobs for City residents. As noted above, approximately 92% of City residents travel outside of the City for work and City services. The Project will provide approximately 375 jobs that can be filled by City residents. Furthermore, development of the restaurant and gas station will provide an opportunity for Suisun City residents to open and operate local businesses within the Project. These local businesses will enable local entrepreneurs to get started and will provide a number of entry level jobs for local residents.

#### **The Project Site is the Only Appropriate Location for the Project**

The City's assessments also conclude that there are relatively few sites available to provide the much-needed retail services given the lack of vacant land within the City and the sensitive resources, including high-quality wetlands and habitat for endangered species, located on the vacant land throughout and immediately surrounding the City.

Bruce Wolfe  
March 25, 2009  
Page 6

Based on the studies described above, as well as other studies, the City identified the Project site as one of the few areas where such necessary commercial development could occur. In fact, the ADE study concludes that the Project would be the best use of the site. The site is located at the entrance to the City along Highway 12 and therefore offers a prime location for regional commercial development. Further, the site has relatively few natural resources. The site has previously been filled and is disked on a semi-annual basis, thereby further degrading the quality of the on-site resources. In contrast to most of the vacant land in the vicinity, the site does not support any endangered species. Finally, the site is completely surrounded by development and major roadways and is therefore consistent with the City's goal of avoiding leapfrog development.

### **Conclusion**

The Project would provide much-needed retail services for City residents. The City currently lacks a major retail destination and the City's retail performance in most major store categories is poor compared to the County and State. Therefore, City residents are forced to travel outside the City to meet their basic retail needs. The Project would increase retail sales in the City, which in turn would generate significant sales tax revenue for the City. The additional sales tax revenue would help alleviate the City's budget deficit and assist in maintaining current essential services to City residents. Furthermore, the Project site is the only appropriate location for the Project. Finally, it is important to note that the City conducted thorough review of all the potentially significant environmental impacts associated with the Project, and certified the Project's Final EIR and approved the Project entitlements on February 12, 2008. On January 21, 2009, Judge Beehman upheld the City's certification of the EIR and rejected a lawsuit challenging it.

Sincerely,



Suzanne Bragdon  
City Manager

cc: William Hurley, Regional Water Quality Control Board  
Jolanta Uchman, Regional Water Quality Control Board  
Bill Orme, State Water Quality Control Board

# **ATTACHMENT 4**

**DEPARTMENT OF FISH AND GAME**

BAY DELTA REGION  
(707) 944-5520  
*Mailing address:*  
POST OFFICE BOX 47  
YOUNTVILLE, CALIFORNIA 94599  
*Street address:*  
7329 SILVERADO TRAIL  
NAPA, CALIFORNIA 94558



**Notification Number: 1600-2007-0522-3**  
**Unnamed tributary to Hill Slough, Solano County**

Mr. John E. Clarke, Regional Vice President  
Wal-Mart Stores, Inc.  
c/o Todd Anderson, Robert A. Karn & Associates  
707 Beck Street  
Fairfield, Ca 94533

## PROJECT DESCRIPTION and PROJECT CONDITIONS

### Description

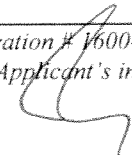
The project consists of the development of a 20.8-acre site with retail stores and restaurants. The development includes a new Wal-Mart store, a fuel station, a sit-down restaurant, and associated parking and infrastructure to support the commercial development. A 1,050-foot vegetated channel is located on the project site and is proposed to be filled. The channel contains willow and cottonwood saplings which will be removed. The 20.8-acre parcel is situated immediately north of Highway 12, south of Peterson Road, and west of Walters Road in Solano County.

### Conditions

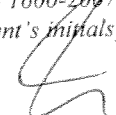
1. All work shall be done according to the project description stated above as well as the plans submitted to the Department that are not in conflict with the above stated project description. The Applicant shall notify the Department of any modifications made to the plans submitted to the Department that pertain to impacts to the stream or the riparian corridor.
2. A crew supervisor shall be on site the entire time the crew is working within the stream zone. Said supervisor shall be completely familiar with the terms and conditions of this agreement and shall ensure compliance with all terms and conditions.
3. The time limit for completing in-channel work subject to this agreement shall be confined to the period of April 15 to October 15, 2008, 2009, 2010, and when the weather is dry, except as otherwise stipulated in this Agreement. The Applicant shall notify Ms. Anna Holmes (209-948-7163) of the date of commencement of operations and the date of completion of operations.
4. Compensation for permanent impacts to the stream shall be at a 2:1 ratio. The Department will accept stream replacement credits at the Elsie Gridley mitigation bank. Other replacement habitat, including mitigation

banks, shall be approved by the Department and shall be protected and managed in perpetuity. Temporary impacts to the stream shall be replaced at a 1:1 ratio either through restoration of the habitat to pre-project conditions within the same year impacts occurred or off-site replacement habitat as approved by the Department and protected and managed in perpetuity.

5. If any wildlife is encountered during the course of construction said wildlife shall be allowed to leave the construction area unharmed.
6. If any sensitive species are observed in project surveys, the Applicant shall submit California Natural Diversity Data Base (CNDDDB) forms to the CNDDDB for all preconstruction survey data within five working days of the sightings, and provide DFG Region 3 with copies of the CNDDDB forms and survey maps.
7. If construction, grading, or other project-related improvements are scheduled during the nesting season of protected raptors and migratory birds (February 15 to August 15), a focused survey for active nests of such birds shall be conducted within 500 feet of project activities by a qualified biologist within 15 days prior to the beginning of project-related activities. A minimum of 3 separate survey days within the 15 days shall be conducted. The results of the survey shall be faxed to (707) 944-5595. Refer to Notification Number 1600-2007-0522-3 when submitting the survey to the Department. If active nests are found, the Applicant shall consult with the Department and the United States Fish and Wildlife Service (USFWS) regarding appropriate action to comply with the Migratory Bird Treaty Act of 1918 and the Fish & Game Code of California. If a lapse in project-related work of 15 days or longer occurs, another focused survey and if required, consultation with the Department and USFWS, will be required before project work can be reinitiated.
8. Focused surveys for burrowing owls shall be conducted within 15 days prior to the beginning of project activities. The project area plus 250 feet surrounding the project impact areas shall be surveyed for suitable habitat, burrows, and owls. Surveys shall occur two hours before to 1 hour after sunset or from 1 hour before to 2 hours after sunrise. Occupied burrows within 250 feet of project area shall not be disturbed during the nesting season, February 1 through August 31. After August 31, if occupied burrows are located within 160 feet of the project location, disturbance shall be kept to a minimum. If avoidance requirements cannot be met, on-site passive relocation should be implemented during the non-nesting season. If passive relocation is necessary, the Applicant shall compensate for the loss of burrowing and foraging habitat by acquiring and conserving in perpetuity 6.5 acres of foraging habitat and two enhanced or artificial burrows for every occupied burrow passively relocated. The Department shall be consulted for passive relocation protocol measures and shall approve any land acquired for compensation.
9. Within 48 hours prior to construction, a qualified biologist will survey the area at the appropriate time of day for presence of the western pond turtle, *Clemmys marmorata*. If any individuals are found, the biologist shall contact the Department at (707) 944-5520 to incorporate protection measures into the project.
10. The Applicant shall conduct an employee orientation program for all persons who will work on-site during construction, landscape, and maintenance activities. The program shall consist of a brief presentation from a Department-approved Biological Monitor about the biology of the species listed in this agreement, their habitat needs, and their status under the California Endangered Species Act, and the Department of Fish and Game fully protected and Species of Special Concern designation.



11. The Biological Monitor shall be on-site during construction activities within the stream zone. The Biological Monitor shall have the authority to stop work at the project site at any time to ensure protection of western pond turtles and native fish. Any individual handling western pond turtles or native fish shall hold valid State and Federal Scientific Collecting Permits.
12. The Applicant/Contractor shall check daily for stranded aquatic life as the water level in the dewatering area drops. All reasonable efforts shall be made to capture and move all stranded aquatic life observed in the dewatered areas. Capture methods may include fish landing nets, dip nets, buckets and by hand. Captured aquatic life shall be released immediately in the closest body of water adjacent to the work site. This condition does not allow for the take or disturbance of any state or federally listed species, or state listed species of special concern.
13. The disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations. Precautions will be taken to avoid other damage to vegetation by people or equipment. Branches and/or limbs overhanging the project site that may be impacted shall be properly pruned prior to mobilization of equipment.
14. Sensitive plant species which have the potential to be found on the project site include Alkali Milk-Vetch, Heartscale, Brittscale, San Joaquin Spearscale, Pappose Tarplant, Hispid Bird's-Beak, Recurved Larkspur, Dwarf Downingia, Carquinez Goldenbush, Contra Costa Goldfields, Legenere, Baker's Navarettia, San Joaquin Valley Orcutt Grass, Bearded Popcorn Flower, Showy Indian Clover, and Saline Clover. Pre-construction surveys for these species shall be conducted during the blooming period. If any of these species are found in the project area, they will be flagged and avoided during construction activities. If these species cannot be avoided during construction, compensation for permanent loss shall be at the rate of 3:1. Location of plant replacements shall be approved by the Department and protected in perpetuity. The Applicant shall maintain an 80% survival rate of each species by the fifth year after replacement. The Applicant is responsible for replacement planting to achieve these requirements. Mitigation shall be established within 1 year of loss.
15. No trees, other than those targeted in the project description, shall be removed other than clearing of downed vegetation/trees in creek. Only those branches that may be damaged from heavy equipment operation may be trimmed to accommodate project activities.
16. Compensation for permanent loss of native trees with a Diameter at Breast Height (DBH) of four (4) inches or greater shall be at a 3:1 ratio. Location, size, and species of tree replacements shall be approved by the Department and protected in perpetuity.
17. All required mitigation planting shall be done between October 15 and December 31 of the year immediately following when impacts occurred. Failure to implement the mitigation (planting or creation) during the required time period will result in additional mitigation for the temporal loss of habitat. The additional mitigation will include the upsizing of plant material one container size above the originally specified container size for all plants not planted during the required time period, and payment of a monetary donation to a local land trust in an amount equal to the amount of the applicant's cost to implement the approved mitigation that was not installed during the required time period.



18. To ensure a successful revegetation effort, all plants and trees shall be monitored and maintained as necessary for five years. All planting shall have a minimum of 80% survival at the end of 5 years. If the survival requirements are not meeting these goals, the Applicant is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice, to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for five years after planting. An annual status report on the mitigation shall be provided to the Department by December 31 of each year. This report shall include the survival, percent cover, and height of both tree and shrub species. The number by species of plants and trees replaced, an overview of the revegetation effort, and the method used to assess these parameters shall also be included. Photos from designated photo stations shall be included.
19. To ensure that project construction, including placing the stream in an underground culvert, does not create sedimentation downstream, the applicant shall use check dams, silt fences, and soil stabilizers. These features shall remain in place and functional throughout the construction period. Normal flows through the culvert shall be restored to the downstream drainage system immediately upon completion of the work at the project site.
20. Erosion control measures shall be utilized throughout all phases of operation in areas where soil, silt, dirt and/or sediment from project activities threatens to enter waters of the State. At no time shall any of these materials be allowed to enter the stream or be placed where it may enter the stream. All erosion control devices shall be removed upon completion of the project.
21. The Contractor shall have readily available plastic sheeting or visquine and will cover exposed spoil piles and exposed areas to prevent these areas from losing loose soil into the stream. These covering materials shall be applied when it is evident rainy conditions threaten to erode loose soils into the stream.
22. Spoil shall not be placed on the stream side slope or where it could enter the stream. Spoil shall not be placed over vegetation except as specifically noticed to and accepted by the Department.
23. Vehicles shall not be driven or equipment operated in water-covered portions of the stream, or where wetland vegetation, riparian vegetation, or aquatic organisms may be destroyed, except as otherwise provided for in this Agreement and as necessary to complete authorized work.
24. Access to the work site shall be via existing roads and access ramps.
25. The project will be planned and executed such that silty or turbid water will not be created when flows return to the stream, and silty water will not be discharged into the stream, nor will turbidity be created within the stream. Upon Department determination that turbidity, siltation or erosion levels resulting from the project related activities constitute a threat to aquatic life, Department approved control devices will be installed, or abatement procedures will be initiated.
26. Staging and storage areas for equipment, materials, fuels, lubricants and solvents, will be located outside of the stream channel and banks. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the stream will be positioned over drip pans. Any equipment or vehicles driven and/or operated within or adjacent to the stream will be checked and maintained daily, to





prevent leaks of materials that if introduced to water could be deleterious to aquatic life. Vehicles will be moved away from the stream prior to refueling and lubrication.

27. Any equipment or vehicles driven and/or operated within or adjacent to the stream shall be checked and maintained daily to prevent leaks of materials that if introduced to water could be deleterious to aquatic life, wildlife, or riparian habitat.
28. Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, wildlife, or riparian habitat resulting from the project related activities shall be prevented from contaminating the soil and/or entering the waters of the State. Any of these materials placed, within or where they may enter a stream or lake, by the Applicant or any party working under contract may be subject to a citation.
29. The Contractor shall not dump any litter or construction debris within the riparian/stream zone. All such debris and waste shall be picked up daily and properly disposed of at an appropriate site.
30. Any materials placed in seasonally dry portions of a stream or lake, that could be washed downstream or could be deleterious to aquatic life, wildlife, or riparian habitat shall be removed from the project site prior to inundation by high flows.
31. A copy of this Agreement must be provided to all contractors and subcontractors and the Applicant's project supervisors. Copies of this Agreement shall be available at the project site during all periods of active work and must be presented to Department personnel upon demand. Department personnel shall be allowed onto the work site at any time during and after construction of the project for the purposes of establishing compliance with this Agreement.
32. The Applicant is liable for compliance with the terms of this Agreement, including violations committed by the contractors and/or subcontractors. The Department reserves the right to suspend construction activity described in this Agreement if the Department determines any of the following has occurred:
  - A) Failure to comply with any of the conditions of this Agreement
  - B) Information provided in support of the Agreement is determined by the Department to be inaccurate
  - C) Information becomes available to the Department that was not known when preparing the original conditions of this Agreement (including, but not limited to, the occurrence of State or federally listed species in the area or risk to resources not previously observed)
  - D) The project as described in the Agreement has changed or conditions affecting fish and wildlife resources change.

Any violation of the terms of this Agreement may result in the project being stopped, a citation being issued, or charges being filed with the District Attorney. Contractors and subcontractors may also be liable for violating the conditions of this Agreement.

## **Amendments and Renewals**

The Applicant shall notify the Department before any modifications are made to the project plans submitted to the Department. Project modifications may require an amendment or a new notification.



This agreement is transferable to subsequent owners of the project property by requesting an amendment.

To renew the agreement beyond the expiration date, a written request for a renewal must be submitted to the Department (1600 Program, Post office box 47, Yountville, CA 94599) for consideration at least 30 days before the agreement expiration date. A renewal requires a fee. The fee schedule can be obtained at [www.dfg.ca.gov/1600](http://www.dfg.ca.gov/1600) or by phone at (707) 944-5520. Renewals of the original agreement are issued at the discretion of the Department.

To modify the project, a written request for an amendment must be submitted to the Department (1600 Program, Post office box 47, Yountville, CA 94599). Amendments require a fee. Amendments to the original agreement are issued at the discretion of the Department.

***Please note that you may not proceed with construction until your proposed project has undergone CEQA review and the Department signs the Agreement.***

I, the undersigned, state that the above is the final description of the project I am submitting to the Department for CEQA review, leading to an agreement, and agree to implement the conditions above required by the Department as part of that project. I will not proceed with this project until the Department signs the agreement. I also understand that the CEQA review may result in the addition of measures to the project to avoid, minimize, or compensate for significant environmental impacts:

Applicant's Name (Print): Wal-Mart Stores, Inc.

JH Applicant's Signature: 

Signed the 28<sup>th</sup> day of July, 2008  
Regional Vice President

G

# **ATTACHMENT 5**



Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board

## San Francisco Bay Regional Water Quality Control Board

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1515 Clay Street, Suite 1400, Oakland, California 94612  
(510) 622-2300, Fax (510) 622-2460  
<http://www.waterboards.ca.gov/sanfranciscobay>



Arnold  
Schwarzenegger  
Governor

November 19, 2008  
Site No. 02-48-C0394 (JGU)  
CIWQS Place No.: 722750

**Certified Mail No.  
Return Receipt Requested**

Wal-Mart Stores, Inc.  
Robert A. Karn & Associates  
707 Beck Avenue  
Fairfield, CA 94333  
Attention: Mr. Todd Anderson

**SUBJECT: Denial Without Prejudice of the Application for Clean Water Act Section 401  
Water Quality Certification for the Walters Road West Development Project,  
City of Suisun, Solano County; Corps File No. 2006-303520N**

Dear Mr. Anderson:

Wal-Mart Stores, Inc., through its agent, Olberding Environmental, Inc., has applied for a Clean Water Act (CWA) Section 401 water quality certification for the Walters Road West Development Project (Project) in Suisun City. The Project proposes to develop approximately 18.34 acres for a commercial retail center on a 20.8-acre parcel and discharge fill material into approximately 2.9 acres of jurisdictional waters.

The application for certification was first received by the Water Board on November 20, 2007. We have received supplemental application materials during the past year. However, at this time the certification application remains incomplete as described in our correspondences of December 7, 2007, and August 4, 2008. Due to the lack of a complete application detailing the Project proposal, we cannot certify that the Project as proposed will not violate State water quality standards. Accordingly, to preserve our ability to act on a water quality certification for this Project, we are denying certification of the project without prejudice.

Water quality certification for this Project is hereby denied without prejudice.

You may reapply for State water quality certification by submitting a revised certification application to our agency. We appreciate that the Project team met with our staff on September 11, 2008, to discuss the outstanding application deficiencies and Water Board requirements. Wal-Mart representatives indicated at the conclusion of this meeting that they had a better understanding of our requirements. Staff will work with the applicant's representatives to develop a certifiable Project design.

*Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years*

---

Mr. Anderson  
Denial w/o Prejudice Walters Rd W Development Project, Suisun  
Site No. 02-48-C0394

- 2 -

If you have any questions, please contact Jolanta Uchman of my staff at (510) 622-2432 or via email to [JUchman@waterboards.ca.gov](mailto:JUchman@waterboards.ca.gov).

Sincerely,



Digitally signed  
by Bruce Wolfe  
Date:  
2008.11.19  
18:49:30 -08'00'

Bruce H. Wolfe  
Executive Officer

Cc: SWRCB-DWQ, Bill Orme [borme@waterboards.ca.gov](mailto:borme@waterboards.ca.gov)  
U.S. EPA, David Smith, WTR-8 [smith.davidw@epa.gov](mailto:smith.davidw@epa.gov)  
ACOE, SF Regulatory Branch,  
Peter Straub [peter.s.straub@usace.army.mil](mailto:peter.s.straub@usace.army.mil);  
Mark D'Avignon [mark.r.d'avignon@usace.army.mil](mailto:mark.r.d'avignon@usace.army.mil);  
Jane Hicks [jane.m.hicks@usace.army.mil](mailto:jane.m.hicks@usace.army.mil);  
Michelle Tovar [Michelle\\_Tovar@fws.gov](mailto:Michelle_Tovar@fws.gov);  
Sandy Brunson [SBrunson@dfg.ca.gov](mailto:SBrunson@dfg.ca.gov);  
Ella Foley-Gannon [efoleygannon@sheppardmullin.com](mailto:efoleygannon@sheppardmullin.com);  
Jeff Olberding [Jeff@olberdingenv.com](mailto:Jeff@olberdingenv.com);  
Heather McCollister [hmccollister@suisun.com](mailto:hmccollister@suisun.com);  
Anthony Moscarelli [archerone@comcast.net](mailto:archerone@comcast.net);  
Phil Tucker [pgtucker@calhcn.org](mailto:pgtucker@calhcn.org);  
Beth Garber [egarber@ufcw5.org](mailto:egarber@ufcw5.org);  
George Guynn, Jr. [georgejr@hotmail.com](mailto:georgejr@hotmail.com);  
Wayne Monger [wmonger@comcast.net](mailto:wmonger@comcast.net);  
Richard Hanson [hansonra@sbcglobal.net](mailto:hansonra@sbcglobal.net)

# **ATTACHMENT 6**

**SAN FRANCISCO BAY  
REGIONAL WATER QUALITY CONTROL BOARD  
APPLICATION**

**FOR THE**

**WALTERS ROAD  
DEVELOPMENT PROJECT**

**SOLANO COUNTY, CALIFORNIA**

Prepared for:

**WAL-MART**  
c/o Robert A. Karn & Associates  
707 Beck Avenue  
Fairfield, California 94533

Phone: (707) 435-9999 – FAX (707) 435-9988  
Contact: Todd Anderson

Prepared by:

**OLBERDING ENVIRONMENTAL, INC.**  
Wetland Regulatory Consultants  
1390 Willow Pass Road, Suite 370  
Concord, California 94520

Phone: (925) 825-2111 – FAX (925) 825-2112  
Contact: Jeff Olberding

**JANUARY 2009**

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### ATTACHMENT 1 FIGURES

Figure 1	Regional Map
Figure 2	Vicinity Map
Figure 3	USGS 7.5 Quadrangle Map
Figure 4	Aerial Photograph
Figure 5	Jurisdictional Delineation Map
Figure 6	Site Plan

### ATTACHMENT 2 SITE PHOTOGRAPHS

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This report should be cited as: Olberding Environmental, Inc. January 2009. *San Francisco Bay Regional Water Quality Control Board Application for the Walters Road Development Project, Solano County, California.* Prepared for Wal-Mart, c/o Robert A. Karn & Associates, Fairfield, California

STATE OF CALIFORNIA – CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
 SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD  
 1515 CLAY STREET, SUITE 1400  
 OAKLAND, CALIFORNIA 94612

**APPLICATION FOR 401 WATER QUALITY CERTIFICATION  
 AND/OR REPORT OF WASTE DISCHARGE**

(FORM R2C502-E)

1. <b>APPLICANT'S NAME</b> Wal-Mart Stores, Inc.	4. <b>AUTHORIZED AGENT'S NAME AND TITLE</b> (an agent is not required) Olberding Environmental, Inc.
2. <b>APPLICANT'S ADDRESS</b> C/O Robert A. Karn & Associates 707 Beck Street Fairfield, California 94533	5. <b>AGENT'S ADDRESS</b> 1390 Willow Pass Road, Suite 370 Concord, Ca 95420
3. <b>APPLICANT'S PHONE &amp; FAX NOS.</b> (email optional) 707-435-9999 Phone 707-435-9988 Fax Tanderson@Rakengineers.Com	6. <b>AGENT'S PHONE &amp; FAX NOS.</b> (email optional) 925-825-2111 Phone 925-825-2112 Fax Jeff@Olberdingenv.Com

7. **STATEMENT OF AUTHORIZATION**  
 I hereby authorize Jeff Olberding to act on my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

-----  
 (This must be signed by the Applicant, not the authorized agent) Regional Vice President 1-14-09  
 APPLICANT'S SIGNATURE DATE

**PROJECT OR ACTIVITY INFORMATION**

8. <b>PROJECT NAME OR TITLE</b> (See Instructions.) Walters Road Development Project		
9. <b>NAME OF AFFECTED WATERBODY(IES)</b> (See Instructions.) Unnamed Drainage And Seasonal Wetlands	10. <b>PROJECT STREET ADDRESS</b> (if applicable)	
11. <b>LOCATION OF PROJECT</b> <u>Solano</u> COUNTY	<u>Suisun City</u> CITY/TOWN (or unincorporated)	<u>Region 2 – San Francisco Bay</u> REGIONAL WATER BOARD REGION

12. **OTHER LOCATION DESCRIPTIONS** (watershed, latitude & longitude, river mile, etc. Attach map. See Instructions.)  
 Suisun Marsh Watershed, N 38 14.329' and W 121 58.781'. See attached maps.

13. **DIRECTIONS TO THE SITE**  
 Access to the Property is attained by taking the Highway 12 exit east from Interstate 80. Follow Highway 12 for approximately 5.25 miles. The Property is situated immediately northwest of the intersection of Highway 12 and Walters Road.

14. **PROJECT PURPOSE** (Describe the reason or purpose for the overall project. See Instructions.)  
 The basic project purpose is a commercial development. The overall project purpose is to construct a regional shopping center to serve the unmet needs of the Suisun City and the region including a large Supercenter, a gas station, sit down restaurant and associated parking. The Alternatives Analysis for the Walters Road Development Project (Dec. 2009) provides additional information regarding the project purpose.

**15. DESCRIPTION OF ACTIVITY AND ENVIRONMENTAL IMPACTS** (Provide a full, technically accurate description of the entire activity and associated environmental impacts. See instructions.)  
Please see attached description.

**16. AVOIDANCE OF IMPACTS** (Describe efforts to avoid and minimize impacts to waters of the State. See instructions.)  
To prevent erosion and siltation from occurring during construction, the Project would be constructed in accordance with an erosion control plan and a grading plan with conditions developed specifically for the Project. The plan will also designate best management practices that will be implemented during construction. As required, additional measures would include installing silt fences, hay bales, water bars, and/or ground covers, to control erosion. Grading would be constructed during the dry period of the year to reduce the potential for siltation or erosion problems. Stabilization measures may include mulching and reseeding following construction.

**17. ENVIRONMENTAL DOCUMENTS** (list any non-CEQA environmental documents that have been prepared for the project and/or the project site. Provide the date of the document and the name of the individual, firm, or agency that prepared it. Provide a copy of delineations and endangered species surveys. See instructions.)  
Biological Resource Analysis Report, July 2007, Olberding Environmental, Inc..  
Jurisdictional Delineation Report, May 2006, Olberding Environmental, Inc.

**DREDGE & FILL INFORMATION**

**18.** The following items must be completed for each action where fill or other material will be temporarily (T) or permanently (P) discharged to a wetland or other waterbody, and where material will be dredged from a waterway (add additional pages as necessary). Provide a map showing the location of each action (See instructions):

Map Location Number	LOCATION (show on plan & indicate waterbody)	REASON FOR ACTION (See instructions)	AMOUNT AND TYPE OF MATERIAL (in cubic yards, see instructions)	SURFACE AREA OF FILL (in acres and/or linear feet; specify (T) or (P); see instructions)
Fig 5	Wetland Drainage Ditch (Corps Regulated)	underground culvert installation	culvert pipe - 1,500 cy	0.310 (P)
Fig 5	Adjacent Wetlands (Corps Regulated)	development fill	clean dirt-2,000 cy	2.686 (P)

**MITIGATION**

**19. MITIGATION** (Describe the size, type, and functions, and values of the proposed mitigation. Describe success criteria, monitoring, and long-term funding, management, and protection of the mitigation site. Attach a Mitigation Plan if needed. See instructions and contact Regional Board staff for additional assistance.)  
Mitigation for 2.996 acres of wetland fill will consist of the purchase of wetland credit at the North Suisun Mitigation Bank, or other approved mitigation bank that services the Project area. The ratio for mitigation is proposed at 1:1 for a total purchase of 2.996 acres.

**CEQA**

**20. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) Documents:** Indicate the status of CEQA documents prepared for the project (see instructions).

TYPE OF DOCUMENT	STATUS	DATE COMPLETED (or expected to be complete)	TYPE OF DOCUMENT	STATUS	DATE COMPLETED (or expected to be complete)
Initial Study	-Choose One-		Notice of Preparation	-Choose One-	
Draft Environmental Impact Report	Complete	Sept 20, 2007	Final Environmental Impact Report	-Choose One-	
Negative Declaration	-Choose One-		Mitigated Negative Declaration	-Choose One-	
Notice of Categorical Exemption Exemption Number:	-Choose One-		Notice of Statutory Exemption Exemption Number:	-Choose One-	
Other (describe)	-Choose One-				
Notice of Determination*	-Choose One-		*Note: A Notice of Determination or Notice of Exemption from the Lead Agency is required before a certification or waiver can be issued.		

Lead Agency: City of Suisun City

Contact: Heather McCollister

Telephone: 707-421-7335

State Clearing House Number: 2006072026

**ADDITIONAL INFORMATION**

**21. HAS ANY PORTION OF THE WORK BEEN INITIATED?** YES  NO   
 IF YES, DESCRIBE THE INITIATED WORK, and explain why it was initiated prior to obtaining a permit. Indicate whether any enforcement action has been taken against the project.

**22. HAS A FEDERAL AGENCY OR THE APPLICANT PROVIDED PUBLIC NOTICE OF THIS APPLICATION FOR WATER QUALITY CERTIFICATION?**

Federal Agency: YES  NO  Date: \_\_\_\_\_ Type of Notification: \_\_\_\_\_ Agency Name and Contact: \_\_\_\_\_  
 Applicant: YES  NO  Date: \_\_\_\_\_ Type of Notification: \_\_\_\_\_ Media Name and Contact: \_\_\_\_\_

IF PUBLIC NOTICE HAS NOT BEEN MADE, provide the name, address, and phone number (if available) of adjacent property owners, lessees, etc., and any other parties known to be interested in the project:

Public Notice will be made by the USACE in association with the 404 permit application processing.

**23. OTHER PERMITS** (List other local, state or federal licenses, permits, and agreements that will be required for any construction, operation, maintenance, or other actions associated with the project. Attach copies of all draft or final documents. See instructions.)

AGENCY	CONTACT (with phone number)	TYPE OF APPROVAL	PERMIT OR ID NUMBER	DATE APPLIED	STATUS	DATE OF ACTION
US Corps of Engrs.	Elizabeth Dyer	Individual Permit		11/20/07	In Review	
Ca Dept Fish Game	Sandy Brunson	Streambed Alteration		11/20/07	In Review	
US Fish Wildlife	Michelle Tovar	Biological Opinion			-Choose One-	
-Choose One-					-Choose One-	
-Choose One-					-Choose One-	
City of Suisun City		Grading Permit			-Choose One-	
Other or Local Agency					-Choose One-	
Other or Local Agency					-Choose One-	
Other or Local Agency					-Choose One-	

**24. OTHER PROJECTS** (List and describe other projects implemented or planned that are related to the proposed project, or that may impact the same waterbody. See instructions. Add additional sheets if necessary.)

PROJECT NAME	DESCRIPTION	WATERBODY AND WATERSHED	DATE IMPLEMENTED/PLANNED
N/A			

25. Application is hereby made for a permit or permits to authorize the work described in this application. I certify, under penalty of perjury, that this application is complete and accurate to the best of my knowledge. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

-----  
Regional Vice President      1-14-09      SIGNATURE OF AGENT      1-21-09  
-----  
SIGNATURE OF APPLICANT      DATE      SIGNATURE OF AGENT      DATE

The application must be signed by the person who desires to undertake the proposed activity (Applicant) or a duly authorized agent if the statement in Block 7 has been filled out and signed.

Attach fee deposit (see Instructions page 7) and any additional documents and submit this application to:

**SFBRWQCB**  
**Attention: 401 Water Quality Certification**  
**1515 Clay Street, Suite 1400**  
**Oakland, CA 94612**

Note: This form, FORM R2C502-E, was designed for electronic use as a Microsoft Word document or template. For assistance using this form or to relay suggestions on how it may be improved, please call 510-622-2330. If you would like a standard, non-electronic form, please call 510-622-2300 and request 401 Application FORM R2C502 – Non-electronic version.

## II. SUPPLEMENTAL INFORMATION:

### 15. Description of Activity and Environmental Impacts

#### Proposed Activity

The Project involves the development of the 20.8-acre site with a retail and dining venue. The four main elements of the development include: 1) a nearly 215,000-square foot Wal-Mart retail store; 2) a proposed 1.05 acres fuel station with related uses; 3) a proposed 8,000-square foot sit-down restaurant; and 4) associated parking and infrastructure to support the commercial development. The fuel station and restaurant are currently proposed uses for Parcel A and B; however, the parcels may be developed with any use that is consistent with the General Commercial zoning for the site. See Figure 6 for the Site Plan.

**Wal-Mart Supercenter:** The main project element consists of the construction of an approximately 214,919 square foot (sf) Wal-Mart Supercenter on about 18.34 acres. (Note: The enclosed building floor area is 200,831 square feet without the outdoor portion of the garden center.) The new Wal-Mart will contain a grocery component of about 45,370 square feet, including a 34,475 square foot grocery sales area and a 10,895 square foot grocery support area. The new Wal-Mart will also contain a garden center of approximately 24,653 square feet (including 14,089 square feet of hard-fenced outdoor garden center and a customer pick-up and loading area). Along the front of the Supercenter will be a series of small internal "shops" occupying a total floor area of approximately 7,007 square feet. Some of these spaces will be occupied by Wal-Mart services such as optical and pharmacy, while others will be leased to non-Wal-Mart vendors and service providers (e.g., bank, hair salon, dry cleaners, etc.), although specific vendors have not yet been identified. A total of 921 parking stalls are proposed for the Wal-Mart. The new Supercenter will be open 24 hours per day, seven days per week.

**Fuel Station—Parcel A:** Parcel A of the subject site is 1.05-acre and will contain a full-service gas station and related uses. Components of the operation include a 4,100 square foot retail building; a minimum six fueling islands; car wash and required parking. Housed within the 4,100 square foot building will be the gas station sales operations and a convenience market. A co-branded quick service restaurant may also be included within the 4,100 square foot building. Located apart from the retail building and the fueling islands is the drive-through car wash facility. A total of 24 parking spaces are proposed for the Parcel A uses.

**Sit-Down Restaurant—Parcel B:** Parcel B is 1.40 acres and will contain an 8,000 square feet of building intended for a sit-down restaurant use together with required parking. Alternate uses for the building include a single-tenant general retailer with a use complementary to the anchor tenant, or a multi-tenant building with a variety of general retail and casual food service uses also complementary to the anchor tenant. A total of 69 parking spaces are proposed for the Parcel B restaurant use.

***Parking and Internal Circulation:*** The proposed project would provide 1,014 parking spaces onsite. The proposed project would exceed the City of Suisun City's Zoning Ordinance minimum parking requirements by 110 spaces. Drive aisles would link the three project components with the access points on Walters Road and Petersen Road. Drive aisles would range from 25 to 52 feet in width. Designated crossing areas would also be located in front of the Wal-Mart Supercenter to alert drivers of the potential of crossing pedestrians.

### **Environmental Impacts**

Imported earthen fill material will be used to fill the 2.947 acres of seasonal wetlands on the Property. The seasonal wetlands on the site will be filled by standard site grading in preparation for development. Trucks will be used to haul 13,000 cubic yards of clean earthen fill into the site. Heavy earth moving equipment will be used to spread fill across the site and the anticipated volume of material that will cover the wetlands would amount to approximately 2,000 cubic yards of earth.

The wetland drainage ditch on the site will be dewatered through the use of coffer dams, and all water will be pumped around the ditch to accommodate the over excavation necessary to install the storm drain system. Concrete storm drain pipes approximately 4 feet in diameter will be installed along the existing channel alignment after soils are prepared for construction and properly stabilized. The alignment will be backfilled and development will occur across the site. Approximately 1,050 linear feet of the channel will be affected by the construction of the culvert system and approximately 1,500 cubic yards of fill consisting of a combination of earthen fill and culvert pipe will be necessary for construction.

Erosion and siltation controls will be used and maintained during and after construction to prevent fill and sediments from entering the creeks located downstream from the Property. To prevent erosion and siltation from occurring, all exposed soils will be permanently stabilized following construction. Soil stabilization measures will likely include installing silt fencing and reseeding the construction area after all earth work is completed.

# **ALTERNATIVES ANALYSIS**

FOR THE

## **WALTERS ROAD DEVELOPMENT PROJECT**

**SOLANO COUNTY, CALIFORNIA**

Prepared for:

**WAL-MART STORES, INC.**

c/o Robert A. Karn & Associates

707 Beck Avenue

Fairfield, California 94533

Phone: (707) 435-9999 – FAX (707) 435-9988

Contact: Todd Anderson

Prepared by:

**OLBERDING ENVIRONMENTAL, INC.**

Wetland Regulatory Consultants

1390 Willow Pass Road, Suite 370

Concord, California 95420

Phone: (925) 825-2111 ~ FAX (925) 825-2112

Contact: Jeff Olberding

&

**SHEPPARD MULLIN RICHTER & HAMPTON, LLP**

Four Embarcadero Center

Seventeenth Floor

San Francisco, California 94111

Phone: (415) 434-9100 ~ FAX (415) 434-3947

Contact: Ella Foley-Gannon

**January 2009**



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### ATTACHMENT 1

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## **1.0 INTRODUCTION**

Wal-Mart Stores, Inc. (Wal-Mart), through its engineer, Robert A. Karn & Associates, is proposing to develop 20.8 acres of undeveloped land located in the City of Suisun City (City), Solano County (County), California (Attachment 1, Figures 1 and 2). The project occurs within the Denverton 7.5 minute USGS quadrangle map (Attachment 1, Figure 3). The project, known as the Walters Road Development Project (Project), involves the development of the 20.8-acre site with a retail shopping center to service the currently unmet needs of the residents of Suisun City. The Project will include an approximately 215,000-square foot Wal-Mart Supercenter; commercial uses that complement the Supercenter such as a gas station with a car wash and a sitdown restaurant; and parking and infrastructure to support the commercial development.

Wal-Mart is seeking authorization to fill 2.947 acres of jurisdictional wetlands from the United States Army Corps of Engineers (Corps) under Section 404 of the Clean Water Act. The verified delineation for the Project site includes 2.996 acres of jurisdictional wetlands. Under the original application submitted to the Corps in November 2007, it was anticipated that the proposed Project would impact all of the site's aquatic resources and the application sought authorization to fill 2.996 acres of jurisdictional wetlands. Since that time, it was determined that one wetland included in the Project verified delineation, comprising approximately 0.049 acres, is located outside the Project site boundaries and therefore will not be impacted by the Project. Current with submission of the original Section 404(b)(1) Alternatives Analysis in June 2008, the applicant amended its application to reduce the amount of impacts authorized to 2.947 acres. This Alternatives Analysis has been developed to assist the Corps in determining whether the proposed Project is the least environmentally damaging practicable alternative (LEDPA).

Wal-Mart also submitted an application to the Regional Water Quality Control Board (RWQCB) for a Section 401 water quality certification in November 2007. As part of the application process, Wal-Mart also submitted the original Alternatives Analysis to the RWQCB in June 2008. RWQCB staff stated that the applicant had not yet met the hurdle of demonstrating that there are no practicable on-site alternatives that would involve less impacts to aquatic resources. To test whether avoidance of aquatic resources could practicably be achieved, the Project team developed and analyzed four additional alternatives. As is presented in this Alternatives Analysis, none of these alternatives are practicable. With this additional information, Wal-Mart has demonstrated that the proposed Project is the LEDPA.

### **1.1 Regulatory Background**

Any activity requiring an individual permit under Section 404 of the Clean Water Act must undergo an analysis of alternatives in order to identify the LEDPA. Each potentially practicable alternative must meet the overall project purpose.

Prior to issuing a Section 404 permit, the Corps is required to make a finding that the project complies with the Guidelines established by the United States Environmental Protection Agency

(EPA) at 40 CFR Part 230. These Guidelines, known as the "Section 404(b)(1) Guidelines", prohibit discharge of dredge or fill material to waters of the United States if there is a "practicable alternative to the proposed discharge that would have less impact on the aquatic ecosystem, provided that the alternative does not have other significant environmental consequences." 40 CFR § 230.10(a). An alternative is practicable "if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." 40 CFR § 230.10(a)(2) and 230.3(q). "If it is otherwise a practicable alternative, an area not presently owned by an applicant which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered." 40 CFR § 230.10(a)(2).

If the proposed activity would involve a discharge into a special aquatic site such as a wetland, the Section 404(b)(1) Guidelines distinguish between those projects that are water dependent and those that are not. A water dependent project is one that requires access to water to achieve its basic purpose such as a marina. A non-water dependent project is one that does not require access to water to achieve its basic purpose, such as a housing or commercial development. Here, the Project is not water dependent.

The Section 404(b)(1) Guidelines establish two presumptions for non-water dependent projects that propose a discharge into a special aquatic site. First, it is presumed that there are practicable alternatives to non-water dependent projects, "unless clearly demonstrated otherwise." 40 CFR § 230.10(a)(3). Second, "where a discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impacts on the aquatic ecosystem, unless clearly demonstrated otherwise." *Id.* The thrust of the Guidelines is that the project applicant should avoid impacts if it can meet the project purpose. This approach is emphasized in a Memorandum of Agreement between the EPA and the Corps, Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines (1990) (MOA). The MOA articulates the Guidelines "sequencing" protocol as first, avoiding impacts; second, minimizing impacts; and third, providing practicable compensatory mitigation for unavoidable impacts providing no overall net loss of functions and values.

A LEDPA determination requires balancing the factors outlined above. However, the approach is meant to be a reasonable one: "A reasonable, common sense approach in applying the requirements of the Guidelines' alternatives analysis is fully consistent with sound environmental protection." U.S. Army Corps of Engineers, Guidance on Flexibility of the 404(b)(1) Guidelines and Mitigation Banking, RGL 93-02 (Aug. 23, 1993). The ultimate decision regarding what is a practicable alternative must also take into account the degree of wetland impacts: "[t]he level of documentation should reflect the significance and complexity of the discharge activity." 40 C.F.R. § 230.6(b). The Corps has noted that "the level of scrutiny required by the Guidelines is commensurate with the severity of the environmental impact (as determined by the functions of the aquatic resource and the nature of the propose activity) and the scope/cost of the project." RGL 93-02.

In addition to requiring the identification of the LEDPA, the Guidelines mandate that a project must not violate any applicable toxic effluent standard or prohibition (40 CFR § 230.10(b)(2)); jeopardize the continued existence of any federally-listed specie or destroy or adversely modify designated critical habitat (40 CFR § 230.10(b)(3)); cause or contribute to violations of any applicable state water quality standard (40 CFR § 230.10(b)(1)); or cause or contribute to significant degradation of waters of the United States (40 CFR § 230.10(c)). Prior to completing review, the Corps also must evaluate the proposed project in light of the public interest. 33 CFR § 320.4. As a general matter, projects which have been approved by state authorities and which the applicant demonstrates to be the LEDPA will be approved by the Corps in the absence of overriding national factors of public interest. 33 CFR § 320.4(J)(3). This is in recognition of the fact that land use planning decisions primarily fall within the purview of local and state authorities.<sup>1</sup>

## **2.0 PROJECT PURPOSE AND NEED**

The basic Project purpose is a commercial development. The overall Project purpose is to construct a commercial retail shopping center to service the needs of the residents of Suisun City and the surrounding region, in compliance with the City's General Plan and Zoning Ordinance, that will, at a minimum, provide an integrated shopping center development that includes a Supercenter of sufficient size to accommodate the needs of Suisun City and the region (more than 172,000 square feet), complementary commercial uses such as a gas station and restaurant, and associated parking and infrastructure.

The proposed Project will provide commercial/retail to service the currently unmet needs of the residents of Suisun City and regional consumers as well as the future demand from planned residential development in the Suisun City/Fairfield region of Solano County. While the City has experienced a dramatic rise in population increasing from 11,087 in 1980 to 26,917 in 2006, the City has not experienced a commensurate increase in employment centers and services and most residents need to commute outside the City for work (approximately 92% in 2006) and for many services. The proposed Project will create employment opportunities, provide needed commercial services, and reduce commute times. By providing such services on a site that is contiguous with existing development, the Project will avoid "leapfrogging" development into undeveloped areas, many of which are located in environmentally sensitive areas such as the Suisun Marsh area. As one of the few undeveloped properties located along a major highway, the site has been identified in the City's General Plan and other planning documents as a site that is important to the development of necessary commercial services.

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<sup>1</sup> The Corps regulations provide: "The primary responsibility for determining zoning and land use matters rests with state, local and tribal governments. The district engineer will normally accept decisions by such governments on those matters unless there are significant issues of overriding national importance. Such issues would include but are not necessarily limited to national security, navigation, national economic development, water quality, preservation of special aquatic areas, including wetlands, with significant interstate importance, and national energy needs. Whether a factor has overriding importance will depend on the degree of impact in an individual case." 33 C.F.R. § 320.4(j)(2).

The construction of the Project is also necessary to meet the fiscal needs of the City. The commercial services will provide property taxes and sales taxes to provide the City revenue to pay for necessary public services and facilities and to help bridge its \$800,000 annual deficit.

### **3.0 PROJECT BACKGROUND, DESCRIPTION, AND IMPACTS**

#### **3.1 Local and State Land Use Authority and Approval**

Suisun City maintains local land use authority over the Project site. In response to development pressures, the City developed a comprehensive area wide development strategy to address the needs of the City and enhance the quality of life and character of the community. As part of this process, the City approved an updated General Plan in 1992, which covered an area that included the subject parcel. The parcel is currently zoned for commercial uses.

In 2002, the Solano County Airport Land Use Commission approved the Travis Air Force Base Land Use Compatibility Plan, which restricts development within zones surrounding the air base. Zone A is comprised of Travis Air Force Base runways and immediately adjoining areas within the runway primary surface and clear zones. All structures except aeronautical facilities are prohibited in Zone A therefore a commercial development such as the Project would be prohibited in this zone. Zones B1 and B2 are comprised of the "Accident Prone Zones," where the density of people is limited to no more than 30 or 60 people per single acre, respectively. A high density commercial shopping center would exceed this density limitation and therefore is prohibited in Zones B1 and B2.

Development within Zone C is allowed, provided that it meets the following restrictions:

1. No more than an average of 75 persons per acre is permitted for the entire site.
2. No more than 300 persons per any individual acre is permitted onsite at any given time.
3. Children's schools, day care centers, libraries, hospitals, nursing homes, and hazards to flight are prohibited land uses.
4. A notice regarding aircraft operational impacts is required to be attached to the deed.
5. Airspace review is required for all structures greater than 100 feet in height.

Development within Zone D is allowed with the following minimal restrictions:

1. Airspace review is required for all structures greater than 200 feet in height.
2. Hazards to flight are prohibited.

#### **3.2 Location and Setting**

The Project is to occur on 20.8 acres of undeveloped land located in southern Suisun City (Attachment 1, Figures 1 and 2). The Project occurs within the Denverton 7.5 minute USGS quadrangle map (Attachment 1, Figure 3). The subject parcel is a roughly triangularly-shaped 20.8-

acre property, with Highway 12 forming the southern boundary, Peterson Road forming the northern boundary, and Walters Road forming the eastern boundary (APN 0173-280-440). Access to the property is attained by taking the Highway 12 exit east from Interstate 80. Follow Highway 12 for approximately 5.25 miles. The property is situated immediately north of the intersection of Highway 12 and Walters Road. A 1,025-foot long drainage ditch bisects the property in a north to south direction, approximately 500 feet west of Walters Road. The drainage ditch collects surface runoff from portions of the property, Peterson Road, and the residential development to the north, and then at the site's southern corner flows into an under ground pipe that eventually discharges to Hill Slough located approximately 0.5 miles south of the property.

As is shown in Attachment 1, Figure 4, surrounding land uses are mostly housing developments, with an eastern boundary of undeveloped annual grasslands. Lands to the immediate north, west, and south of the property have all been developed with single family homes. Immediately northeast of the property are two undeveloped lots, but lands to the north and northeast of these small lots have also been developed with single family homes and a sports complex. Lands to the east and southeast of the property consist of a large expanse of undeveloped annual grasslands associated with the Travis Air Force Base management area (east of Walters Road).

### **3.3 Project Site Characteristics**

The property is situated at approximately 20 feet above sea level, with elevations decreasing slightly in a west to east direction. Fill has previously been deposited over a large portion of the property west of the drainage ditch. The mound of fill is approximately 1.5 to 2 feet higher in elevation than the surrounding areas. This area of fill prevents water from draining from the western portion of the site, creating ponded areas within the shallow depressions that were found throughout this area. The site supports non-native annual grasslands that are disked on a bi-annual basis. Near the northwest corner of the property is an area where the annual grassland habitat has been disturbed by vehicle traffic, indicating that this area was recently used as a staging area for nearby construction.

The property supports three habitat types: non-native annual grassland, ditch, and seasonal wetland. The drainage ditch has been colonized by disturbance tolerant forbs and emergent vegetation. With the exception of a solitary cottonwood tree (*Populus fremontii*), both the drainage ditch and surrounding grasslands lack any tree or shrub cover.

### **3.4 Jurisdictional Features**

The verified delineation for the Project site shows a total of 2.996 acres of wetlands, as is shown in Attachment 1, Figure 5. The features are summarized in the table below.