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Attorney for Petitioners
California Healthy Communities Network,
San Francisco Baykeeper, and Citizens
Committee to Complete the Refuge

BEFORE THE
STATE WATER RESOURCES CONTROL BOARD

In the matter of Wal-Mart Stores, Inc.,
Walters Road Development Project, Suisun
City, Solano County - Waste Discharge
Requirements and 401 Water Quality
Certification issued October 13, 2010
(Order No. R2-2010-0109)

PETITION FOR RECONSIDERATION

[23 Cal.Code.Reg. § 3867]

Pursuant to Section 3867 of Title 23 of the California Code of Regulations, Petitioners CALIFORNIA HEALTHY COMMUNITIES NETWORK, SAN FRANCISCO BAYKEEPER, and CITIZENS COMMITTEE TO COMPLETE THE REFUGE (“Petitioners”) hereby petition the State Water Resource Control Board for reconsideration of the San Francisco Bay Regional Water Quality Control Board’s (“Regional Board”) Order No. R2-2010-0109, dated October 13, 2010, issuing waste discharge requirements and water quality certification to Wal-Mart Stores, Inc. (“Wal-Mart”), for the Walters Road Development Project in Suisun City, Solano County (“Project”). Following is the information required by Section 3867.

1. Petitioners

California Healthy Communities Network
P.O. Box 1353
Martinez, CA 94553
Tel: (707) 479-6000

San Francisco Baykeeper
785 Market Street, Suite 850
San Francisco, CA 94103
Tel: (415) 856-0444

Citizens Committee to Complete the Refuge
453 Tennessee Lane
Palo Alto, CA 94306
Tel: (650) 493-5540

2. Action For Which Reconsideration is Requested

Regional Board Order No. R2-2010-0109 (“the Order”) issuing waste discharge requirements and water quality certification to Wal-Mart Stores, Inc. for the Walters Road Development Project in Suisun City, Solano County. A true and correct copy of the Order is attached to this Petition as **Attachment 1**.

3. Date on Which Action Occurred

October 13, 2010.

4. Reasons Why the Action Is Improper

The Regional Board’s issuance of certification was improper in two primary respects. First, there is no evidence or information of any kind in the record to support its determination that the Project will comply with all applicable water quality standards, since there is no actual mitigation plan or proposal whatsoever for the Project’s stream channel impacts. Second, under various state and federal regulations, policies, and guidance documents, off-site mitigation for the Project’s fill of seasonal wetlands was required at a ratio substantially greater than 1:1 under the circumstances. These arguments are set forth in greater detail below, following a statement of facts and procedural history.

A. Factual Background

The Project site is located in the Suisun Marsh watershed, on a 20.8-acre site at the intersection of Highway 12 and Walters Road in eastern Suisun City. The Project site is a triangularly-shaped property, with Highway 12 forming the southern boundary, Petersen Road forming the northern boundary, and Walters Road forming the eastern boundary. The site is comprised of three habitat types: non-native annual grasslands, stream, and seasonal wetlands.

The site contains approximately 2.996 acres of jurisdictional waters of the State and the United States, including wetlands and a stream channel. The jurisdictional waters are comprised of 2.596 acres of seasonal wetlands and vernal pools; and 0.4 acres (1,100 linear feet) of a stream channel with riparian/wetland vegetation. The unnamed stream bisects the Project site in a north to south direction, and is tributary to Hill Slough, which enters the northern portion of Suisun Slough and Suisun Marsh. A portion of the Project site is within federally-designated critical habitat for the endangered vernal pool tadpole shrimp (*Lepidurus packardii*) and threatened vernal pool fairy shrimp (*Branchinecta lynchi*). In addition, waters on the Project site provide for flood water attenuation, groundwater recharge, and water quality enhancement including the filtering of sediment and nutrients to downstream waters.

Project Description

Wal-Mart proposes to construct a retail shopping center on 20.14 acres of the 20.8-acre site. The shopping center will be comprised a 182,000 square foot “supercenter” with 879 parking stalls on 18.44 acres; an 8,000 square foot restaurant with 69 parking stalls on 1.41 acres; and two stormwater detention basins totaling 12,850 square feet on 0.29 acres.

Impacts to Wetlands

The total delineated jurisdictional waters of the State and U.S. on the Project site are approximately 2.996 acres. The site’s jurisdictional waters are comprised of:

- 2.596 acres of seasonal wetlands, some of which are considered vernal pools; and
- 0.4 acres (1,100 linear feet) of stream channel with associated riparian/wetland vegetation.

The Project will result in the permanent fill of approximately 2.63 acres of the site’s 2.996 acres of jurisdictional waters. This impact is comprised of the following:

- 2.35 acres of wetlands; and
- 0.28 acres (786 linear feet) of stream channel.

Procedural History

Wal-Mart first applied to the Regional Board for water quality certification on November 20, 2007. On November 19, 2008, the Regional Board’s Executive Officer denied the application without prejudice on grounds the application did not include an adequate alternatives analysis or stormwater management plan. Wal-Mart submitted a new application on or around January 22, 2009. Once again, due to the lack of a complete application detailing the Project

proposal, including an incomplete alternatives analysis and stormwater management plan, the Regional Board's Executive Officer denied the application without prejudice on April 23, 2010.

On June 21, 2010, Wal-Mart submitted a third application, this time for a partially downsized version of Project that, among other changes, omitted a proposed gas station. The net loss of jurisdictional waters resulting from the new Project was thus 2.35 acres of wetlands and 0.28 acres (786 linear feet) of stream channel. As mitigation for the loss of wetlands, Wal-Mart proposed to purchase mitigation credits from the Elsie Gridley Mitigation Bank, near Dixon in Solano County, at a 1:1 ratio, and as mitigation for the loss of stream channel it proposed to purchase riparian credits at a 2:1 ratio from the Noonan Ranch Mitigation Bank, a planned but not yet existing mitigation bank area in Fairfield, Solano County.

On July 9, 2010, Wal-Mart sent a letter to the Regional Board's Executive Officer providing additional information on the modified Project plan, denoted "CP 33." **Attachment 2.** On the issue of mitigation, the letter stated only:

"Impacts associated with development of CP 33 would be mitigated by purchasing seasonal wetland credits at a 1:1 ratio from the Elsie Gridley Mitigation Bank and riparian credits at a 2:1 ratio from the Noonan Ranch Mitigation Bank.

Muzzy Ranch Conservation Company is processing an amendment to the existing Noonan Ranch Mitigation Bank to add this riparian mitigation. Muzzy Ranch Conservation Company met with the U.S. Fish and Wildlife Service, California Department of Fish and Game, and the City of Fairfield last week to obtain additional information for the amendment. Muzzy Ranch Conservation Company expects to submit a draft prospectus to the U.S. Fish and Wildlife Service in the next few weeks for review and comment and will then proceed with the amendment process."

On July 16, 2010, Regional Board staff sent Wal-Mart a somewhat paradoxical letter, stating that although the application was complete, a high level of uncertainty regarding the future availability of riparian credits from the Noonan Ranch Bank, prevented the staff from preparing a tentative order. **Attachment 3.** The letter explained:

"Although the application is complete, Water Board staff cannot complete drafting a tentative order for public review of the Project because the mitigation proposal in the application does not contain sufficient information for the Water Board to determine that water quality standards will be met. As part of the mitigation plan included in the application, Wal-Mart proposes to purchase riparian credits for the Project's linear impacts at the Noonan Ranch Mitigation Bank. While Water Board staff feel that purchases of riparian credits at a bank near the Project can be acceptable mitigation, such riparian credits do not currently exist at the Noonan Ranch Mitigation Bank, nor does the

Noonan Ranch Mitigation Bank itself exist. Based on information Water Board staff have received, neither the credits or the bank will exist at anytime in the near future.

[¶]

Wal-Mart needs to supplement its certification application with a proposal for adequate compensatory mitigation for the Project's linear impacts such that the Water Board can determine, at the time it considers the application, that water quality standards will be met. The proposal needs to contain sufficient details to ensure that all Project impacts will be mitigated. Water Board staff cannot complete drafting a tentative order for public review until we receive this information.” Emphasis added.

In other words, because riparian credits did not (and do not) exist at Noonan Ranch Mitigation Bank, and because the bank itself did not (and does not) even exist, there was insufficient information in Wal-Mart’s application to enable staff to make the prerequisite determination that water quality standards will be met in order for it to issue water quality certification.

Meanwhile, in April, 2010, representatives from U.S. EPA, the Army Corps of Engineers, and the Department of Fish & Game had conducted an “Interagency Compensatory Mitigation Site Visit” to the Elsie Gridley Mitigation Bank, in order to inspect the facility for compliance with applicable performance criteria. In a report forwarded to the Corps and Regional Board on August 18, 2010 (*See* Report with cover e-mail, **Attachment 4**), U.S. EPA staff identified several performance criteria were not being met. Specifically, EPA observed, based on this field visit and 2008 data that:

- Phase I wetlands had failed to meet Year 3 performance criteria for hydrophilic plant species cover or species diversity. (p. 3.)
- Phase II wetlands “look very similar to Phase I pools,” though no detailed performance sampling was undertaken (p. 3.)
- “The site looked trampled and beat down. This may have been due to the recent introduction of cattle or perhaps due to ORV use.” (p. 4.)
- “The constructed wetlands looked to be holding large amounts of water and were pooling very deep (most were at least 2’ deep). They looked more like seasonal marsh and playa pools than vernal pools. . . . We were unable to differentiate between vernal pools and playa pools.” (p. 4.)

In other words, as of August, 2010, the long term success of the wetlands at the Elise Gridley Mitigation Bank was far from assured. At the very least, EPA’s report strongly suggested that one acre of wetlands at this facility did not possess the ecological functions, habitat values, and other wetland assets of one acre of undisturbed wetlands at this Project’s site.

Nevertheless, despite the significant uncertainty surrounding the availability and viability of mitigation and both Noonan Ranch and Elsie Gridley, Regional Board staff prepared and

circulated a tentative order (“TO”) for public review on August 23, 2010, imposing a public comment deadline of September 22, 2010. Subsequent to the Regional Board’s issuance of the TO, however, Wal-Mart notified the Regional Board via letter that it had been unable to acquire any mitigation credits at the Noonan Ranch site or elsewhere. Accordingly, Wal-Mart was unable to provide the Regional Board with any details or specifics whatsoever regarding how mitigation for the permanent fill of 786 linear feet of stream channel would be planned, implemented, and monitored to success.

On October 6, 2010 Regional Board staff prepared a staff report for the October 13, 2010 meeting, **Attachment 5**, that disclosed that no location for mitigation of the Project’s stream channel impacts had been identified.

On October 13, 2010, following a public hearing during which both Petitioners here voiced objections on the record to the failure to identify a mitigation plan for stream channel impacts, the Regional Board adopted Order No. R2-2010-0109 issuing water quality certification and WDRs to Wal-Mart. Regarding mitigation for stream channel impacts, the Order provided as follows:

“To mitigate for the permanent fill of 0.28 acres (786 linear feet) of stream channel, the Discharger proposes to create and/or restore a minimum of 1,572 linear feet of streamchannel at an off-site parcel. The Discharger has not finalized the details of such mitigation; thus, provisions of this Order require the Discharger to submit detailed mitigation plans, for Regional Water Board approval, prior to starting any Project construction (i.e., site grading).”

The Order correspondingly imposed the following condition no. 5:

“Not later than 90 days prior to the start of construction (defined as site grading), the Discharger shall submit, acceptable to the Regional Water Board, a Final Mitigation and Monitoring Plan (Final MMP) that addresses the proposed off-site mitigation elements for the stream impacts. The Discharger shall comply with and implement the Final MMP. The Final MMP shall include the following:

- a. A proposal that will create and/or restore a minimum of 1,572 linear feet of stream channel and replace the impacted stream’s ecosystem functions and values. The proposed channel shall have similar characteristics of the impacted stream with a defined channel and enough water flow for scour and sediment transport to

occur. If preservation and restoration of an existing stream is proposed, a higher amount of linear feet will be required[.]”¹

As explained further below, this constituted a wholesale deferral by the Regional Board of a mandatory duty under the Clean Water Act and Porter-Cologne to require a specific program of mitigation before determining that a proposed activity will comply with water quality standards.

B. There Is No Evidence To Support the Regional Board’s Issuance Of Water Quality Certification With Regard To Stream Channel Impacts.

The Regional Board violated applicable law in issuing water quality certification notwithstanding the absence of any specific plan or program of mitigation for the Project’s stream channel impacts. Under both Section 401 of the Clean Water Act and Title 23 of the California Code of Regulations, the Regional Board may issue water quality certification in connection with a Section 404 permit application only if it finds, based on substantial evidence in the record, that the activity in question will, as a factual matter, comply with all applicable water quality standards and other appropriate requirements. *See* 23 C.C.R. § 3859(a) (“[c]onditions shall be added to any certification, if necessary, to ensure that all activities will comply with applicable water quality standards and other appropriate requirements”). Where a program of off-site mitigation is required to compensate for a loss of wetland or riparian acreage, as is the case here, the Regional Board must find, again based on substantial evidence in the record, that the compensatory mitigation acreage described in such a program is adequate in terms of its quantity, quality, habitat values, and several other factors to fully mitigate for any project-related losses. In order to make such a finding, there must be clear, factual information in the record that demonstrates such adequacy.

The State Board has articulated the standard for such evidentiary findings in the context of Section 401 certification as follows:

“Generally speaking, in order to issue water quality certification, the State Water Board (or a Regional Board) must find that there is a reasonable assurance that the project will comply with water quality standards, including the designated beneficial uses of the affected water bodies, the water quality objectives established to protect those beneficial uses, and State Water Board Resolution 68-16 (“Policy with Respect to Maintaining High

¹ The condition goes on to identify a number of additional components of the FMMP, none of which identify any specific location or description of the stream channel.

Quality Waters in California”[.]” *In re Double Wood Investment, Inc.*, SWRCB Order WQ-2000-09 (June 15, 2007) at p. 1.

In the current case, there simply is no information of any kind before the Regional Board to provide such “reasonable assurance” that the project will comply with water quality standards with regard to its stream channel impacts. On the contrary, Regional Board staff and the applicant have both acknowledged that the: (i) availability, (ii) feasibility, and (iii) suitability of off-site acreage to compensate for the loss of 0.28 acres of stream channel is completely unknown at the present time, and is not likely to become known in the foreseeable future. There is simply no documentation to support required findings that the Walmart Project will comply with all applicable water quality standards, and that all impacts to stream channel habitat will be fully mitigated. The Regional Board’s action was therefore erroneous. *See Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506; *see also Karuk Tribe of Northern California v. Cal. Regional Water Quality Control Bd.* (2010) 183 Cal.App.4th 330, 368, fn. 29.

Furthermore, the Regional Board’s own guidance makes clear that thorough mitigation plans must be developed as part of any application for 401 Certification, and must be considered by the Regional Board as part of its decision whether to issue the certification. For example, mitigation plans must contain:

“[b]aseline studies of both the impacted site and the mitigation site to determine what wetland functions will be lost at each location. Studies should contain adequate spatial and temporal coverage and include all wildlife and vegetation species expected to be impacted at the two sites; hydrology of the sites; and soils present at the sites. A wetland delineation approved by the Corps should also be included for both sites.” San Francisco Bay Water Board, *Fact Sheet for Reviewing Wetland and Riparian Projects* (2006), p. 5; emphasis added.

Correspondingly, this Guidance provides that a Preliminary Mitigation & Monitoring Plan contain a thorough description of the “Proposed Mitigation Site,” including the following information:

“Proposed Mitigation Site (site description; ownership; rationale for choice; ecological assessment of mitigation site including existing site functions; quantitative justification for project if wetlands already exist on the site; habitat types to be created; present & proposed uses of adjacent areas; constraints).” *Id.* at Table 2.

Here, since no mitigation site has even been identified as a possibility, there is no factual information whatsoever before the Regional Board – let alone information addressing the foregoing qualitative and quantitative factors – to support a finding that the Project can feasibly be conditioned in a manner so as to “ensure” compliance with all applicable water quality standards and other requirements.

In *In Re Double Wood Investment, Inc.*, cited above, the State Board generally affirmed the foregoing principle that an actual mitigation plan must be developed and reviewed before a Regional Board may properly issue water quality certification. In that case, the State Board’s Executive Officer initially denied water quality certification for a golf course on several occasions due in part to a lack of specificity of mitigation for impacts to seasonal watercourses present at the site. The State Board upheld the EO’s prior denials on grounds in part that the developer’s mitigation program for wetlands fill, was “conceptual” and was not fully defined. After the developer submitted additional detailed information concerning the mitigation efforts, the State Board ultimately issued certification, explaining:

“Finding: The mitigation proposal, as supplemented by petitioner’s January 19, 2000 submittal, is now sufficient. . . . Further, the mitigation proposals are now fully defined, unlike the previous conceptual proposals. *In re Double Wood Investment, Inc.*, SWRCB Order WQ-2000-09 (June 15, 2007) at pp. 4-5; emphasis added.

The State Board’s reasoning establishes that there can be no “certification” that a project will comply with all applicable water quality standards when there is only a “conceptual” proposal for mitigation before the Board for consideration. In the current case, there is not even a conceptual proposal before the Regional Board. There simply is no proposal of any kind. The State Board therefore should adhere to its reasoning in Oder WQ 2009-09 and overturn the Regional Board’s issuance of certification here.

C. The Regional Board Impermissibly Issued Certification Based On Off-Site, Out-of-Kind Mitigation For Seasonal Wetland Loss At The Troubled Elsie Gridley Bank At Only A 1:1 Ratio.

As described above, the Regional Board included a condition in its water quality certification requiring mitigation of 2.35 acres of wetland impacts via the purchase of credits at the Elise Gridley Mitigation Bank at a 1:1 ratio. This, too, violated applicable guidance.

Under the Regional Board’s own Wetland Fill Policy, contained in its Basin Plan, there is to be no net loss of wetland acreage and no net loss of wetland value when the project and any

proposed mitigation are evaluated together. State resource agencies have long understood that purchase of mitigation bank credits to mitigate permanent impacts to wetlands have generally been met with limited success, and that off-site habitat creation or purchase of mitigation bank credits generally fails to replace ecological functionality, resulting in net loss of wetland acreage and/or resource value.² Accordingly, mitigation ratios greater than 1:1 are generally required when dischargers propose the use of mitigation banks or where it is intended to enhance existing wetlands at an off-site location.

The State and Regional Boards have developed several methodologies to determine appropriate wetland mitigation ratios, considering multiple factors such as existing habitat quality, acreage, ecosystem functionality and the type of mitigation being proposed. Required mitigation ratios vary from region to region. However, as a general rule, enhancement of an existing degraded site demands at least a 2:1 replacement ratio and preservation of existing wetland habitat requires a higher mitigation ratio, typically 5:1, since this approach does not effectively achieve the ‘no-net loss’ standard.

As the Regional Board staff itself explained in a letter to Wal-Mart informing it that its original application was incomplete:

“If, after a more thorough evaluation of site development alternatives has been performed, it is demonstrated that some portion of the wetland mitigation must be provided by purchasing credits at the mitigation bank, such credits will likely need to be acquired at a ratio at least 2: 1 (mitigation acreage to impacted wetlands acreage).” Regional Board, letter to Wal-Mart, December 18, 2007. **Attachment 6**; emphasis added.

There is no indication that the Regional Board required or received any comprehensive baseline study of the ecological quality, functionality, or habitat values of the mitigation credits available at the Elise Gridley Mitigation Bank before it issued certification. On the contrary, what the Regional Board did receive was EPA’s 2010 inspection report highlighting the failure of the Bank’s Phase I and II wetlands apparent inability to meet applicable performance criteria. Clearly, mitigation credits at a 1:1 ratio from a banking facility of unproven performance and a demonstrated inability to meet performance criteria cannot support a finding that the project will

² Ambrose, R. F., J. C. Callaway, and F. F. Lee. 2006. *An evaluation of compensatory mitigation projects permitted under Clean Water Act Section 401 by the California State Water Quality Control Board, 1991–2002*. California Environmental Protection Agency, California State Water Resources Control Board. Los Angeles, CA, USA. 03-259-250-0.

comply with all water quality standards. The Regional Board according erred by issuing water quality certification based on credits at this ratio form this particular facility.

5. Manner In Which Petitioners Are Aggrieved

Petitioner CALIFORNIA HEALTHY COMMUNITIES NETWORK (“HCN”) is a California unincorporated association maintaining its principal place of business in Martinez, Contra Costa County. HCN is a project of the Tides Center, an independent nonprofit organization based in San Francisco that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code. HCN is comprised of organizations and individuals who share common concerns regarding poorly planned, environmentally unsustainable land use and development practices in California. HCN’s organizational members include the Sierra Club, Greenbelt Alliance, East Bay Alliance for a Sustainable Economy, Solano Taxpayers, and the Solano County Green Party. HCN’s individual members include residents and taxpayers in Suisun City, including Anthony Moscarelli.

Petitioner SAN FRANCISCO BAYKEEPER is a regional non-profit public benefit corporation organized under the laws of the State of California. Baykeeper’s mission is to protect and enhance the water quality of the San Francisco Bay and Delta for the benefit of their ecosystems and human communities. Baykeeper’s members directly benefit from San Francisco Bay region waters and wetlands in the form of recreational swimming, fishing, photography, bird watching, and boating, each of which uses have been, are, and will continue to be adversely impacted by the loss of wetlands and addition of pollutants to San Francisco Bay region waters. Baykeeper strives to protect the Bay and Delta by investigating pollution problems, bringing enforcement actions against polluters directly when necessary, and seeking administrative and judicial review of discharge permits issued to polluters by local, state and/or federal permitting agencies.

Petitioner CITIZENS COMMITTEE TO COMPLETE THE REFUGE (“CCCR”) is a regional, volunteer-based 501(c)(3) organization whose goal is to protect and restore the biodiversity of San Francisco Bay by protecting its remaining wetlands and the lands that support them. CCCR works to place these lands under the permanent protection of the Don Edwards San Francisco Bay National Wildlife Refuge or other suitable entities. CCCR has taken an active

interest in the Clean Water Act, Porter-Cologne, CEQA, and the federal and state Endangered Species Acts, and their respective regulations, policies, implementation and enforcement.

HCN, Baykeeper, and CCCR accordingly have a direct interest in the vigorous enforcement of state and federal environmental laws that protect water quality, wetlands, and species habitat. The Regional Board's unlawful issuance of Section 401 water quality certification and WDRs to Wal-Mart in the absence of any identified mitigation plan or program for stream channel impacts thereby directly and adversely affects these interests.

6. Specific Action Requested by Petitioners

Petitioners request the State Board to reverse, overturn, or otherwise invalidate the Regional Board's Order No. R2-2010-0109, dated October 13, 2010, issuing water quality certification and WDRs to Wal-Mart.

7. List of Other Interested Persons³

City of Suisun City
701 Civic Center Blvd.
Suisun City, CA 94585

Save Our Suisun
PO Box 841
Suisun City, CA 94585

8. Statement Of Notice to Regional Board and Applicant.

Petitioners affirm that a copy of this petition is being simultaneously sent via U.S. Mail to the Executive Officer of the Regional Board and to Wal-Mart Stores, Inc. c/o its counsel of record in the Regional Board proceeding.

9. Copy of Request for Preparation of Record

A copy of the request to the Regional Board's Executive Officer to prepare the staff record, including a tape recording or transcript of any pertinent Regional Board meeting, is attached to this Petition as **Attachment 7**.

10. Summary of Prior Participation by Petitioners

Prior to and during the October 13, 2010 public hearing, representatives of HCN, CCCR and Baykeeper submitted written and/or oral testimony to the Regional Board objecting to the

³ Petitioners are aware that numerous individual submitted form letters to the Regional Board in support of the Project. These individuals are not included on this list.

TO and proposed issuance of water quality certification and WDRS based on the alleged deficiencies in identified mitigation for the permanent loss of wetlands and riparian habitat. Representatives also spoke at the hearing itself. Representatives of HCN further raised these and other objections several times via e-mail and other written correspondence throughout the application review process commencing in 2007.

Conclusion

For the reasons stated in this Petition, Petitioners respectfully request the State Board to set aside the Regional Board's Order No. R2-2010-0109 issuing water quality certification and WDRs to Wal-Mart for the Walters Road Development Project.

Dated: November 10, 2010

Respectfully submitted,

M. R. WOLFE & ASSOCIATES, P.C.



Mark R. Wolfe
Attorney for Petitioners CALIFORNIA HEALTHY
COMMUNITIES NETWORK, SAN FRANCISCO
BAYKEEPER, and CITIZENS COMMITTEE TO
COMPLETE THE REFUGE

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

ORDER NO. R2-2010-0109

**WASTE DISCHARGE REQUIREMENTS AND WATER QUALITY CERTIFICATION
FOR:**

**WAL-MART STORES, INC.
WALTERS ROAD DEVELOPMENT PROJECT
SUISUN CITY, SOLANO COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the Regional Water Board), finds that:

1. Wal-Mart Stores, Inc., (Discharger) has applied to the Regional Water Board for authorization to construct a retail shopping center on a 20.8-acre site at the intersection of Highway 12 and Walters Road in Suisun City, Solano County (Project).
2. The Project, which will develop 20.14 acres of the site, is comprised of the following:
 - a. An 182,000 square foot supercenter with 879 parking stalls on 18.44 acres;
 - b. An 8,000 square foot restaurant with 69 parking stalls on 1.41 acres; and
 - c. Two stormwater detention basins totaling 12,850 square feet on 0.29 acres.
3. The Project site is a triangularly-shaped property located within the Suisun Marsh Watershed, with Highway 12 forming the southern boundary, Petersen Road forming the northern boundary and Walters Road forming the eastern boundary. A 1,100 linear feet unnamed stream bisects the Project site in a north to south direction. The unnamed stream is a tributary to Hill Slough, which enters the northern portion of Suisun Slough. The Project site is situated approximately 20 feet above sea level, with elevations decreasing slightly in a west to east direction. The Project site is comprised of three habitat types: non-native annual grasslands, stream, and seasonal wetlands.
4. There are approximately 2.996 acres of jurisdictional waters of the United States, including wetlands and a stream channel, on the Project site. The site's waters of the United States are comprised of:
 - a. 2.596 acres of seasonal wetlands; and
 - b. 0.4 acres (1,100 linear feet) stream channel with riparian/wetland vegetation.
5. The Project will result in the permanent fill of approximately 2.630 acres of the site's 2.996 acres of jurisdictional waters of the United States. This impact is comprised of the following:
 - a. 2.35 acres of wetlands; and
 - b. 0.28 acres (786 linear feet) of stream channel.
6. The Discharger filed an application for Water Quality Certification and Waste Discharge Requirements with the Regional Water Board on June 21, 2010. The application was subsequently completed by additional information submitted on July 9, 2010.
7. The Discharger has applied to the U.S. Army Corps of Engineers (Corps) for an individual permit under Section 404 of the Clean Water Act (33 U.S.C. § 1344). The Corps issued a

Public Notice for the Project on January 31, 2008, but has not issued a permit for the Project at this time.

8. A portion of the Project site is within critical habitat for the endangered vernal pool tadpole shrimp (*Lepidurus packardii*) and threatened vernal pool fairy shrimp (*Branchinecta lynchi*). In addition, waters on the Project site also provide for flood water attenuation, groundwater recharge, and water quality enhancement including the filtering of sediment and nutrients to downstream waters.
9. The Corps has initiated consultation with the United States Fish & Wildlife Service (USFWS) under the authority of Section 7 of Endangered Species Act regarding Project-related impacts to critical habitat. The USFWS has not yet issued a Biological Opinion for the Project.
10. The Project's stream channel conveys and provides attenuation and treatment of the upstream stormwater runoff, which includes the 11.75-acre Quail Glen Subdivision.
11. Development of the Project could increase pollutant load, the volume of stormwater discharged from the site, and the velocity and durations of the flows to the waters downstream including Hill Slough and Suisun Slough. Impacts to the beneficial uses of the stream and wetlands, as well as downstream waters, could result from the discharge of sediments and construction wastes during construction. In addition, the proposed structures and parking lots will indirectly impact beneficial uses through discharge of urban runoff pollutants (e.g., oil and grease, heavy metals, pathogens, nutrients, pesticides, etc.). The post-construction modification of the runoff hydrograph from the new development could cause an increase in peak flows downstream. Such changes in the runoff hydrograph can cause unnatural erosion, flooding, and deposition of sediments in the creek and otherwise impact water quality and beneficial uses of waters.

Mitigation Plan

12. To mitigate for the permanent fill of 2.35 acres of seasonal wetlands, the Discharger proposed to purchase 2.35 acres of credit of seasonal wetlands at the Elise Gridley Mitigation Bank in Solano County.
13. To mitigate for the permanent fill of 0.28 acres (786 linear feet) of stream channel, the Discharger proposes to create and/or restore a minimum of 1,572 linear feet of stream channel at an off-site parcel. The Discharger has not finalized the details of such mitigation; thus, provisions of this Order require the Discharger to submit detailed mitigation plans, for Regional Water Board approval, prior to starting any Project construction (i.e., site grading).

Post-Construction Stormwater and Hydromodification Management

14. The Discharger submitted a report titled, Stormwater Control Plan, dated October 6, 2008, on treatment of on-site stormwater associated with the new impervious surface. The Discharger is required to revise the Stormwater Control Plan to accurately reflect the current Project as defined in Finding 2. The Discharger also submitted a report titled, Post-Construction Stormwater Treatment for Off-site Run-on, dated May 26, 2010, and revised

June 16, 2010. Additional information on stormwater and hydromodification was provided in Avoided Wetlands Mitigation dated May 26, 2010. These reports include measures to address the Project's post-construction urban runoff impacts, as well as regulate flows to pre-development levels. The Discharger is required to monitor, inspect, and maintain these stormwater treatment measures in perpetuity.

15. The Discharger will also prepare and implement a site specific Stormwater Pollution Prevention Plan (SWPPP) for the Project in accordance with the requirements, provisions, limitations, and prohibitions of the General Construction Permit (2009-0009-DWQ) for discharges of stormwater associated with construction activity. Post-construction BMPs to treat stormwater runoff will be installed during construction and maintained in perpetuity after the site construction is complete.
16. The Regional Water Board has determined to regulate the proposed discharge of fill materials into waters of the State by issuance of Waste Discharge Requirements (WDRs) pursuant to Section 13263 of the California Water Code (CWC) and 23 CCR §3857, in addition to issuing certification pursuant to 23 CCR §3859. The Regional Water Board considers WDRs necessary to adequately address impacts and mitigation to beneficial uses of waters of the State from the Project, to meet the objectives of the California Wetlands Conservation Policy (Executive Order W-59-93), and to accommodate and require appropriate changes to the Project.
17. The Regional Water Board provided public notice of the application and this Order on August 23, 2010.
18. This Order is effective only if the Discharger pays all of the required fees conditioned under 23 CCR.

Regulatory Framework

19. The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes implementation plans to achieve water quality objectives. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Resources Control Board, Office of Administrative Law and the U.S. EPA, where required.
20. The wetlands and unnamed stream on the Project site are located with the Suisun Basin and are tributary to Hill Slough. The Basin Plan does not explicitly identify beneficial uses for these waters. However, the Basin Plan states that "[t]he beneficial uses of any specifically identified water body generally apply to all of its tributaries." Hill Slough is a tributary to Suisun Slough. Beneficial uses identified in the Basin Plan for Suisun Slough are as follows:
 - a. Navigation (NAV)
 - b. Water Contact Recreation (REC-1)
 - c. Non-contact Water Recreation (REC-2)
 - d. Warm Freshwater Habitat (WARM)
 - e. Wildlife Habitat (WILD)

f. Fish Spawning (SPWN)

21. The Basin Plan Wetland Fill Policy (policy) establishes that there is to be no net loss of wetland acreage and no net loss of wetland value when the project and any proposed mitigation are evaluated together, and that mitigation for wetland fill projects is to be located in the same area of the Region, whenever possible, as the project. The policy further establishes that wetland disturbance should be avoided whenever possible, and if not possible, should be minimized, and only after avoidance and minimization of impacts should mitigation for lost wetlands be considered.
22. The goals of the California Wetlands Conservation Policy (Executive Order W-59-93, signed August 23, 1993) include ensuring “no overall loss” and achieving a “...long-term net gain in the quantity, quality, and permanence of wetland acreage and values...” Senate Concurrent Resolution No. 28 states that “[i]t is the intent of the legislature to preserve, protect, restore, and enhance California’s wetlands and the multiple resources which depend on them for benefit of the people of the State.” Section 13142.5 of the CWC requires that the “highest priority shall be given to improving or eliminating discharges that adversely affect...wetlands, estuaries, and other biologically sensitive areas.”
23. This Order applies to the permanent fill and indirect impacts to waters of the State associated with the Project, which is comprised of the components listed in Finding 5. Construction of the Project will result in the permanent placement of fill in 2.63 acres of jurisdictional waters, including seasonal wetlands and a stream.
24. The Discharger has submitted a Clean Water Act section 404 Alternatives Analysis and supplemental information to show that appropriate effort was made to avoid and then to minimize wetland and stream disturbance, as required by the Basin Plan.
25. The California Environmental Quality Act (CEQA) requires all discretionary projects approved by public agencies to be in full compliance with CEQA, and requires a lead agency (in this case, the City of Suisun City) to prepare an appropriate environmental document for such projects. The City of Suisun prepared and certified the Environmental Impact Report for the Walters Road West Project (EIR) on January 10, 2008, State Clearinghouse No. 2006072026. The EIR found significant unavoidable visual, air, greenhouse, and noise impacts, which are beyond the jurisdictional purview of the Regional Water Board. The EIR also found that significant impacts related to the filling of the wetlands would be mitigated to less than significant levels upon the purchase of credits at a mitigation bank at a level sufficient to fully replace the functions and values of the wetlands and ensure no net loss of wetland habitat in terms of both acreage and functions and values or at a ratio no less than 1:1 ratio. The EIR also found that significant impacts to the stream would be mitigated to less than significant levels with the above wetlands mitigation. The EIR also found significant impacts related to hydrology and water quality from the Project but that they would all be mitigated to less than significant levels through the mitigation measures identified in the EIR such as compliance with requirements of construction and municipal stormwater permits. With respect to any impacts to critical habitats for the endangered vernal pool tadpole shrimp and threatened vernal pool fairy shrimp, the EIR concludes that there will be no impact if USFWS revises its critical habitat designation for the Project area, but that if it does not, the Discharger is required to mitigate the significant impact to less

than significant levels through the purchase of credits at an USFWS approved mitigation bank at a no less than 3:1 ratio for critical habitat wetlands preservation, 1:1 for critical habitat wetlands creation, and 1:1 critical habitat uplands preservation or other ratios determined by USFWS.

26. The Regional Water Board, as a responsible agency under CEQA, has considered the EIR, together with the record before the Regional Water Board, including public comments, and finds that the significant environmental impacts of the proposed activities, which are within the Regional Water Board's purview and jurisdiction, have been identified and mitigated to less than significant levels. Specifically, significant impacts from the wetland and stream fill and significant impacts to hydrology and water quality will be mitigated through the mitigation requirements set forth in the EIR and this Order. Further, changes have been incorporated into the Project (the Project now results in 0.246 acres less of wetland fill and 314 linear feet less in stream fill than was previously proposed by the Discharger and evaluated in the EIR), which lessen the impacts from the wetland and stream fill.
27. Pursuant to Title 23, California Code of Regulations sections 3857 and 3859, the Regional Water Board is issuing Waste Discharge Requirements and Water Quality Certification for the proposed Project.
28. The Regional Water Board has notified the Discharger and interested parties of its intent to issue Waste Discharge Requirements and Water Quality Certification for the Project.
29. The Regional Water Board, in a public meeting, heard and considered all comments pertaining to this Order.

IT IS HEREBY ORDERED that Wal-Mart Stores, Inc., in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following, pursuant to authority under CWC Sections 13263 and 13267:

A. Discharge Prohibitions

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, is prohibited.
2. The discharge of floating oil or other floating materials from any Project activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
3. The discharge of silt, sand, clay, or other earthen materials from any Project activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
4. The wetland and creek fill activities and mitigation construction subject to these requirements shall not cause a nuisance as defined in CWC §13050(m).

5. The discharge of decant water from the Project's fill sites, and stockpile or storage areas to surface waters or surface water drainage courses is prohibited, except as conditionally allowed following the submittal of a discharge plan or plans as described in the Provisions.
6. The groundwater in the vicinity of the Project shall not be degraded as a result of the placement of fill for the Project.
7. The discharge of materials other than stormwater, which are not otherwise regulated by a separate NPDES permit or allowed by this Order, to waters of the State is prohibited.
8. The discharge of drilling muds to waters of the State, or to where such muds could be discharged to waters of the State, is prohibited.
9. The discharge of earthen fill, construction material, concrete, aggregate, rock rip-rap, and/or other fill materials to waters of the State is prohibited, except as expressly allowed herein.

B. Receiving Waters Limitations

1. The discharge shall not cause the following conditions to exist in waters of the State at any place:
 - a. Floating, suspended, or deposited macroscopic particulate matter or foam in concentrations that cause nuisance or adversely affect beneficial uses;
 - b. Bottom deposits or aquatic growths to the extent that such deposits or growths cause nuisance or adversely affect beneficial uses;
 - c. Alteration of temperature, turbidity, or apparent color beyond present natural background levels;
 - d. Visible, floating, suspended, or deposited oil or other products of petroleum origin; and
 - e. Toxic or other deleterious substances to be present in concentrations or quantities which will cause deleterious effects on wildlife, waterfowl, or other aquatic biota, or which render any of these unfit for human consumption, either at levels created in the receiving waters or as a result of biological concentration.
2. The discharge shall not cause nuisance, or adversely affect the beneficial uses of the receiving water.
3. The discharge shall not cause the following limits to be exceeded in waters of the State at any one place within one foot of the water surface:
 - a. Dissolved Oxygen: 5.0 mg/L, minimum

The median dissolved oxygen concentration for any three consecutive months shall not be less than 80% of the dissolved oxygen content at saturation. When natural

factors cause concentrations less than that specified above, then the discharges shall not cause further reduction in ambient dissolved oxygen concentrations.

- b. Dissolved Sulfide: 0.1 mg/L, maximum
 - c. pH: The pH shall not be depressed below 6.5 nor raised above 8.5, nor caused to vary from normal ambient pH by more than 0.5 pH units.
 - d. Un-ionized Ammonia: 0.025 mg/L as N, annual median; and 0.16 mg/L as N, maximum
 - e. Nutrients: Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.
4. There shall be no violation of any water quality standard for receiving waters adopted by the Regional Water Board or the State Water Resources Control Board.

C. Provisions

- 1. The Discharger shall comply with all Prohibitions, Receiving Water Limitations and Provisions of this Order immediately upon adoption of this Order or as provided below.
- 2. The Discharger shall submit copies to the Regional Water Board of all necessary approvals and/or permits for the Project, including its associated mitigation, from applicable government agencies, including, but not limited to, the California Department of Fish and Game (CDFG), USFWS, and the Corps. Copies shall be submitted within 60 days after issuance of any permit or other approval.
- 3. In addition to the requirements of this Order, the Discharger shall comply with any other more stringent requirements imposed by the Corps, USFWS, and CDFG.
- 4. Construction shall not commence on any Project component until all required documents, reports, plans, and studies required in the Provisions associated with that component have been submitted to and found acceptable by the Executive Officer or the Regional Water Board in the case of the Final Mitigation and Monitoring Plan.

Compensatory Mitigation

- 5. Not later than 90 days prior to the start of construction (defined as site grading), the Discharger shall submit, acceptable to the Regional Water Board, a Final Mitigation and Monitoring Plan (Final MMP) that addresses the proposed off-site mitigation elements for the stream impacts. The Discharger shall comply with and implement the Final MMP. The Final MMP shall include the following:

- a. A proposal that will create and/or restore a minimum of 1,572 linear feet of stream channel and replace the impacted stream's ecosystem functions and values. The proposed channel shall have similar characteristics of the impacted stream with a defined channel and enough water flow for scour and sediment transport to occur. If preservation and restoration of an existing stream is proposed, a higher amount of linear feet will be required;
 - b. The proposed mitigation site must occur within the Regional Water Board's jurisdictional boundaries, as well as within Solano County;
 - c. A schedule providing for mitigation construction to commence prior to the start of Project construction. The schedule shall provide for all mitigation to be completed before construction is complete;
 - d. An irrigation and planting plans;
 - e. Provisions for use of native plant seeds/plantings and the avoidance of non-native vegetation;
 - f. A monitoring program that consists of:
 1. Establishment of performance criteria,
 2. Selection of performance indicators,
 3. Field sampling of performance indicators,
 4. Analysis of the field data,
 5. A remedial action plan,
 6. Annual reports submittals, and
 7. A minimum monitoring duration of 10 years - adequate to evaluate site performance;
 - g. If the proposed mitigation parcel will be grazed by livestock, a detailed grazing plan, including stocking rates, fencing plans for waterbodies and upland water sources shall be submitted;
 - h. Financial assurances adequate to ensure the construction, maintenance, monitoring, and preservation of the proposed mitigation and other measures. Detailed cost estimates to cover these activities shall be submitted, as well; and
 - i. A conservation easement or similar mechanism to provide in perpetuity for the protection of the mitigation area for the purposes of retaining the land in its natural and open-space condition.
6. As-built plans for the off-site mitigation site shall be prepared and submitted to the Regional Water Board within six weeks of the completion of mitigation site construction.
 7. Not later than 30 days prior to the start of any Project construction, the Discharger shall submit proof of purchasing 2.35 acres of wetland creation and/or restoration credits that met prescribed performance standards from the Elise Gridley Mitigation Bank or an approved mitigation bank in Solano County.

Monitoring and Reporting

8. All technical and monitoring reports required pursuant to this Order are being required pursuant to Section 13267 of the California Water Code. Failure to submit reports in accordance with schedules established by this Order or failure to submit a report of sufficient

technical quality acceptable to the Executive Officer may subject the Discharger to enforcement action pursuant to Section 13268 of the California Water Code.

9. Annual monitoring reports shall be submitted to the Regional Water Board by December 15 of each monitoring year and until the sites have met their performance standards and final success criteria and the Executive Officer has accepted in writing a notice of mitigation completion. The mitigation-monitoring period for off-site mitigation parcel shall be a minimum of ten years. Monitoring reports shall be prepared as described in Provision 5, and shall include assessment of all mitigation features with respect to performance criteria established in the Final MMP. Reports shall include methods used, locations sampled, representative photographs, results of monitoring, trends, reference weather conditions, recommendations, and implemented actions. For necessary remedial actions not taken prior to submittal of the report, an implementation schedule shall be provided. Annual reports shall also include the proposed annual grazing monitoring, including photographs, residual dry matter monitoring results, summaries of livestock stocking rates (or other appropriate measure of livestock grazing), analyses of trends over time, and all other information, as appropriate.

Electronic Reporting Format

10. In addition to print submittals, all reports submitted pursuant to this Order must be submitted as electronic files in PDF format. The Regional Water Board has implemented a document imaging system, which is ultimately intended to reduce the need for printed report storage space and streamline the public file review process. Documents in the imaging system may be viewed, and print copied made, by the public, during file reviews conducted at the Regional Water Board's office. All electronic files, whether in PDF or spreadsheet format, shall be submitted via email (only if the file size is less than 3 MB) or on CD. CD submittals may be included with the print report.

Notice of Mitigation Completion

11. Once the Discharger has determined that the mitigation has achieved the final success criteria specified in the Final MMP approved by the Regional Water Board, it shall submit a notice of mitigation completion (notice), acceptable to the Executive Officer. The notice shall include a description of the mitigation that has been determined to be successful, as well as proposed long-term funding and conservation mechanism to preserve the mitigation site in perpetuity. After acceptance of the notice in writing by the Executive Officer, the Discharger's submittal of annual mitigation monitoring reports is no longer required.

Stormwater Management

12. The Discharger shall comply with the General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit Order 2009-0009-DWQ).
13. By November 12, 2010, the Discharger shall submit a revised Stormwater Control Plan, acceptable to the Executive Officer that accurately reflects the Project as permitted by this Order. The Discharger shall install the proposed post-construction stormwater and

hydromodification treatment measures during Project construction pursuant to the revised Stormwater Control Plan as approved and other reports identified in Finding 14. The Discharger shall submit as-built report within 60 days of the complete installation of the stormwater and hydromodification treatment measures. As part of the as-built report, the Discharger is required to submit a signed Stormwater Treatment Measures Maintenance Agreement between the Discharger and the City of Suisun to ensure monitoring, inspecting, and maintaining both the on-site and off-site treatment measures in perpetuity.

Fees

14. This Order combines Waste Discharge Requirements and Clean Water Act Section 401 Water Quality Certification provisions. The annual fee shall reflect this, and consist of the following:

The fee amount for the Waste Discharge Requirements portion shall be in accordance with the current fee schedule, per California Code of Regulations, Division 3, Chapter 9, Article 1, section 2200(a)(1), based on the discharge's Threat to Water Quality and Complexity rating of the Discharge to Land or Surface Waters, plus applicable surcharge(s). The Threat and Complexity rating shall be rated as 1A. After the initial year, this portion of the fee shall be billed annually to the Discharger. The fee payment shall indicate the Order number, WDID number, and the applicable season.

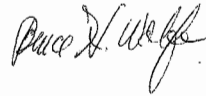
General Provisions

15. The Discharger shall comply with all the Prohibitions, Effluent and Receiving Water Limitations, and Provisions of this Order immediately upon adoption of this Order or as provided in this Order.
16. All reports pursuant to these Provisions shall be prepared by professionals registered in the State of California.
17. The Discharger shall immediately notify the Regional Water Board by telephone and e-mail whenever an adverse condition occurs as a result of this discharge. Such a condition includes, but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. Pursuant to CWC §13267(b), a written notification of the adverse condition shall be submitted to the Regional Water Board within two weeks of occurrence. The written notification shall identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to the modifications of the Regional Water Board, for the remedial actions.
18. Should discharges of otherwise uncontaminated ground water contaminated with suspended sediment be required from the Project site, where such discharges are not otherwise covered by an applicable NPDES permit, such discharges may be considered covered by the General Permit, following the submittal of a discharge/treatment plan, acceptable to the Executive Officer, at least 30 days prior to such a discharge.

19. The Discharger shall notify the Regional Water Board in writing at least 30 days prior to actual start date for the Project (i.e., prior to the start of grading or other construction activity for any Project component, including the creek and wetland mitigation components).
20. The Discharger shall at all times fully implement and comply with the engineering plans, specifications, and technical reports submitted with its application for water quality certification and the report of waste discharge, and as may subsequently be submitted to comply with this Order.
21. The Discharger is considered to have full responsibility for correcting any and all problems that arise in the event of a failure that results in an unauthorized release of waste or wastewater.
22. The discharge of any hazardous, designated or non-hazardous waste as defined in Title 23, Division 3, Chapter 15 of the California Administrative Code, shall be disposed of in accordance with applicable state and federal regulations.
23. The Discharger shall remove and relocate any wastes that are discharged at any sites in violation of this Order.
24. In accordance with CWC §13260, the Discharger shall file with the Regional Water Board a report of any proposed change in ownership or any material change in the character, location, or quantity of this waste discharge. Any proposed material change in the discharge requires approval by the Regional Water Board after a hearing under CWC §13263. Material change includes, but is not be limited to, all significant new soil disturbances, all proposed expansion of development, or any change in drainage characteristics at the Project site. For the purpose of this Order, this includes any proposed change in the boundaries of the area of wetland/waters of the State to be filled and mitigated.
25. The following standard conditions apply to this Order:
 - a. Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to CWC §13330 and 23 CCR §3867.
 - b. Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR §3855(b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
 - c. Certification is conditioned upon total payment of any fee required pursuant to 23 CCR §3833 and owed by the Discharger.
26. The Discharger shall maintain a copy of this Order and all relevant plans and BMPs at the Project site so as to be available at all times to site operating personnel and agencies.

27. The Discharger shall permit the Regional Water Board or its authorized representatives at all times, upon presentation of credentials:
 - a. Entry onto Project premises, including all areas on which water body fill or water body mitigation is located or in which records are kept.
 - b. Access to copy any records required to be kept under the terms and conditions of this Order.
 - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Order.
 - d. Sampling of any discharge or surface water covered by this Order.
28. This Order does not authorize commission of any act causing injury to the property of another or of the public; does not convey any property rights; does not remove liability under federal, state, or local laws, regulations or rules of other programs and agencies, nor does this Order authorize the discharge of wastes without appropriate permits from other agencies or organizations.
29. The Regional Water Board will consider rescission of this Order upon Project completion and the Executive Officer's acceptance of notices of completion of mitigation for all mitigation, creation, and enhancement projects required or otherwise permitted now or subsequently under this Order.
30. This Waste Discharge Requirements and Water Quality Certification is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to California Water Code Section 13330 and Title 23, California Code of Regulations, Section 3867.
31. The Regional Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or Section 303 of the Clean Water Act.
32. This Order is not transferable.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region on October 13, 2010.



Digitally signed
by Bruce Wolfe

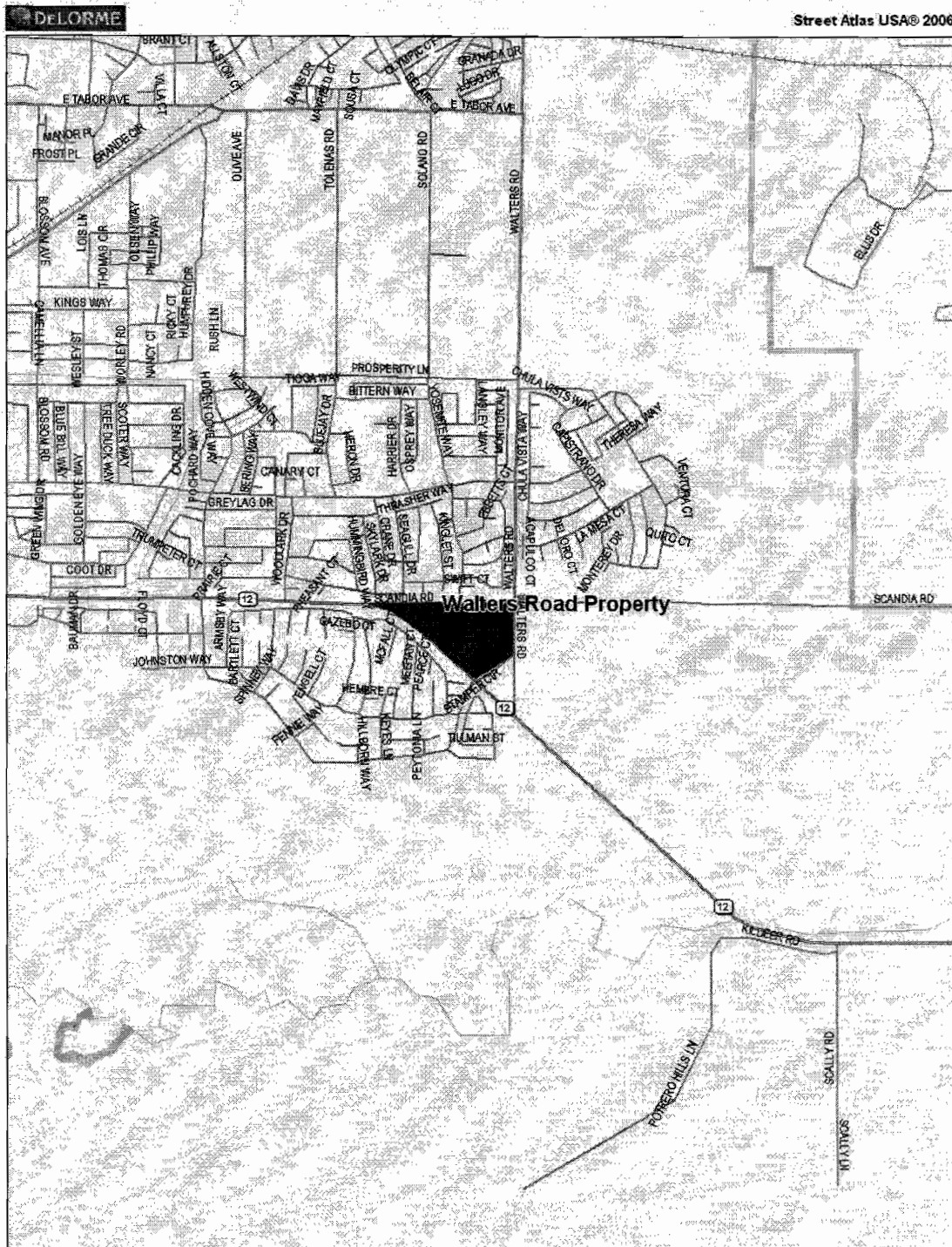
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Bruce H. Wolfe
Executive Officer

Attachments: Figure 1: Vicinity Map
Figure 2: USGS Quadrangle Map
Figure 3: Wetlands Delineation Map
Figure 4: Proposed Project Diagram



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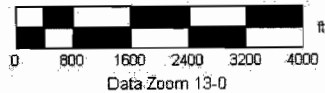


Figure 1. Project Vicinity

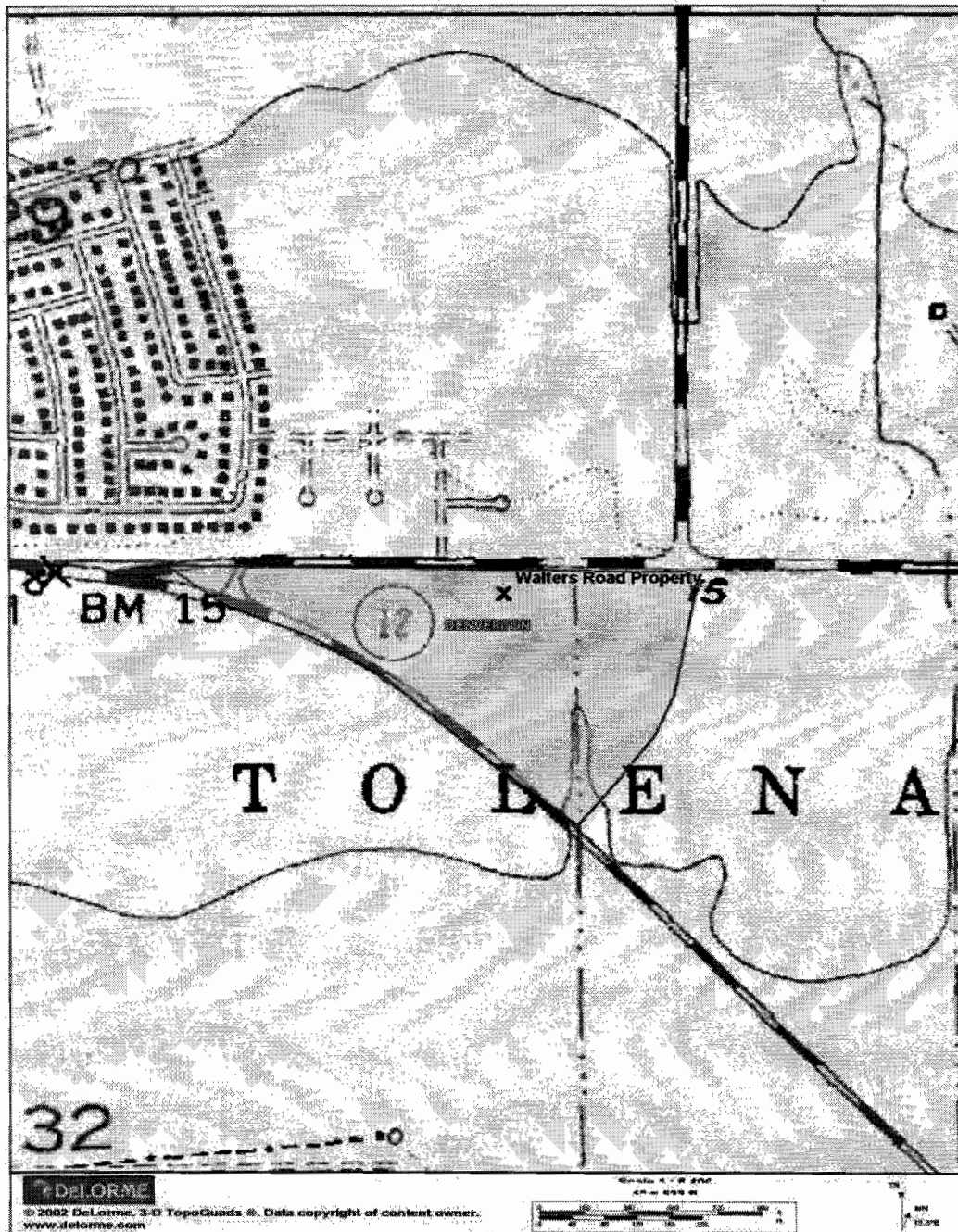


Figure 2: USGS Quadrangle Map

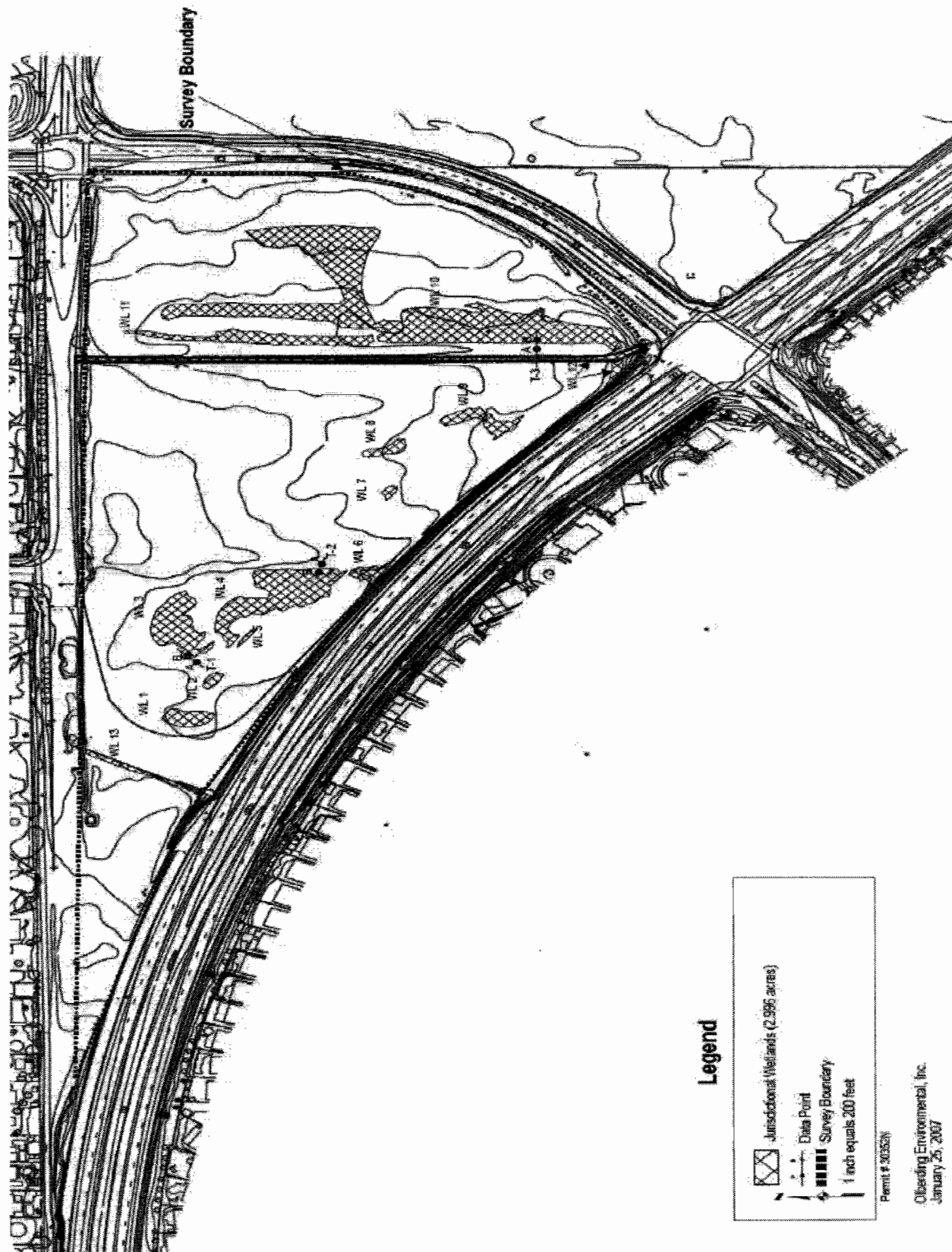


Figure 3: Wetlands Delineation Map

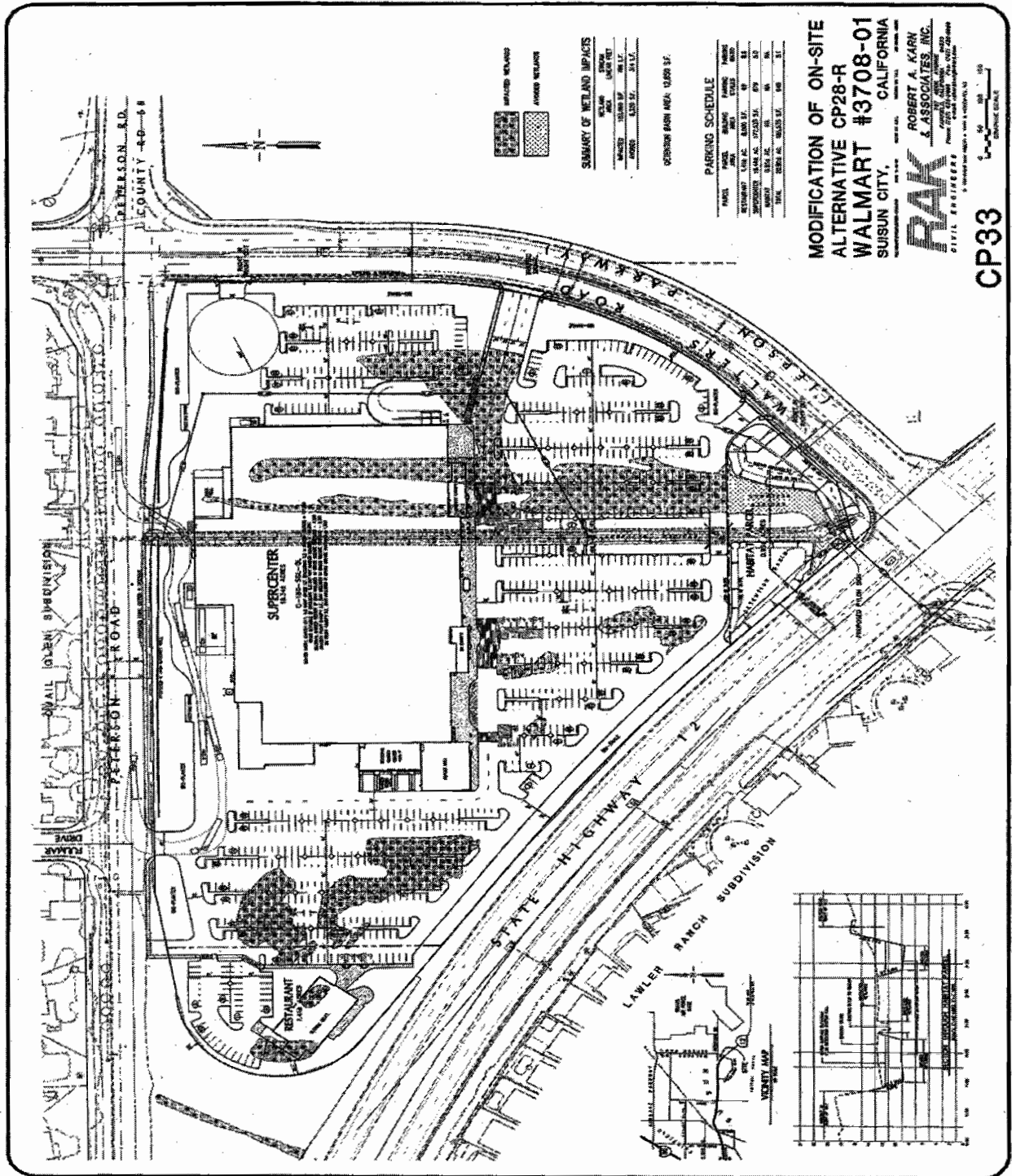


Figure 4: Proposed Project Diagram



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Our File Number: 15CM-130472

July 9, 2010

VIA E-MAIL AND U.S. MAIL

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality
Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Walters Road Development Project, Suisun City: Additional Information
Regarding CP 33

Dear Mr. Wolfe:

Thank you for meeting with representatives of Walmart, the City of Suisun City ("City"), and the Governor's Office of Economic Development on July 1, 2010, to discuss the Walters Road Development Project. At that meeting, the parties further discussed a modified site plan ("CP 33") that the Regional Water Quality Control Board ("Regional Board") staff agreed met its concerns regarding avoidance and that was a practicable alternative. The Regional Board has requested that Walmart provide additional information on this site plan. Specifically, the Regional Board requested that Walmart provide the following: (1) additional information regarding the project description, amount of fill, and avoidance measures for CP 33; (2) an analysis of whether CP 33 could be developed on one of the previously-analyzed off-site alternative locations; and (3) an update as to the status of the proposed mitigation. This additional information should complete the application submitted on June 21, 2010 and provide sufficient information to allow the Regional Board to move forward with processing the water quality certification as discussed at the meeting.

1. **Additional Information Regarding CP 33**

a. **Project Description:**

CP 33 involves the development of the 20.8-acre site with a retail and dining venue. The three main elements of the development include: 1) an approximately 182,000 square foot supercenter; 2) an approximately 8,000 square foot sit-down restaurant; and 3) associated parking and infrastructure to support the commercial development. The restaurant is

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currently a proposed use; however, the parcel may be developed with any use that is consistent with the General Commercial zoning for the site.

Supercenter: CP 33 includes construction of an approximately 182,000 square foot supercenter on approximately 18.44 acres. (Note: The enclosed building floor area is approximately 177,535 square feet without the outdoor portion of the garden center.) The store will contain a grocery component, general retail sales, garden center, and other uses. A total of 879 parking stalls are proposed for the supercenter. The new supercenter will be open 24 hours per day, seven days per week.

Sit-Down Restaurant: CP 33 will also contain an approximately 8,000 square foot building intended for a sit-down restaurant use together with required parking on approximately 1.41 acres. 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 restaurant use.

Parking and Internal Circulation: CP 33 would provide 948 parking spaces on-site. Drive aisles would link the supercenter and restaurant 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 supercenter to alert drivers of the potential of crossing pedestrians.

Environmental Impacts: CP 33 would avoid approximately 0.317 acres of jurisdictional wetlands in the southern portion of the site, including approximately 315 linear feet of the wetland drainage ditch.

Imported earthen fill material will be used to fill the impacted seasonal wetlands on the property. The impacted seasonal wetlands on the site will be filled by standard site grading in preparation for development. Trucks will be used to haul clean earthen fill into the site. Heavy earth-moving equipment will be used to spread fill across the site.

A portion of 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 around the proposed building to reroute a portion of the existing channel after soils are prepared for construction and properly stabilized. The alignment will be backfilled and development will occur across the site.

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

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stabilized following construction. Soil stabilization measures will likely include installing silt fencing and reseeding the construction area after all earth work is completed.

- b. Fill Information:
 - i. CP 33 would permanently fill 2.63 acres of jurisdictional wetlands, of which 0.28 acres comprise the wetland drainage ditch.
 - ii. CP 33 would use 900 cubic yards of clean dirt to place 786 linear feet of the drainage ditch permanently in an underground culvert.
 - iii. CP 33 would use 1,880 cubic yards of clean dirt to permanently fill the remaining 2.35 acres of impacted jurisdictional wetlands.
- c. Avoidance Measures: CP 33 would avoid impacts to waters of the state by incorporating the following features:
 - i. Prepare and implement a site specific Stormwater Pollution Prevention Plan (SWPPP) for the project in accordance with all the requirements, provisions, limitations and prohibitions of the General Construction Permit (2009-0009-DWQ) for discharges of stormwater associated with construction activity. This will include proper selection, installation, and maintenance of Best Management Practices (BMP) for sediment and erosion control, good site management "housekeeping", and BMPs to prevent non-stormwater discharges from discharging from the site. Included in the SWPPP will be a Rain Event Action Plan (REAP) and a Construction Site Monitoring Program specifically designed to the Risk Level of the Project.
 - ii. Post-construction BMPs to treat stormwater runoff before entering waters of the State will be installed during construction and maintained into perpetuity after the site is completely stabilized. In addition, post-development flows from the site will be regulated to pre-development levels.
 - iii. Post-construction stormwater treatment for 11.75 acres of off-site run-on from the Quail Glen Subdivision is proposed to be constructed as a part of this project. A report entitled, Post-Construction Stormwater Treatment for Off-Site Run-on, dated May 26, 2010 and revised June 16, 2010, was prepared by Robert A. Karn & Associates, Inc. to address the sizing and cost of three types of mechanical treatment devices. (See Additional Information document, Attachment 14, submitted June 21, 2010.)

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RWQCB staff has indicated that the Hydrodynamic Separator proposed in paragraph 3.1.2 on page 5 of the report is a reasonable approach for the treatment.

- iv. In order to avoid and preserve the avoided wetlands it is proposed to treat the post-construction run-off from 0.064 acres of parking lot. A detailed engineering analysis to support this proposal entitled, Avoided Wetlands Mitigation, dated May 26, 2010, was prepared by Robert A. Karn & Associates, Inc. (See Meeting Materials, Attachment K, submitted May 27, 2010.)

2. **Development Of CP 33 On Off-Site Alternative Locations**

Regional Board staff requested that Walmart analyze whether a supercenter of the size proposed in CP 33 could be developed at one of the previously-analyzed off-site alternative locations. Both Bob Karn from Robert A. Karn & Associates, Inc. and City staff determined that such a supercenter cannot be developed on any of the off-site alternative locations due to the same site constraints that are explained in detail in Walmart's previous submittals. (See attached letters from Bob Karn and the City: see also Walmart's June 2008 Alternatives Analysis, January 2009 second Alternatives Analysis, March 2009 Addendum to the second Alternatives Analysis, and Meeting Materials, Attachments B-D, submitted May 27, 2010.)

3. **Information Regarding Proposed Mitigation**

Impacts associated with development of CP 33 would be mitigated by purchasing seasonal wetland credits at a 1:1 ratio from the Elsie Gridley Mitigation Bank and riparian credits at a 2:1 ratio from the Noonan Ranch Mitigation Bank.

Muzzy Ranch Conservation Company is processing an amendment to the existing Noonan Ranch Mitigation Bank to add this riparian mitigation. Muzzy Ranch Conservation Company met with the U.S. Fish and Wildlife Service, California Department of Fish and Game, and the City of Fairfield last week to obtain additional information for the amendment. Muzzy Ranch Conservation Company expects to submit a draft prospectus to the U.S. Fish and Wildlife Service in the next few weeks for review and comment and will then proceed with the amendment process. (See also Meeting Materials, Attachment L, submitted May 27, 2010.)

SHEPPARD MULLIN RICHTER & HAMPTON LLP

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July 9, 2010
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With this additional information, as discussed at the meeting, the application for water quality certification is complete. Thank you for your attention to this matter and we look forward to receiving any comments by July 16, 2010, as agreed to at the meeting, and to moving forward with the water quality certification process.

Sincerely,



Alexis M. Pelosi

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:SENS1\402748780.1

cc: Bill Hurley
Jolanta Uchman
Dyan Whyte
Bryan Matsumoto
Florentino Castellon
Matt McCarron
Suzanne Bragdon
April Wooden
Jason Garben



Linda Adams
Agency Secretary

California Regional Water Quality Control Board

San Francisco Bay Region

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2360 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>



Arnold Schwarzenegger
Governor

July 16, 2010
Site No. 02-48-C0394 (ECM)

CIWQS Place No.: 722750

Sent via electronic mail: No hardcopy to follow

Wal-Mart Stores, Inc.
Robert A. Karn & Associates
707 Beck Avenue
Fairfield, CA 94533
Attention: Mr. Robert A. Karn
Rkarn@RAKengineers.com

**SUBJECT: Application for Clean Water Act Section 401 Water Quality
Certification for the Walters Road Development Project, City of Suisun,
Solano County; Corps File No. 2006-303520N**

Dear Mr. Karn:

Wal-Mart Stores, Inc. (Wal-Mart) has applied for a Clean Water Act section 401 water quality certification (certification) for the Walters Road Development Project (Project) in the City of Suisun City. The Project would develop approximately 19.85 acres for a commercial retail center on a 20.8-acre parcel and discharge fill material into approximately 2.63 acres of jurisdictional waters, including 2.35 acres of wetlands and 0.28 acres (786 linear feet) of stream channel. The Water Board received the certification application for the Project on June 22, 2010. Water Board staff also received supplemental application materials on July 9, 2010. Staff have reviewed these application materials and deem the certification application to be complete.

Although the application is complete, Water Board staff cannot complete drafting a tentative order for public review of the Project because the mitigation proposal in the application does not contain sufficient information for the Water Board to determine that water quality standards will be met. As part of the mitigation plan included in the application, Wal-Mart proposes to purchase riparian credits for the Project's linear impacts at the Noonan Ranch Mitigation Bank. While Water Board staff feel that purchases of riparian credits at a bank near the Project can be acceptable mitigation, such riparian credits do not currently exist at the Noonan Ranch Mitigation Bank, nor does the Noonan Ranch Mitigation Bank itself exist. Based on information Water Board staff have received, neither the credits or the bank will exist at anytime in the near future.

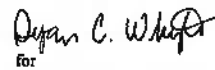
Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years

Noonan Ranch currently is a 'conservation bank' for endangered species habitat and has a conservation easement with the United States Fish and Wildlife Service (FWS). Water Board staff have recently been in contact with FWS staff, and they have confirmed that they will need to grant permission to amend the conservation bank for any proposed work or changes to the Noonan Ranch site. FWS staff have not received any proposed amendment as of July 13, 2010. Thus, FWS staff have given no assurance that FWS will agree to amend the conservation bank, nor has U.S. Army Corps of Engineers (Corps) staff given us any assurance that the Corps will approve the mitigation bank prospectus. As such, there is no assurance that riparian credits will ever become available to Wal-Mart. Further, should FWS agree to amend the conservation bank, the length of time for FWS to complete the amendment, for the Corps to approve a mitigation bank, and for that mitigation bank to make riparian credits available would likely be a minimum of one year.

Wal-Mart needs to supplement its certification application with a proposal for adequate compensatory mitigation for the Project's linear impacts such that the Water Board can determine, at the time it considers the application, that water quality standards will be met. The proposal needs to contain sufficient details to ensure that all Project impacts will be mitigated. Water Board staff cannot complete drafting a tentative order for public review until we receive this information.

To accelerate resolution of this application, I have assigned Elizabeth Morrison, the Water Board's certification program manager, direct oversight of the Project. If you have any questions, please contact Elizabeth at (510) 622-2330 or via email to Emorrison@waterboards.ca.gov.

Sincerely,



Bruce H. Wolfe
Executive Officer

Cc: SWRCB-DWQ, Bill Orme borne@waterboards.ca.gov;
U.S. EPA, Jason Brush, WTR-8 brush.Jason@epamail.epa.gov;
Melissa Scianni scianni.melissa@epamail.epa.gov
ACOE, SF Regulatory Branch
Bryan Matsumoto, Bryan.T.Matsumoto@usace.army.mil;
Laurie Monarres, laurie.a.monarres@usace.army.mil;
Cameron Johnson, Cameron.l.Johnson@usace.army.mil;
Jane Hicks jane.m.hicks@usace.army.mil;
U.S. FWS, Valerie Layne Valerie_layne@fws.gov
Michelle Tovar Michelle_Tovar@fws.gov;
CDFG, Sandy Brunson SBrunson@dfg.ca.gov;
Robert Uram RUram@sheppardmullin.com;

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Beth Garber egarber@ufcw5.org;
George Guynn, Jr. georgejr@hotmail.com;
Wayne Monger wmonger@comcast.net;
Richard Hanson hansonra@sbcglobal.net;

Elizabeth Morrison - long overdue follow-up on Elsie Gridley Mitigation Bank

From: <Raffini.Eric@epamail.epa.gov>
To: <Marc.A.Fugler@usace.army.mil>
Date: 8/18/2010 12:00 PM
Subject: long overdue follow-up on Elsie Gridley Mitigation Bank
CC: <JGAN@dfg.ca.gov>, <Scianni.Melissa@epamail.epa.gov>, "Matsumoto, Bryan T. SPN" <Bryan.T.Matsumoto@usace.army.mil>, "Valerie Layne" <valerie_layne@fws.gov>, <emorrison@waterboards.ca.gov>, <James.T.Robb@usace.army.mil>, <Dwight_Harvey@fws.gov>
Attachments: Gridley_compliance form2010.doc; Gridley_photos.pptx; Elsie Gridley Mitigation Bank CTSAssessment-Gridley-GAN072310.pdf

Hi Mark,

I think I promised to compile a list of issues from our compliance inspection to Elsie Gridley on 4/21/10 and IRT conference call on 5/19. I believe that I was going to send you this list and then you were going to inform the bank sponsor via a letter? Also, since our last meeting, we did receive the 2009 monitoring report (7 months late), but I have not had a chance to review it in detail. I think most of the issues are detailed in the attached report, but here are the major things that we noticed:

(1) The bank sponsor changed the reference site from the on-site natural, existing pools to off-site pools at Muzzy Ranch. The IRT did not approve this change. Thus all performance remain the same, and constructed pools should be compared to on-site natural pools.

(2) Constructed pools in both Phases are not meeting performance standards set forth in BEI. For example, Year 3 standards for hydrophytic plant cover, species diversity.

(3) Grazing management had not been implemented

(4) We were unable to differentiate between "vernal pools" and other "seasonal wetlands." Most of the pools looked very similar – large, deep, and much more like seasonal marsh than vernal pools. The 2008 delineation for Phase I indicated: playa pools (16.52), vernal pools (9.02), incidental wetlands (1.23), incidental swales (1.54), wetland channel and adjacent wetlands (5.64). However, it was virtually impossible to notice the difference between playa pools and vernal pools. Most of the IRT felt that the entire site should be classified as "seasonal wetlands" - since it did not appear that the constructed vernal pools were performing correctly. See attached photos.

(5) Riparian areas - Prior to our site visit, no detailed performance sampling was conducted for the riparian areas. Thus, it is difficult to assess compliance. Planting success appears to have been very variable across the site. The area also contains large stands of thistle and other invasive species.

(6) Credit Ledger - There appears to once again be some serious problems with the credit ledger. Many mistakes were noticed (and subsequently corrected) in 2008. I've emailed Steve Foreman several times regarding some of these issues, but still have not heard anything back. Here's what I noticed;

According to the credit ledger, the IRT has approved the following credit releases of constructed wetlands to date:

Phase I - (27.8 acres): 4.17 acres (15% construction), 15.33 acres (55% - as-builts and hydro) = 20.07 released

Phase II - (31.6 acres): 4.74 acres (15% construction), 19.40 (55% as-builts and hydro) = 24.14 released

Riparian - (9.1 acres, phase I and II): **9.47 released ? – Why were all riparian credits for both phases already released without meeting any performance standards. Furthermore, the ledger stated 9.47 (not 9.1 acres from as-builts)...**

Constructed Channel (1.2 acres phase I and .5 acres phase II): .18 (15%) +.62 (54%) = .80 acres phase I, and .08 (15%)+ 1.3(?) phase II = **2.18 acres of 1.7 acres??** [this is questionable, also in the 2008 report, the sponsor stated they believe 90% of available credits should be released, but this is not consistent with the BEI]

So, I think those are the major issues. Did I miss anything? Attached are the photos, compliance report and also a recent letter from DFG regarding CTS credits. I assume since the Sac Dist is Chair of this IRT, that you all will take the lead in sorting some of this out? Has anyone on this email list reviewed the 2009 report or credit ledger yet?

Thanks

Eric

Eric Raffini, Environmental Scientist
tel: 415.972.3544 | fax: 415.947.3537

U.S. EPA, Region 9
75 Hawthorne St., San Francisco, CA 94105
www.epa.gov/region9

Interagency Compensatory Mitigation Site Visit Form – Summary Findings

for Mitigation Banks, Permittee-Responsible Mitigation, and In-Lieu Fee Mitigation approved to compensate for unavoidable impacts under Section 404 of the Clean Water Act

1. Form Completed By: Name: Eric Raffini Agency: US EPA Email: raffini.eric@epa.gov		2. Date of site visit: 4/21/10	
3. Reviewing Team: Eric Raffini (EPA), Melissa Scianni (EPA) Phillip Shannin (Corps-SF) Marc Fugler (Corps-Sac) Janice Gan (DFG) Dwight Harvey (FWS, unable to attend)			
PROJECT IDENTIFICATION			
4. Project name: Elise Gridley Mitigation Bank			
5. Corps Permit Number: 2000-00614 (Sac), 2003-283430 (SF)		6. Corps Project Manager: William Guthrie (Sac) – Lead District Phillip Shannin (SF)	
7. County: Solano	8. Watershed (8-digit HUC): Lower Sacramento	9. Lat/Long: 38° 17' 46.47" N 121° 48' 27.28" W	
10. Project type: Check one: <input checked="" type="checkbox"/> Mitigation Bank <input type="checkbox"/> Permittee-Responsible Mitigation <input type="checkbox"/> In-Lieu Fee Mitigation			
11. Applicant name and/or organization: Wetland Resources LLC, contact Ed Flynn			
12. Contact for technical information: LSA Associates, Contact Steve Foreman			
13. Date of Construction: Phase I grading completed in November 2005 Phase II and Riparian plantings completed in Fall 2006		14. Age of Mitigation (Years): 4.5 years (Phase I) 3.5 years (Phase II)	
15. Monitoring Reports on File: Phase I As-builts (Jan 2007), Phase II As-builts (Oct 2007), First Annual Report (Jan 2008), 2008 Annual Report (dated 8/19/09), LSA stated during field visit that 2009 annual report will be submitted shortly (it is 6 months late).			
16. Mitigation Goals: From the Habitat Restoration and Monitoring Plan in the BEI - the total size is 1837 acres of which 61 acres are encumbered by easements and excluded by the bank credits. This makes the remaining acreage 1776 after the easements are subtracted. 1,100 acres are being set aside as vernal pool and associated grassland species habitat preservation. 300 acres will remain in agricultural production for Swainson's hawk foraging habitat. The remaining 376 acres have had vegetation and topography altered and 100 acres of vernal pools are proposed to be built across them in multiple phases.			
17. Corrective Actions/Remediation (Include dates and description): Nothing major to date.			
18. Brief project description The Elsie Gridley Mitigation Bank (Gridley Bank) was established for the purpose of providing offsite mitigation opportunities for vernal pool grassland and riparian habitats as well as a number of associated rare, threatened and endangered species. The Bank Enabling Instrument (BEI) allows for the sale of wetland "credits" as mitigation for wetland impacts and preservation credits for an approved third-party within the designated bank service area. The BEI was formally approved by the Mitigation Bank Review Team (MBRT) members on March 8, 2006. Phase 1 (total area 80 acres) [According to as-built reports] 27.8 acres constructed vernal pools/swales (min. w/observed hydrology) 1.2 acres channel (1900 linear feet) 2.0 acres riparian Phase 2 (total area 75 acres) 31.6 acres constructed vernal pools/swales (min. w/observed hydrology) 0.5 acres channel (2200 linear feet) 7.1 acres riparian These two phases have a 38% vernal pool density. Initial as-builts were calculated at 27.8 acres for Phase I, based on the Year-3 delineation 33.95 acres of wetlands are present in the Phase I restoration area (4.89 acres more than originally estimated) – much of this increase in acreage is due to swales. The wetlands mapped are differentiated into (according to 2008 delineation): playa pools (16.52).			

vernal pools (9.02),
incidental wetlands (1.23),
incidental swales (1.54),
wetland channel and adjacent wetlands (5.64)

PERFORMANCE CRITERIA

19. Performance Criteria

Performance Standard	Compliance
<p>1. Hydrophytic Plant Species Cover - Wetlands Year 1 – constructed pools and swales should show initial establishment of typical vernal pool indicator species. Year 3 – relative cover of vernal pool indicator species shall not be significantly different than reference pools (at $\alpha=0.05$ or 95% confidence)</p>	<p>Year 1 criterion appears to be met for both Phases. Year 3 – Phase I constructed pools were 11% hydrophytic cover, on-site reference pools were 57% , and 15% at Muzzy.</p>
<p>2. Invasive Exotic Plant Species – Wetlands Year 3 – By end of the third-year monitoring period, absolute cover by invasive exotic plants in the created wet ands shall be no greater than 5%.</p>	<p>Year 3 – perennial pepperweed was observed in the pools at less than 5%</p>
<p>3. Species Diversity – Wetlands Year 3 – The number of vernal pool indicator species (e.g richness) shall not be significantly different (at $\alpha=0.05$ or 95% confidence) than reference sites.</p>	<p>Year 3 – Phase I Constructed pools is 4.4, reference pools is 10.0 and Muzzy was 4.0.</p>
<p>4. Constructed Acreage – Wetlands Year 3 – The extent of constructed wetland will be determined at the end of the third growing season for each active restoration phase. At a minimum, the extent of delineated restored wetland shall be equal to the acreage identified in the hydrology performance criterion 1. Acreage less than in criterion 1 will be subtracted and additional acreage will be added to available credits</p>	<p>Initial as-builts were calculated at 27.8 acres for Phase I, based on the Year 3 delineation 33.95 acres of wetlands are present in the Phase I restoration area (4.89 acres more than originally estimated) – much of this increase in acreage is due to swales. The wetlands mapped are differentiated into playa pools (16.52), vernal pools (9.02), incidental wetlands (1.23), incidental swales (1.54), wetland channel and adjacent wetlands (5.64)</p>
<p>5. Plant Species Cover – Riparian Year 3 – relative cover shall have at least 51% relative cover of riparian species.</p>	<p>Not assessed in the 2008 report</p>
<p>6. Invasive Exotic Plant Species – Riparian Year 3 – Absolute cover by invasive exotic plants in the created meander channels shall be no greater than 5%. This criterion extends through the entire restoration monitoring period as well as in perpetuity monitoring and management.</p>	<p>Not assessed in the 2008 report</p>
<p>7. Species Diversity – Riparian Year 3 – The created meander channels and Barker Slough restoration shall support at least 5 native riparian species characteristic of riparian zones in the Solano County region.</p>	<p>Not assessed in 2008 report</p>
<p>8. Soil Saturation and Ponding – Wetlands Year 1 – Restored/constructed wetlands must be inundated or have saturated soils for greater than 18 consecutive days (5% of the growing season) Year 3 – Restored/constructed wetlands* must be inundated or saturated during the rainy season for a duration sufficient to support vernal pool plant communities and the depth and duration shall not be significantly different than the reference pools (at $\alpha=0.05$ or 95% confidence). *some pools will have greater depth (1-2ft) to support CTS</p>	<p>(Jan 2007) Year 1 – this criterion was met (Oct 2007) Year 1 – this criterion was met Year 3 – not assessed in any report</p>

20. Compliance with Performance Standards

These findings are based on the 2008 monitoring report as well as our 2010 field visit. The data from 2008 represents Year 3 for Phase I and Year 2 from Phase II. Data from 2009 field season was not submitted at the time to the IRT at the time of our field visit.

Phase I Wetlands – Have not met Year 3 performance standards for hydrophytic plant species cover or species diversity. Both metrics are significantly different than the on-site reference wetlands. Invasive plant species within wetlands appears low, and delineation confirms the constructed wetland acreage.

Phase II Wetlands – No detailed performance sampling was conducted for Phase 2 restoration pools in 2008. Thus, it is difficult to assess compliance. The pools look very similar to Phase I pools.

Riparian - No detailed performance sampling was conducted for the riparian areas in 2008. Thus, it is difficult to assess compliance. Planting success has been variable across the site. The area also contains large stands of thistle and other invasive species (per site visit).

ONSITE OBSERVATIONS**21. Describe conditions of mitigation project, include plants/animals observed on site, habitat type, surrounding land use, buffer and disturbance:**

It was apparent from our site visit that the site had not been actively grazed during the fall/winter 2009-2010. A new fence along the perimeter of the site was recently installed and cattle had been placed on the site less than a week prior to our visit. The sponsor states that they have entered into a long-term grazing agreement with a cattle provider. This should help control thatch in the constructed wetlands.

The site looked trampled and beat down. This may have been due to the recent introduction of cattle or perhaps due to ORV use.

The constructed wetlands looked to be holding large amounts of water and were ponding very deep (most were at least 2' deep). They looked more like seasonal marsh and playa pools than vernal pools (see attached pictures). We were unable to differentiate between vernal pools and playa pools.

Invertebrate sampling was positive, with many of the pools containing Vernal pool tadpole shrimp, California fairy shrimp, and mid-valley fairy shrimp. They have become established and appear to be reproducing and expanding.

Waterfowl on the site was abundant.

Riparian areas do not appear to be performing as expected. Although some of the plants have survived, overall cover is low (plants are spread out)

RECOMMENDATIONS**22 Recommendations (e.g planting, regardfng, fill removal, trash removal, sign installation, fencing, grazing, instream alterations, education, invasive species control, further monitoring or studies):**

Additional monitoring is necessary to determine compliance with standards. The 2009 monitoring report is 6 months behind schedule. Wetland vegetation establishment appears to be progressing slower than anticipated – perhaps due to the longer inundation and ponding as compared to on-site vernal pools.

The 2008 monitoring report compared sampling data with pools from Muzzy Ranch (located off-site). It is unclear whether the sponsor sought permission from the IRT to use Muzzy Ranch rather than the on-site reference pools. Additional information needed is from the sponsor as to why on-site reference pools are not appropriate. Thus, compliance performance will be based on on-site pools.

The new fence should improve grazing management on-site.

Purple star thistle should be controlled in the riparian areas.

It is unclear as to what types of wetlands were planned as compared to what is on the ground. Wetlands on-site have characteristics of playa pools, seasonal marshes and vernal pools. Differentiating among these three categories is difficult. Thus, it may be necessary for IRT to revisit and adjust credit allocations that are reflected in the ledger.

23. Does the mitigation comply with performance standards and conditions set forward in the Bank Enabling Instrument?

Partial compliance, but recommendation is to not approve any additional credit releases until more data is received to support performance standards contained in the BEI.

ADDITIONAL INFORMATION**24. Comments and/or additional information on the project**

According to the credit ledger, the IRT has approved the following credit releases of constructed wetlands to date:

Phase I – (27.8 acres): 4.17 acres (15% construction), 15.33 acres (55% - as-builts and hydro) = 20.07 released

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Constructed Channel (1.2 acres phase I and .5 acres phase II): 18 (15%) + 62 (54%) = .80 acres phase I, and .08 (15%) + 1.3(?) phase II = 2.18 acres of 1.7 acres?? [this is questionable, also in the 2008 report, the sponsor stated they believe 90% of available credits should be released, but this is not consistent with the BEI]

Endowment Account at Department of Fish and Game

Report dated 4/19/10 – Endowment is fully funded - \$620,548 with an additional \$15,513 contingency security. Total interest earned on the account is \$57,070. The contingency security is used to assure performance obligations during the interim management period. This security is to be released to the bank sponsor. Also, the BEI states that a performance security in the amount of 15% of construction costs (\$18,750) to ensure implementation of remedial obligations to meet success criteria. This supposedly resides with the Corps, as there is no record of it in the DFG account. Need to check on this.

Project Description

The Applicant proposes to construct a retail shopping center on 20.14 acres of the 20.8-acre site. The shopping center will be comprised of:

- An 182,000 square foot supercenter with 879 parking stalls on 18.44 acres;
- An 8,000 square foot restaurant with 69 parking stalls on 1.41 acres; and
- Two stormwater detention basins totaling 12,850 square feet on 0.29 acres.

Project Application

The Applicant first submitted an application for certification for the Project on November 20, 2007. Due to the lack of a complete application detailing the Project proposal, including an incomplete alternatives analysis and stormwater management plan, and to preserve our ability to act on certification for the Project, on November 19, 2008, the application was denied without prejudice.

On January 22, 2009, the Water Board received a new certification application for the Project. Due to the lack of a complete application detailing the Project proposal, including an incomplete alternatives analysis and stormwater management plan, and to preserve the ability to act on for the Project, on April 23, 2010, the application was denied without prejudice. Correspondence received on the two applications that were denied without prejudice is posted on the Board's website.

After numerous meetings during May and June 2010 between Board staff, the Applicant, and representatives of Suisun City and the Governor's Office of Economic Development, the Applicant submitted a new certification application on June 21, 2010, proposing a revised Project, which was subsequently completed by additional information submitted on July 9, 2010.

The Project as now proposed no longer includes the gas station and the resultant fill of wetlands on the 0.95 acre "gas station parcel", which was proposed in the earlier applications, avoids fill of approximately 315 feet of the stream channel, includes a landscaped buffer for the avoided fill, proposes post-construction treatment of stormwater discharging from a 11.75 acre catchment drained by the stream channel to the north of the Project site, and proposes mitigation for the remaining stream channel fill at the Noonan Ranch site in northern Fairfield. This Project is described in the tentative order (TO) that would adopt certification and WDRs for the Project, which was circulated for public comment on August 23, 2010.

Project Impacts

As part of the complete application, the Applicant has submitted a Clean Water Act section 404(b)(1) Alternatives Analysis, as well as additional information requested by staff to supplement the Analysis. These documents address off-site alternatives to the Project, as well as onsite design alternatives, and demonstrate the Applicant's conclusion that the Project as proposed is the least environmentally damaging practicable alternative. Staff concur with this conclusion.

The total delineated jurisdictional waters of the State and U.S. on the Project site are approximately 2.996 acres. The site's jurisdictional waters are comprised of:

- a. 2.596 acres of seasonal wetlands, some of which are considered vernal pools; and

- b. 0.4 acres (1,100 linear feet) of stream channel with associated riparian/wetland vegetation.

The Project will result in the permanent fill of approximately 2.63 acres of the site's 2.996 acres of jurisdictional waters. This impact is comprised of the following:

- a. 2.35 acres of wetlands; and
- b. 0.28 acres (786 linear feet) of stream channel.

Mitigation

To mitigate for the permanent fill of 2.35 acres of seasonal wetlands and vernal pools, the Applicant proposes to purchase 2.35 acres of credit of seasonal wetlands at the Elise Gridley Mitigation Bank near Dixon in northeastern Solano County. While this mitigation bank is outside this Board's jurisdiction (it is in the Central Valley Regional Water Board's jurisdiction), we have allowed other Solano County project proponents to mitigate for their projects' impacts to seasonal wetlands and vernal pools at this bank.

To mitigate for the permanent fill of 0.28 acres (786 linear feet) of stream channel, the Applicant proposed in its June 21, 2010, application to create and/or restore a minimum of 1,572 linear feet of stream channel at an off-site parcel, the Noonan Ranch site in northern Fairfield, Solano County. This location was identified in the TO circulated for public comment. However, since the Applicant had not acquired any mitigation credits at the Noonan Ranch site or otherwise identified the specifics as to how mitigation at that site would be planned, implemented, and monitored to success, the TO requires the Applicant to submit a Final Mitigation and Monitoring Plan for Water Board approval no less than 90 days in advance of the start of Project construction. The TO further describes the mitigation and monitoring specifications that the Plan must include.

Since circulation of the TO on August 23, the Applicant has notified staff that the Noonan Ranch site is no longer a viable option for off-site mitigation for stream impacts. Staff is continuing to work with the Applicant to identify an acceptable off-site parcel that will mitigate the impacts to the onsite stream channel. The TO, at Finding 13, will be need to be revised to delete reference to the Noonan Ranch site as the off-site mitigation parcel.

Stormwater BMPs

The Applicant submitted a report titled, Stormwater Control Plan, dated October 6, 2008, on treatment of onsite stormwater associated with the new impervious surface. The TO requires the Applicant to update/revise the Stormwater Control Plan to accurately reflect the onsite stormwater control measures proposed in the current Project application, which include bio-swales and bio-planters surrounding parking areas, and two detention basins on the gas station parcel.

The Applicant also submitted a report titled, Post-Construction Stormwater Treatment for Off-site Run-on, dated May 26, 2010, and revised June 16, 2010, that proposes treatment of a 11.75 acre catchment drained by the stream channel to the north of the Project site. Additional information on stormwater and hydromodification was provided in Avoided Wetlands Mitigation dated May 26, 2010. These reports include measures to address the Project's post-construction urban runoff impacts, as well as regulate flows to pre-development levels as required by the Board's Municipal Regional Stormwater Permit. The TO requires the Applicant to monitor, inspect, and maintain these stormwater treatment measures in perpetuity.

The Applicant is also required to prepare and implement a site-specific Stormwater Pollution Prevention Plan (SWPPP) for the Project in accordance with the requirements of the State Water Board's General Construction Permit for discharges of stormwater associated with construction activity.

Other Agencies' Involvement

The U.S. Army Corps of Engineers (Corps) issued a Public Notice for an earlier version of the Project on January 31, 2008, but has not issued a permit for the Project at this time. The Corps has initiated consultation with the U.S. Fish & Wildlife Service (USFWS) under the authority of Section 7 of Endangered Species Act regarding project-related impacts to critical habitat. The USFWS has not yet issued a Biological Opinion for the Project. The Corps cannot issue a permit for the Project until the USFWS issues the Biological Opinion and the Board adopts certification.

The California Department of Fish and Game (CDFG) has issued a Section 1603 Agreement (Agreement) for Alteration of Streambeds for the Project as previously proposed. However, the Agreement required the Applicant to mitigate for stream impacts at the Elise Gridley Mitigation Bank in northeastern Solano County. Elise Gridley Mitigation Bank no longer has 'linear' or 'stream' credits for sale, therefore the Agreement will need to be revised/amended to reflect the stream mitigation when a the Applicant proposes acceptable mitigation to CDFG.

Tentative Order

The TO for the Project was circulated on August 23, 2010, for public comment, with the public comment period scheduled to close on September 22, 2010. However, due to a problem with our database of interested parties' email addresses, not all interested parties received the August 23 electronic copy of the TO. This problem was identified and resolved by providing those interested parties excluded earlier with an electronic copy of the TO on September 2, 2010. As such, staff extended the public comment period to October 1, 2010, to ensure all interested parties had the full 30 days to review the TO as required by the Water Code.

As noted above, the Applicant has notified staff that the Noonan Ranch site is no longer a viable option for off-site mitigation for stream impacts. Thus, Finding 13 in the TO needs to be revised to delete the reference to the "Noonan Ranch site in northern Fairfield."

General Comments

As of the close of the comment period on October 1, 2010, we had received approximately 100 comment letters. These letters are posted on the Board's website and can be located at http://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/2010/October/walmart/6_Comments.pdf. Staff will prepare a response document to all comments and recommend revising the TO as appropriate. However, there are a few water quality issues that are significant and appear in many of the comment letters. I have listed them here and provide an initial response:

1) *The site contains a "man-made drainage ditch of little value."* – The site contains a stream channel, which historically was straightened, most likely by ranchers in the early to mid-1900s. The stream channel has been determined to be waters of the State and U. S., necessitating State and federal permitting for any activities that are proposed to dredge and fill it. The stream provides several functions including floodwater attenuation, groundwater recharge, and water quality enhancement including the filtering of sediment and nutrients to downstream waters.

2) *Relative to the mitigation for the stream channel impacts, comments ranged from concerns regarding “a lack of detailed plan to provide comments on”, “approval of mitigation after adoption of the TO” and “request for EO approval of the mitigation plan.”* – When the TO was initially circulated, it stated that the Applicant was proposing to mitigate stream channel impacts at the Noonan Ranch site. However, since a detailed plan for that mitigation was not submitted, the TO included provisions for submittal and subsequent Water Board approval of a Final Mitigation and Monitoring Plan. Requiring Water Board approval of the Plan ensures that the public will have an opportunity to review and comment on it before the Project starts construction. Since circulation of the TO, the Applicant has notified staff that Noonan Ranch is no longer a viable option for mitigation. The TO still requires that the Applicant submit its Plan for an off-site parcel that will provide appropriate mitigation for stream channel impacts. To ensure full public review and comment of the Plan, it is appropriate that the Plan be submitted for Water Board approval, rather than EO approval.

3) *“To mitigate the loss of wetland habitat, the applicant proposes to mitigate at a 1:1 ratio at the Elsie Gridley Mitigation Bank. This mitigation ratio is inadequate.”* – The Applicant has proposed to purchase 2.35 acres of wetland credits at Elsie Gridley Mitigation Bank. The Mitigation Bank has sufficient wetland credits for sale at this time. We view this ratio as appropriate since the onsite wetlands will be mitigated off-site before the onsite wetland impacts occur.

4) *“Let the applicant mitigate for their impacts”* – We fully agree that the Applicant needs to mitigate for the Project’s impacts. The Applicant has identified mitigation appropriate for the Project’s seasonal wetland impacts but not the Project’s stream impacts. The TO includes a requirement for submittal of a Final Mitigation and Monitoring Plan that would be approved by the Water Board once the Applicant identifies appropriate mitigation for the Project’s stream impacts.

Summary

In its June 21, 2010, application for certification and WDRs, the Applicant has proposed a revised project design that reduces seasonal wetland and stream impacts from its earlier proposals and expands the post-construction treatment of the local catchment’s stormwater runoff. The TO as circulated would adopt certification and WDRs for the revised project.

However, the Applicant has yet to identify a mitigation proposal that appropriately mitigates for the Project’s stream impacts. The TO requires that the Applicant do so, subject to Water Board approval, before Project construction begins. As such, the TO ensures that the public will have the opportunity to review the Applicant’s ultimate mitigation proposal.



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

Date: December 18, 2007
File No. 2128.02 (JGU)
Site No. 02-48-C0394
Inc W Walters Rd Wal-Mart

Wal-Mart Stores, Inc.
C/o Todd Anderson
Robert A. Karn & Associates
707 Beck Avenue
Fairfield, CA 94333

SUBJECT: Incomplete Application for Water Quality Certification under Section 401 of the Clean Water Act for the Walters Road Development Project, City of Suisun, Solano County

Dear Mr. Karn:

Water Board staff has reviewed your application for a Clean Water Act Section 401 water quality certification that the proposed Walters Road Development Project will not violate State water quality standards. The application is incomplete, and furthermore, it appears that the project as currently proposed, would be in violation of State water quality standards. This letter is notification that the Regional Board does not grant water quality certification at this time.

Project Description

The applicant, Wal-Mart Stores, Inc., through its agent, Jeff Olberding, submitted the application to develop the Walters Road Development Project (Project). The Project is located northwest of the intersection of State Route 12 (SR-12) and Walters Road in the City of Suisun in Solano County (38°14.329'N, 121°58.781'W). The proposed development of 18.34 acres for commercial retail center on a 20.8-acre parcel would include a Wal-Mart Supercenter, a sit-down restaurant, a gas station with a convenience store and automated car wash, an onsite roadway, approximately 1,021 parking stalls, and utility improvements. The Project site is bisected by an unnamed creek that runs north to south and drains into Hill Slough. Seasonal wetlands are scattered throughout the site. A jurisdictional delineation was field-verified in February 2007 and confirmed that the site contains 2.996 acres of jurisdictional wetlands and other waters including 1,025 linear feet of the creek. The Project, as proposed, would result in the discharge of approximately 3,500 cubic yards of fill into 2.996 acres of jurisdictional waters, (100% of the wetlands present on the Project site).

California Environmental Protection Agency



This letter serves as notification that the application is incomplete and inadequate. Please submit the following information and respond to the following comments in order to amend and complete the application:

1) Alternatives Analysis: The Water Board's Water Quality Control Plan (Basin Plan) prohibits all discharges of fill material into wetlands, unless a discharge, as proposed, constitutes the least environmentally damaging practicable alternative (LEDPA) that will achieve the basic project purpose. For non-water dependent projects, including this Project, it is assumed that there are less damaging alternatives, and the applicant must appropriately rebut this assumption. The following represents the sequence in which proposals should be approached:

- a) **Avoid:** Avoid impacts to waters;
- b) **Minimize:** Modify project to minimize impacts to waters;
- c) **Mitigate:** Once impacts have been fully minimized, compensate for the remaining unavoidable impacts to waters.

In situations where it has been clearly demonstrated that avoidance of impacts to waters is not possible, and that impacts have been fully minimized, then adequate mitigation for the loss of water body acreage (or, when applicable, linear feet) and functions is required. In-kind, on-site mitigation for all, or part of, the Project's impacts to wetlands and other waters should be provided if possible. If it can be adequately demonstrated that off-site and/or out-of-kind mitigation are the only viable option for a project, a further increase in mitigation area would be appropriate. A further increase in mitigation area is also appropriate if the mitigation waters and wetland and riparian habitats are not successfully established prior to the impacts. The applicant is also required to utilize a Low Impact Development (LID) planning approach. The State has endorsed the LID approach whereby development projects:

- Maintain natural waters, drainage paths, landscape features and other water-holding areas to promote stormwater retention and groundwater recharge;
- Preserve the amenity and other values of natural waters;
- Minimize generation of urban pollutants;
- Design communities and landscaping to minimize stormwater generation, runoff, and concentration, and
- Promote water conservation.

The Project seems not to incorporate the above into the proposed design, and therefore is not in line with the LID approach.

The proposed Project should take into consideration variations on the locations and design of the proposed buildings and infrastructure, footprint minimization through design(s) of multi-story structure(s), a roof-top restaurant and garden, and incorporation of the existing jurisdictional features into the Project design, especially those that avoid impacting jurisdictional waters. We require the applicant submit an Alternatives Analysis report that

considers other alternatives to meet the overall project purpose of a mixed-use commercial development and, at the same time, protecting the existing jurisdictional waters.

Mitigation

Per the California Wetlands Conservation Policy, and the Regional Board's Basin Plan, mitigation is required to compensate for the project's temporary and permanent impacts to waters of the State. We also recognize that, given the significant loss of wetlands in the San Francisco Bay Area, avoidance and minimization of impacts are important for all remaining wetlands. A compensatory mitigation plan will only be considered after impacts to all waters have been fully characterized and minimized, as discussed in Item No. 1 above.

The Biological Assessment for Critical Habitat for the Vernal Pool Tadpole Shrimp and the Vernal Pool Fairy Shrimp for the Walters Road Development Project, Solano County, California, by Olberding Environmental, Inc., dated November 2007, states that credits would be purchased at an agency approved mitigation bank to compensate for the loss of jurisdictional wetlands and riparian habitat along the on-site channel. Although the Elsie Gridley Mitigation Bank and the North Suisun Mitigation Bank have been approved and operating in Solano County, it is our understanding that these banks cannot accommodate a mitigation habitat demand for riparian credits.

If, after a more thorough evaluation of site development alternatives has been performed, it is demonstrated that some portion of the wetland mitigation must be provided by purchasing credits at the mitigation bank, such credits will likely need to be acquired at a ratio at least 2:1 (mitigation acreage to impacted wetlands acreage). Since the final design cannot be determined before the alternatives analysis has been conducted, we are not able to provide further comments on the proposed mitigation at this time.

2. CEQA: The Walters Road West Project Draft Environmental Impact Report, dated September 20, 2007, was submitted with the 401 application, however, a copy of the final CEQA document (Final Notice of Determination) prepared for the activity (23 CCR §3856(f)) is needed with the application.

3. Stormwater Management Plan (SWMP): The SWMP should describe the Project's measures to minimize its urban runoff impacts for the life of the project, be comprised of source controls, design measures to minimize impervious surface, and treatment controls that remove pollutants from stormwater runoff. The SWMP must demonstrate that sufficient treatment controls will be installed to meet the criterion of treating approximately 85% of average annual storm water runoff from all of the site's impervious surfaces. The SWMP should include appropriate narrative, drainage plans, project-specific design details for the proposed controls, calculations, provisions for operation and maintenance (O&M), what entity will be responsible for O&M, description of how O&M will be funded, and all other corresponding information, as appropriate.

The proposed Project is located within approximately 72-acre drainage area that has been almost entirely developed. The Project would significantly increase surface runoff and impact water quality downstream from the Project site and possibly exceed the capacity of the existing outfall in tidally influenced Hill Slough. Since the Project would result in a significant cumulative effect within the

Mr. Karn
Walters Rd Wal-Mart Suisun - Incomplete Application
Site No. 02-48-C0394

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watershed, changes in the watershed hydrology should be properly assessed while preparing the SWMP.

Staff will continue to work with you to complete your application for water quality certification. If you have any questions, please contact Jolanta Uchman of my staff at (510) 622-2432 or via email to juchman@waterboards.ca.gov. Future correspondence regarding this project should reference the Site Number indicated at the top of this letter.

Sincerely,
*Original Signed by
Wil Bruhns for*

Bruce H. Wolfe
Executive Officer

Cc: Bill Orme, SWRCB-DWQ

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California Environmental Protection Agency

Mr. Karn
Walters Rd Wal-Mart Suisun - Incomplete Application
Site No. 02-48-C0394

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California Environmental Protection Agency

 Recycled Paper

November 10, 2010

By FedEx

Bruce H. Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612
Fax: (510) 622-2460

Re: Request to Prepare Staff Record – Order no. R2-2010-0109 , Waste
Discharge Requirements and Water Quality Certification for Walters Road
Development Project, Suisun City, Solano County, October 13, 2010

Dear Mr. Wolfe:

San Francisco Baykeeper and the California Healthy Communities Network have petitioned the State Water Resources Control Board for reconsideration of the above-referenced Regional Board order. A copy of that petition is enclosed. On their behalf, this is to request preparation of the staff record pursuant to Section 3867(d) (9) of Title 23 of the California Code of Regulations.

Thank you for your attention to this request and please call with any questions.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



Mark R. Wolfe

MRW:am