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 8 MERCED ALLIANCE FOR RESPONSIBLE GROWTH;
 8 TOM GRAVE; KYLE STOCKARD; JOEL KNOX

9
 10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **IN AND FOR THE COUNTY OF MERCED**

12
 13 MERCED ALLIANCE FOR RESPONSIBLE
 14 GROWTH; TOM GRAVE; KYLE STOCKARD;
 14 JOEL KNOX; and DOES 1 through 10,

15 Petitioners and Plaintiffs,

16 vs.

17 CITY OF MERCED; MERCED CITY COUNCIL,
 18 and DOES 11 through 20,

19 Respondents and Defendants,

20
 21 WAL-MART STORES EAST, L.P.; WAL-MART
 22 STORES EAST, INC.; WAL-MART STORES,
 22 INC; and DOES 21 through 40,

23 Real Parties in Interest and Defendants.

CV 000593

**PETITION FOR WRIT OF MANDATE AND
 COMPLAINT FOR INJUNCTIVE RELIEF**
 (CCP §§ 526; 1085, 1088.5, 1094.5; PUB.
 RESOURCES CODE §§ 21168, 21168.5)

**CALIFORNIA ENVIRONMENTAL
 QUALITY ACT**

BY FAX

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1 BY THIS PETITION AND COMPLAINT ("Petition"), Petitioners and Plaintiffs allege:

2 **INTRODUCTION**

3 1. Petitioners and Plaintiffs Merced Alliance for Responsible Growth, Tom Grave, Kyle Stockard and
4 Joel Knox (collectively "Petitioners"), hereby challenge Respondents and Defendants City of Merced
5 and Merced City Council ("Respondent" or "City") for the City's September 28, 2009 approval of
6 the Wal-Mart Regional Distribution Center ("Project"), which proposes the construction and
7 operation of a 1.1 million square foot Regional Distribution Center and associated facilities, on a
8 230-acre site located at the northwest corner of Gerard Avenue and Tower Road in the City of
9 Merced, Merced County, for violations of the California Environmental Quality Act ("CEQA") (Pub.
10 Resources Code, § 21000 et seq.).

11 **PARTIES**

12 2. Petitioners incorporate the allegations of Paragraph 1 of this Petition.

13 3. Petitioner Merced Alliance for Responsible Growth is an unincorporated association of persons who
14 live in the City of Merced and the surrounding Central Valley, and who are concerned about the
15 potentially significant, adverse effects that the Project may have on the local and regional physical
16 environment. Petitioners and its members are united by their concern about the Project's potentially
17 significant, adverse air quality, traffic, land use and urban decay, hydrology, visual impacts,
18 cumulative impacts, and other environmental impacts, and the City's failure to properly investigate,
19 disclose, analyze and mitigate such impacts pursuant to CEQA's procedural and substantive
20 requirements prior to certifying the Project EIR and approving the Project. The Alliance's current
21 address is as follows: P.O. Box 110, Merced, California, 95341.

22 4. Petitioner Tom Grave is an individual who resides in the City of Merced and is also a member of
23 Merced Alliance for Responsible Growth. As a resident of the City, Mr. Grave is concerned about
24 the Project's potentially significant, adverse impacts on the local and regional physical environment,
25 including the Project's adverse air quality, public health, traffic, land use and urban decay,
26 hydrology, visual impacts, and cumulative impacts. Mr. Grave is also concerned with the City's
27 failure to properly investigate, disclose, analyze and mitigate such impacts pursuant to CEQA's
28 procedural and substantive requirements prior to certifying the Project EIR and approving the
29 Project. Mr. Grave has submitted written and/or comments on the Project. Mr. Grave's current
30 address is as follows: 3425 Sueno Ct., Merced, CA 95348.

- 1 5. Petitioner Kyle Stockard is an individual who resides in the City of Merced and is also a member
2 of Merced Alliance for Responsible Growth. As a resident of the City, Mr. Stockard is concerned
3 about the Project's potentially significant, adverse impacts on the local and regional physical
4 environment, including the Project's adverse air quality, public health, traffic, land use and urban
5 decay, hydrology, visual impacts, and cumulative impacts. Mr. Stockard is also concerned with the
6 City's failure to properly investigate, disclose, analyze and mitigate such impacts pursuant to
7 CEQA's procedural and substantive requirements prior to certifying the Project EIR and approving
8 the Project. Mr. Stockard has submitted written and/or comments on the Project. Mr. Stockard's
9 current address is as follows: 2499 E. Gerard Ave. #12, Merced, CA 95341.
- 10 6. Petitioner Joel Knox is an individual who resides in the City of Merced and is also a member of
11 Merced Alliance for Responsible Growth. As a resident of the City, Mr. Knox is concerned about
12 the Project's potentially significant, adverse impacts on the local and regional physical environment,
13 including the Project's adverse air quality, public health, traffic, land use and urban decay,
14 hydrology, visual impacts, and cumulative impacts. Mr. Knox is also concerned with the City's
15 failure to properly investigate, disclose, analyze and mitigate such impacts pursuant to CEQA's
16 procedural and substantive requirements prior to certifying the Project EIR and approving the
17 Project. Mr. Knox has submitted written and/or comments on the Project. Mr. Knox's current
18 address is as follows: 88 Sweetwater Ave, Merced, CA 95341.
- 19 7. Respondent City of Merced and its decision making body, the City of Merced City Council
20 (collectively "City"), is the public agency that served as the CEQA lead agency for the Project, and
21 that certified the EIR and approved the Project on September 28, 2009 over Petitioners' and other's
22 objections. The City's business address is 678 West 18th Street, Merced, California, 95340. The
23 City is named as the Respondent in this action, because it is the legislative body that issued the
24 challenged approvals. The City is named as a Defendant in this action because Petitioners seek
25 permanent injunctive relief upon a finding that Petitioners are entitled to the relief requested in this
26 Petition.
- 27 8. Real Party in Interest and Defendant Wal-Mart Stores East, L.P., is a Delaware limited partnership
28 whose address is listed with the California Secretary of State as 702 SW 8th Street, Bentonville,
29 Arkansas. Petitioners have named this entity as a Real Party in Interest in this litigation because the
30 City's staff reports and approval documents indicate that this entity may be the recipient of one or

1 more of the approvals challenged in this Petition. This entity is named as a Defendant in this action
2 because Petitioners seek permanent injunctive relief upon a finding that Petitioners are entitled to
3 the relief requested in this Petition.

4 9. Real Party in Interest and Defendant Wal-Mart Stores East, Inc., is a Delaware corporation whose
5 address is listed with the California Secretary of State as 702 SW 8th Street, MS #0555, Bentonville,
6 Arkansas. Petitioners have named this entity as a Real Party in Interest in this litigation because the
7 City's staff reports and approval documents indicate that this entity may be the recipient of one or
8 more of the approvals challenged in this Petition. This entity is named as a Defendant in this action
9 because Petitioners seek permanent injunctive relief upon a finding that Petitioners are entitled to
10 the relief requested in this Petition.

11 10. Real Party in Interest and Defendant Wal-Mart Stores, Inc., is a Delaware corporation whose address
12 is listed with the California Secretary of State as 702 SW 8th Street, Bentonville, Arkansas.
13 Petitioners have named this entity as a Real Party in Interest in this litigation because the City's staff
14 reports and approval documents indicate that this entity may be the recipient of one or more of the
15 approvals challenged in this Petition. This entity is named as a Defendant in this action because
16 Petitioners seek permanent injunctive relief upon a finding that Petitioners are entitled to the relief
17 requested in this Petition.

18 11. Wal-Mart Stores East, L.P., Wal-Mart Stores East, Inc., and Wal-Mart Stores, Inc. are hereinafter
19 referred to collectively as "Real Parties" or "Applicant."

20 12. Petitioners do not know the true names and capacities of Petitioners and Plaintiffs fictitiously named
21 herein as DOES 1 through 10, inclusive. Petitioners are informed and believe, and thereon allege,
22 that such fictitiously named Petitioners and Plaintiffs are beneficially interested in the City's
23 compliance with its mandatory duties under CEQA before approving the Project, and that such
24 Petitioners and Plaintiffs adequately participated in the City's administrative review process for the
25 Project to have standing to be joined as Petitioners and Plaintiffs in this proceeding. Petitioners will
26 amend this Petition to allege the fictitiously named Petitioners' and Plaintiffs' true names and
27 capacities when ascertained.

28
29 13. Petitioners do not know the true names and capacities of Respondents and Defendants fictitiously
30 named herein as DOES 11 through 20, inclusive. Petitioners are informed and believe, and thereon

1 alleges, that such fictitiously named Respondents and Defendants are responsible in some manner
2 for the acts or omissions complained of or pending herein. Petitioners will amend this Petition to
3 allege the fictitiously named Respondents' and Defendants' true names and capacities when
4 ascertained.

- 5 14. Petitioners do not know the true names and capacities of Real Parties in Interest and Defendants
6 fictitiously named herein as DOES 21 through 30, inclusive. Petitioners are informed and believe,
7 and thereon alleges, that any resolution of this matter in Petitioners' favor may affect the rights and
8 interests of the fictitiously named Real Parties and Defendants in a manner that would indicate that
9 they should be allowed to participate as parties to this litigation. Petitioners will amend their Petition
10 to allege the fictitiously named Real Parties' and Defendants' true names and capacities when
11 ascertained.

12 STATEMENT OF FACTS

- 13 15. Petitioners incorporate the allegations of Paragraphs 1 through 14 of this Petition.
- 14 16. The Project involves the construction of a 1.1 million square foot Wal-Mart Regional Distribution
15 Center and associated facilities operating 24 hours per day, and employing approximately 1,200
16 employees on approximately 230 acres within the city limits of Merced. Project operation and
17 implementation will involve approximately 900 diesel-truck trips a day and 2,150 passenger trips
18 per day, seven days a week. The majority of the trucks servicing the Project's distribution center will
19 not be owned or operated by Wal-Mart. Trucks and passenger cars accessing the Project site from
20 Highway 99 will use the same traffic route as the recently constructed University of California at
21 Merced.
- 22 17. In addition to the 1.1 million square foot warehouse, proposed are: a 17,000 square foot truck
23 maintenance building with two underground oil storage tanks, a fueling station with two 20,000
24 gallon diesel fuel storage tanks, a fire pump house, a truck gate, and aerosol storage (located within
25 the warehouse.)
- 26 18. The Project site is zoned industrial, but has historically been used for agriculture.
- 27 19. The City of Merced is the sixth most ozone-polluted city in the U.S. The San Joaquin Valley has
28 long registered some of the worst air pollution in the United States, with one in five children having
29 asthma. A significant source of this air pollution comes from diesel and gasoline fueled vehicles.
30 The San Joaquin Valley led the nation in 2004 in the number of days with quantities of ozone

- 1 considered unhealthy by the Environmental Protection Agency. In addition, water pollution is
2 another significant problem in the San Joaquin Valley, including groundwater purity.
- 3 20. Currently, there are two schools within a one-mile radius of the Project site and a third school located
4 within 2.2 miles of the Project site. A fourth elementary school is planned within three-quarters of
5 a mile or less of the Project site.
- 6 21. On or about July 7, 2006, the City published a Notice of Preparation ("NOP") of an Environmental
7 Impact Report ("EIR") for the Project.
- 8 22. In February, 2009 the City completed a Draft EIR for the Project.
- 9 23. The City circulated the Draft EIR for public comment from February 25, 2009 through April 27,
10 2009.
- 11 24. The City's Site Plan Review Committee held a public meeting on April 23, 2009 and considered
12 whether or not to refer the Site Plan Review Application to the Planning Commission for a public
13 hearing and decision. The Site Plan Committee by a 2-0 vote referred the project to the Planning
14 Commission for a public hearing.
- 15 25. On August 19, 2009 and August 24, 2009, the Planning Commission held public hearings and
16 considered the EIR and the Project. The Planning Commission voted 7-0 to recommend that the
17 City Council certify the Environmental Impact Report, approve the General Plan amendment, and
18 adopt a finding of General Plan consistency for the abandonment of the Kibby Road right-of-way.
19 The Planning Commission voted 6-1 to recommend approval of the Site Plan Review Application.
- 20 26. On September 2, 2009, Petitioner Merced Alliance for Responsible Growth timely appealed the
21 Planning Commission's actions on two grounds: 1) the Planning Commission violated Merced
22 Municipal Code section 20.68.40 in referring the Site Plan Application to the City Council, and 2)
23 the Planning Commission did not have the authority to adopt final findings that the abandonment
24 of a right of way was consistent with the City's General Plan.
- 25 27. On September 21, 2009, September 23, 2009, September 26, 2009 and September 28, 2009, the City
26 Council held public hearings on the EIR and the Project. On September 28, 2009, the City Council
27 approved the Project by taking the following actions: 1) adopting Resolution 2009-67 certifying
28 the Final Project EIR, making findings of fact and a statement of overriding consideration, approving
29 a mitigation monitoring plan, and directing staff to file a CEQA Notice of Determination ("NOD");
30 2) adopting Resolution 2009-69 amending the City of Merced General Plan circulation element,

1 approving the Site Plan Review Application, and approving the developer agreement for the Project;
2 and 3) adopting Resolution 2009-70 ordering the vacation/abandonment of the right-of-way for
3 Kibby Road. In addition, the City Council, by a 7-0 vote, adopted Resolution 2009-68 denying the
4 appeal filed by Petitioner Merced Alliance for Responsible Growth challenging the Planning
5 Commission's recommendations to approve the Site Plan Review Application and General Plan
6 finding for the Project.

7 28. The Merced County Clerk Recorder's office posted the City's CEQA Notice of Determination for
8 the Project on September 29, 2009 commencing CEQA's 30-day statute of limitations.

9 29. The foregoing decisions, along with any subsequent project approvals that may be issued by the City
10 or any other entity that are dependant on these decisions, constitute the "approval" of the Project
11 challenged, and that Petitioners seek to have set aside or enjoined, or both, in this action.

12 30. Throughout the City's environmental review process and at the foregoing hearings, Petitioners and
13 others submitted written and oral objections to the Project on various grounds including, but not
14 limited to, the City's failure to comply with CEQA's mandatory procedural and substantive
15 requirements before certifying the EIR and approving the Project. Petitioners' objections include,
16 but are not limited to, the City's failure to conduct environmental review that addressed the "whole"
17 of the Project; the City's failure to recirculate a Draft EIR in light of significant new information
18 that had not been presented in the publicly circulated Draft EIR; the City's failure to adequately
19 consider alternatives; and the City's failure to adequately disclose, analyze or mitigate the Project's
20 potentially significant air quality, public health, traffic, land use, urban decay, hydrology, visual,
21 and cumulative impacts.

22 JURISDICTION AND VENUE

23 31. Petitioners incorporate the allegations of Paragraphs 1 through 30 of this Petition.

24 32. Petitioners have filed this Petition for Writ of Mandate pursuant to Article IV, section 10 of the
25 California Constitution and sections 1085, 1088.5, and 1094.5 of the Code of Civil Procedure, and
26 sections 21168 and 21168.5 of the Public Resources Code. Petitioners have filed this Complaint for
27 Injunctive Relief pursuant to Code of Civil Procedure section 526.

28 33. Venue is proper in this Court under Code of Civil Procedure section 393.

29 STANDING

30 34. Petitioners incorporate the allegations of Paragraphs 1 through 33 of this Petition.