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CITY OF ROSEMEAD

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10  
11 GARVEY SCHOOL DISTRICT and  
SAVE OUR COMMUNITY,

12 Petitioners,

13 vs.

14  
15 CITY OF ROSEMEAD and DOES  
1 THROUGH 50,

16 Respondents.

17 \_\_\_\_\_  
18 WAL-MART REAL ESTATE BUSINESS  
TRUST, DEVELOPMENT RESOURCE  
19 CONSULTANTS, INC., and DOES 51  
through 100

20 Real Parties in Interest.  
21 \_\_\_\_\_  
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) CASE NO. BS 101111  
)  
) (Hon. James C. Chalfant)  
)  
) RESPONDENT, CITY OF ROSEMEAD'S,  
) OPPOSITION TO PETITION FOR WRIT OF  
) MANDATE, MEMORANDUM OF POINTS  
) AND AUTHORITIES AND DECLARATION  
) OF LISA E. KRANITZ IN SUPPORT  
) THEREOF  
)  
) [REQUEST FOR JUDICIAL NOTICE FILED  
) CONCURRENTLY HEREWITH]  
)  
) Action Filed: January 11, 2006  
)  
) HEARING  
)  
) Date: August 22, 2006  
) Time: 10:00 a.m.  
) Dept.: 13

1 **I. INTRODUCTION AND PROCEDURAL BACKGROUND**

2 The case before this court involves a continued attempt by Save Our Community, this  
3 time joined by the Garvey School District, to prevent a Wal-Mart Supercenter in the City of  
4 Rosemead. Real Parties in Interest (hereafter “Wal-Mart”) originally filed applications to build a  
5 Wal-Mart Supercenter, along with a gas station and various outpad buildings in or about July  
6 2002. Specifically, the applications were for a tentative parcel map to subdivide the property into  
7 six parcels, conditional use permits for a gas station, alcohol sales at the Wal-Mart, and a mini-  
8 mall on the outpads, and a General Plan land use amendment to change the designation of the  
9 property from office/light industrial to commercial (AR 1, Tab 4, 94, 151-152.)<sup>1</sup> The zoning of  
10 the property already allowed for retail commercial uses. (AR 1, Tab 4, 166.)

11 After a lengthy review process that started with a public scoping meeting on November  
12 19, 2003 (AR 4, Tab 7, 2035-2062), the EIR was made public in May 2004 (AR 4, Tab 7, 2285);  
13 hearings were held before the Planning Commission and the City Council, and the Final EIR was  
14 certified in September 2004, at which time the City Council also provided the necessary  
15 approvals for development of the Project Design Alternative, which had been analyzed in the  
16 EIR (see history recited in AR 1, Tab 1, 1-5).

17 The Project Design Alternative made significant physical and operational improvements  
18 in response to the public comments that had been raised. Specifically, the Project Design  
19 Alternative eliminated the gas station use, reduced approximately 19,000 square feet of  
20 commercial development on the outlying pads to 3,000 square feet of such use, and reduced the  
21 fast food use from 3,000 square feet to approximately 2,500 square feet. The Project Design  
22 Alternative also incorporated other physical changes including a 14-foot high sound wall along  
23 the residential side of the project site, the elimination of truck access from Rush Street, increased  
24 interior and perimeter landscaping, improved architectural elevations and appearance, and a  
25 requirement for Wal-Mart to fund a flashing pedestrian signal and an adult crossing guard at a

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27 <sup>1</sup>“AR” stands for Administrative Record, which will be filed with this court on the date of  
28 the hearing. The number following “AR” is to the specific volume of the administrative record,  
followed by the Tab at which the document can be found and the specific page number(s).

1 nearby school. Wal-Mart also agreed to certain operational restrictions, including a limitation  
2 on truck delivery hours. (AR 8, Tab 15, 3830-3832.)

3 Save Our Community filed a lawsuit on October 7, 2004 (First Amended Petition and  
4 Answer, ¶ 8 of each) and on August 17, 2005 judgment on the writ was entered (Request for  
5 Judicial Notice [“RJN”], Exhibit A)<sup>2</sup>). Despite the many alleged deficiencies of the Final EIR,  
6 the court found only two defects: failing to include an analysis of off-site alternatives in the EIR  
7 itself; and analysis of the twenty-four hour operation. The court did not invalidate the permits  
8 and approvals that had been granted, but did order that a new EIR should be prepared. (RJN,  
9 Exhibit A.) On or about October 18, 2005, Appellant filed its first notice of appeal. (RJN,  
10 Exhibit B.)

11 In response to the trial court’s judgment and writ, the City completed a Revised EIR  
12 which contained an alternative site analysis. (AR 6, Tab 11, 3362-3394.) No analysis was made  
13 of a twenty-four hour operation as after the court issued the judgment, Wal-Mart changed the  
14 requested project and withdrew that part of the application. (AR 6, Tab 11, 3369; Declaration of  
15 John Nolan, counsel for Wal-Mart, ¶ [RJN, Exhibit C].) The Revised Final EIR was certified on  
16 December 13, 2005 (AR 1, Tab 1, 1-8) and a Supplemental Return to the Writ was filed on or  
17 about December 15, 2005 (RJN, Exhibit D). On or about December 22, 2005, for the very first  
18 time, Appellant tried to obtain injunctive relief from the trial court to prevent the construction  
19 from going forward pending resolution of Appellant’s objections to the Supplemental Return to  
20 the Writ of Mandate (RJN, Exhibit E); this relief was denied (RJN, Exhibit F ).

21 On or about January 23, 2006, Appellant, along with the Garvey School District, filed the  
22 present lawsuit challenging the adequacy of the Final Revised EIR; a first amended petition was  
23 filed on or about March 18, 2006. On or about February 2, 2006, Appellant’s partner in this  
24 second lawsuit, Garvey School District, sought to halt the project by filing an *ex parte* request for  
25 a temporary restraining order in this lawsuit (RJN, Exhibit G); this relief was also denied (RJN,  
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27 <sup>2</sup> Respondent’s Request for Judicial Notice is filed concurrently with this brief, under  
28 separate cover.

1 Exhibit H). And on or about February 15, 2006, Appellant filed a petition for writ of supersedeas  
2 in the first case, again trying to halt the construction of the project, which was also denied. (RJN,  
3 Exhibit I.)

4 **II. ISSUES BEFORE THIS COURT**

5 \_\_\_\_\_Petitioners have raised three issues in this proceeding. The first and second issues have to  
6 do with Petitioners' allegations that the project has been improperly segmented because they  
7 allege that Wal-Mart really intends to operate a 24-hour store. These arguments are without  
8 merit as this portion of the project has been deleted.

9 The third issue, as framed by Petitioners, is whether there was substantial evidence in the  
10 record to support the City's statement of overriding considerations as the hours of operation will  
11 be reduced. In reality, the issue as argued by Petitioners is not whether there is substantial  
12 evidence to support the statement of overriding considerations, but whether the statement of  
13 overriding considerations is still applicable given the change in the hours of operation. If, in fact,  
14 Petitioners argue that there is not substantial evidence to support the statement of overriding  
15 considerations, then the City requests that this action be stayed based on another action pending  
16 in the court of appeal raising this same issue.<sup>3</sup> (RJN, Exhibit J [Petitioners' Opening Brief], pp.  
17 22-27.)

18  
19 **III. THE CITY HAS PROHIBITED THE OPERATION OF A TWENTY-FOUR**  
20 **HOUR SUPERCENTER**

21 Wal-Mart's original application was to operate a 24-hour Supercenter. In the first lawsuit  
22 Save Our Community argued that the EIR was insufficient as an informational document because  
23 it did not analyze a round-the-clock operation and the trial court found merit in this argument.  
24 Wal-Mart then determined that it would not pursue a 24-hour operation, withdrew its request for  
25 a 24-hour operation (RJN, Exhibit C) and even went so far as to record a covenant to this effect

26 \_\_\_\_\_  
27 <sup>3</sup>The pendency of an earlier action growing out of the same events and between the same  
28 parties is a ground for abatement of the second action. (*Leadford v. Leadford* (1992) 6 Cal.App.4th  
571, 574, 8 Cal.Rptr.2d 9.)

1 (AR 8, Tab 17, 3922-3926). Based on Wal-Mart's decision to limit the hours of operation, the  
2 City did not analyze the impacts of a 24-hour operation in the revised EIR (AR 6, Tab 11, 3369)  
3 and specifically conditioned the project to have limited hours (AR 7, Tab 14, 3441 [Condition  
4 No. 54]).

5           Unfortunately for all parties concerned, Wal-Mart had originally submitted an application  
6 to the Department of Alcohol Beverage Control ("ABC") based on the assumption that the  
7 Supercenter would operate on a 24-hour basis.<sup>4</sup>

8           Petitioners seem to feel that this component is still reasonably foreseeable not only  
9 because of the mix-up with the ABC application, but also because of the wording on the  
10 declaration of restriction recorded by Wal-Mart. The fact that Wal-Mart provided that there  
11 would not be a twenty-four hour store without further environmental review is not an indication  
12 that Wal-Mart intends to ask for this in the future. The wording simply parallels what the law  
13 already provides; any applicant may return to the City and request a change of conditions. Wal-  
14 Mart was simply trying to assure the public that this could not be done without environmental  
15 review.

16           Regardless of any confusion with the ABC application or any misinterpretation of the  
17 intent of the declaration of restrictions recorded on the property by Petitioners, there is no intent  
18 on the part of Wal-Mart to operate on a 24-hour basis (AR 8, Tab 15, 3727) and the City has  
19 specifically prohibited such a possibility (AR 7, Tab 14, 3441 [condition no. 54]).

20  
21 **V. THE PROJECT HAS NOT BEEN IMPROPERLY SEGMENTED**

22           Petitioners have also challenged the Revised EIR on the basis of improper segmentation,  
23 based on their unfounded claim that it is reasonably foreseeable that the Supercenter will operate  
24 on a 24-hour basis. Again, this argument is based on Petitioners' misguided insistence that  
25 Wal-Mart still intends to operate a 24-hour operation when in fact not only has Wal-Mart

26 \_\_\_\_\_  
27           <sup>4</sup> This issue is more fully briefed by Wal-Mart. However, the City made the ABC aware of  
28 the fact that a condition had been imposed limiting the hours of operation after the approval of the  
Revised EIR. (Declaration of Lisa E. Kranitz, paragraph 3.)

1 withdrawn this request, but such use has been prohibited by the City. The cases cited by  
2 Petitioners do not support their argument.

3  
4  
5 **A. The 24-Hour Operation Is Not Reasonably Foreseeable And Need Not Be**  
6 **Analyzed**

7 Petitioners cite a number of cases in support of their argument that the 24-hour operation  
8 is still reasonably foreseeable and should have been analyzed. The City does not disagree with  
9 the basic propositions set forth in these cases; however, each of these cases deals with a situation  
10 in which a future use is clearly contemplated. As none of the cases present the same situation as  
11 the one before this court, i.e., where a portion of the project is withdrawn and is no longer  
12 reasonably foreseeable, the arguments contained in the cited cases are inapplicable to this case.

13 Petitioners cite *Citizens Association for Sensible Development of Bishop Area v. County*  
14 *of Inyo* (1985) 172 Cal.App.3d 151, 217 Cal.Rptr. 893, for the proposition that there should  
15 not be separate environmental documents for the same project, even if there are several  
16 approvals. (172 Cal.App.3d at 166.) *Citizens Association* involved the development of an  
17 86,500 square foot shopping center and an expansion of an existing Safeway. (*Id.* at 156.) The  
18 development required a general plan amendment, zone change, subdivision, and road  
19 abandonment. (*Id.* at 156-157.) Instead of preparing one environmental document, the County  
20 split the project into two. First it prepared an initial study for the general plan amendment and  
21 zone change, determined that there would not be any significant impact and stated that issues  
22 such as traffic, water, sewer and fire issues would be evaluated with the tentative tract map. (*Id.*  
23 at 157, 166.) After the County Board approved that negative declaration, an initial study was  
24 prepared for the tract map and road abandonment; again the County determined that there would  
25 not be a significant impact because the land use now allowed for the proposed development and  
26 another negative declaration was adopted. (*Id.* at 157-158, 166-167.) Not surprisingly, the  
27 appellate court determined that by splitting the proposed project in two, there was a failure to  
28 consider the cumulative effect of the development and the project should have been described as

1 a shopping center which required the various approvals. (*Id.* at 164, 165.)

2         *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182,  
3 55 Cal.Rptr.2d 625, is cited for the proposition that the impact of the entire project must be  
4 analyzed, even if the ultimate mitigation is to not build a portion of the project. Again, the case  
5 is inapposite to the present situation. *Stanislaus* involved a situation in which an EIR was  
6 prepared for a Specific Plan that involved the creation of a 29,500 acre destination resort  
7 community that would include a total of 5,000 residential units and would be built in four  
8 overlapping phases over a twenty-five year time period. (48 Cal.App.4th at 188.) Phase 1 was to  
9 take a period of 15 years and included development of a “mini-phase 1” over the first five years.  
10 (*Id.* at 188-189.) Despite the detail of the project plans, the EIR was only able to identify water  
11 supplies for the first five-year buildout. (*Id.* at 195.) Again, without surprise, the court had  
12 trouble with the fact that the County had approved an EIR and Specific Plan for a 25-year project  
13 without knowing what the impacts would be with relation to the water source (*id.*). The court  
14 therefore held that the EIR was required to recognize that water would be needed, that it would  
15 have to come from one or more possible sources, and the EIR should discuss what the impacts  
16 would be if supplied from such sources (*id.* at 206).

17         *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 118 Cal.Rptr.  
18 249, is also cited for the proposition that CEQA should look at the total project. Again, the case  
19 is inapposite to the present case. *Bozung* was a case early on in CEQA’s history in which the  
20 California Supreme Court determined that in the case of annexation of property from a county to  
21 a city, CEQA review should start with the annexation approval by the County and not be deferred  
22 until the City rezoned the annexed property.

23         Lastly, Petitioners cite to *Laurel Heights Improvement Association v. Regents of*  
24 *University of California* (1988) 47 Cal.3d 376, 253 Cal.Rptr. 426, for the proposition that an EIR  
25 must analyze the effects of reasonably foreseeable future expansion. In *Laurel Heights* the  
26 California Supreme Court found that there had been improper segmentation of the project where  
27 the draft EIR actually acknowledged that the University would occupy the remainder of the  
28 facility’s space when it became available and even went so far as to predict the number of

1 faculty, staff and students that would occupy the facility at such time. (47 Cal.3d at 396.)

2 **B. CEQA Contemplates That There May Be Changes In The Project During**  
3 **The Review Process**

4 While it is true that a curtailed project description may cause an inadequate  
5 environmental analysis, it is important to realize that when the CEQA process is working  
6 properly, there may be project changes and CEQA is not designed to freeze the project as it was  
7 submitted. (Remy, Thomas, Moose & Manley, Guide to the California Environmental Quality  
8 Act (1999 10<sup>th</sup> Edition), § IX, p. 361 and cases cited therein.) In fact, if change were not  
9 contemplated by the CEQA process, there would be no point in analyzing alternatives.

10 Case law specifically recognizes the propriety of the City's environmental review in the  
11 present case. A change of a project upon remand, thereby negating the need for analysis of the  
12 removed component, was recently approved of by the court of appeal in *Anderson First Coalition*  
13 *v. City of Anderson* (2005) 130 Cal.App.4th 1173, 30 Cal.Rptr.3d 738. In *Anderson*, a CEQA  
14 challenge was brought to a project consisting of a Wal-Mart Supercenter, outlying retail pads,  
15 and a gas station. The trial court granted the petition to the extent that the impacts of the gas  
16 station had not been adequately analyzed and severed the gas station from the rest of the project.  
17 (130 Cal.App.4th at 1177-1178.) Rather than preparing a revised EIR, the city excluded the gas  
18 station from the project and adopted new resolutions certifying the EIR and approving the  
19 project. (*Id.* at 1178.) In addition to rejecting the Petitioner's arguments of improper segregation  
20 of the project and hindering a cumulative impact review, the court stated:

21 "And no free passes from environmental review have been issued. Should the gas  
22 station ever be proposed again, it will have to be environmentally reviewed as to  
23 its own impacts and together with the Project as to its cumulative impacts."  
(*Id.* at 1180 – 1181.)

24 Similarly, in *Lucas Valley Homeowners v. County of Marin* (1991) 233 Cal.App.3d 130,  
25 284 Cal.Rptr. 427, the real party, Chabad of Northbay, sought a conditional use permit to convert  
26 a residence into a synagogue with associated religious uses. (233 Cal.App.3d at 139.)  
27 Neighboring homeowners challenged the negative declaration for failing to consider future  
28 growth and expansion as the Chabad had planned on eventual growth, had been recruiting to

1 increase its congregation, and had requested permission for eventual use of the upstairs as a  
2 social hall. (233 Cal.App.3d at 161-162.) The County Board denied Chabad’s request to convert  
3 the second floor to a social hall in its resolution of approval and bound Chabad to the maximum  
4 number of participants that it had originally indicated. (*Id.* at 162.) In overruling the trial court  
5 and holding that there was no error under CEQA, the court stated:

6  
7 “[t]he trial court ignored the reality of the permit as approved and accepted, and  
8 focused instead on earlier plans of Chabad for expansion. True, the first  
9 application projected a larger population. \* \* \* The dreams of . . . expansion, and  
10 past outreach efforts, are not substantial evidence that future expansion of the  
11 project, *as presented to the Board* [emphasis in original], is reasonably  
12 foreseeable. Chabad submitted, and agreed to, a project with a static  
13 congregation. The one possibility of expansion . . . was disapproved, with the  
14 provision that Chabad could reapply for such conversion after the first annual  
15 review. Of course, at that time the project once again would be subjected to an  
16 initial environmental review.”

17 (*Id.* at 162.)

18 **C. Application Of The Above Law Supports The City’s Position**

19 The cases relied upon by Petitioners involve situations where the environmental impacts of  
20 a proposed or reasonably foreseeable project were not properly evaluated because the project  
21 description was too narrow and the projects were either improperly segmented or future  
22 components that were clearly contemplated were ignored. Unlike those cases, the present case is  
23 analagous to *Anderson* and *Lucas Valley*. As in *Anderson*, the project changed by removing an  
24 objectionable component - the twenty-four hour operation - and that component is no longer  
25 reasonably foreseeable. As in *Lucas Valley*, conditions were specifically imposed to prohibit the  
26 objectionable component.

27 Like the trial court in *Chabad*, Petitioners herein have ignored the reality of the approved  
28 and accepted conditions. No matter what Wal-Mart originally desired, the revised project and the  
conditions of approval make this Wal-Mart Supercenter a curfew store.

**VI. THE STATEMENT OF OVERRIDING CONSIDERATIONS IS SUPPORTED BY  
SUBSTANTIAL EVIDENCE**

1 In their last attempt to derail the Wal-Mart, Petitioners claim that the statement of  
2 overriding considerations is inadequate because the 24-hour operation was deleted and the  
3 benefits of a 24-hour operation could not be the same as the benefits of a more-limited operation.  
4 Such argument is ridiculous at best; regardless of whether the Wal-Mart operates 24-hours, with  
5 only minor exception, the project benefits which supported the statement of overriding  
6 considerations still exist.

7  
8 **A. With Minor Exception, The Project Benefits Remain The Same Regardless Of Hours Of Operation**

9 The City Council found that the Project Design Alternative would lead to the following  
10 benefits:

11 (1) creation of a productive commercial/retail use, capitalizing on the Project site's  
12 access and approximate location to major roadways including SR-60 and Walnut  
13 Grove Avenue; (2) the Project will allow for productive use of vacant land within  
14 the City with a commercial/retail use as contrasted with the approved office/light  
15 industrial uses of the Project site to provide retail services to residents of the city  
16 and surrounding community; (3) the development of additional commercial/retail  
17 uses will provide for increased economic benefits to the City of Rosemead to  
18 increase sales taxes and additional employment opportunities; (4) the Project will  
19 lead to the creation of at least 425 full-time-equivalent jobs, and generate at least  
20 \$0.64 million in annual sales tax revenue; and (5) the Project will bring a much  
21 needed market to the Project area.

22 (AR 1, Tab 2, 63.)

23 Examining these benefits one-by-one, it is clear that with very minor exceptions, the benefits of  
24 the Project Design Alternative remain the same, even without a 24-hour operation.

25 The first, second and fifth benefits deal with creating a productive retail use out of the last  
26 large parcel in the City that would capitalize on the site's access and location to major roadways  
27 and the freeway and provide much needed services to the City's residents, including a major  
28 market. Regardless of whether the Wal-Mart operates 24-hours a day, there will still be a major  
tenant with other retail uses on the outpads that will capitalize on the same site access as a 24-  
hour operation. Similarly, regardless of whether the Wal-Mart operates 24-hours a day, there will  
still be a Wal-Mart with a grocery component and other retail development on the parcel that will  
provide needed retail services to the community.

The third and fourth benefits deal with providing increased economic benefits in the form

1 of increased sales taxes and additional employment opportunities. Once again, regardless of  
2 whether the Wal-Mart operates 24-hours a day, there can be no question that there will be  
3 increased sales taxes from the development of the vacant site, increased sales tax from other City  
4 businesses that will experience a growth due to Wal-Mart, and additional employment  
5 opportunities. While the City admits that it is unclear whether there will still be at least 425 full-  
6 time equivalent jobs and at least \$0.64 million in annual sales tax revenue, this benefit which is  
7 listed in number 4 is separate and distinct from the mere development of additional retail uses and  
8 additional employment.<sup>5</sup>

9 As the City Council specifically found that each of the benefits in and of itself was an  
10 independent basis for overriding the environmental impacts (AR 1, Tab 2, 63), it is clear that the  
11 City has complied with CEQA.

12  
13 **B. There Is Substantial Evidence To Support The Statement Of Overriding**  
14 **Considerations**

15 In looking at this issue it is important to note that Petitioners do not seem to be challenging  
16 the adequacy of the evidence as it relates to the findings for a 24-hour operation. If, however, this  
17 is in fact Petitioners' argument, then the case should be stayed while the appellate case is pending  
18 as that issue is raised therein. (RJN, Exhibit J [Petitioners' Opening Brief, pp. 22-27].)  
19 Nevertheless, the City points to the evidence in the Administrative Record that supports the  
20 statement of overriding considerations, leaving no doubt that there was a need to use the property  
21 at issue for a market, additional retail services, additional tax base and jobs.

22 The Administrative Record is clear that sufficient retail opportunities do not exist in  
23 Rosemead, forcing residents to travel and shop outside of the City's corporate boundaries; the

24  
25 <sup>5</sup>The City further points out that the 425 jobs listed in the benefits associated with the project  
26 is already reduced from the 507 jobs that were estimated in the EIR. (AR 3, Tab 6, 1556.)  
27 Additionally, the fact that the Wal-Mart is not to be opened 24-hours does not necessarily relate to  
28 a proportional reduction in sales tax as customers will likely modify their hours of shopping.  
Furthermore, the hours of operation that were eliminated, 10 p.m. to 8 a.m., are the "nighshift" when  
there would be the fewest employees and fewest customers and therefore there would be only a  
minimal impact on the number of jobs and the creation of sales tax revenue.

1 closure of Ralph's during the review of this project left the City without a major supermarket and  
2 with the next closest supermarket more than two and a half miles away. (AR 1, Tab 4, 177, 614,  
3 615; AR 5, Tab 8, 2620, 2720, 2735-36, 2737; AR 8, Tab 15, 3841; AR 8, Tab 20, 3938; AR 8,  
4 Tab 21, 4052:line 23 - 4053:line 5, 4101:lines 1-12; Supp AR 9, Tab 26, 4242:lines 7-16,  
5 4253:lines 3-8, 4265:lines 3-5, 4266:lines 10-15; 4288:lines 13-15, 4289:lines 13-15; Supp AR  
6 10, Tab 27, 4497:lines 20-22, 4523:lines 10-14, 4536:line 19 - 4537:line 7, 4542:line 23 -  
7 4543:line 10.)<sup>6</sup> The dearth of shopping opportunities is also evidenced by the statistics that show  
8 that, except for Temple City, the surrounding communities far exceed Rosemead in taxable sales  
9 per capita. (Supp. AR 9, Tab 25, 4146, 4148.) Furthermore, Rosemead residents are already  
10 spending more than \$20 million a year at Wal-Marts in other jurisdictions. (AR 8, Tab 15, 3839.)  
11 Rosemead had significantly less sales per capita in retail outlets classified as apparel stores,  
12 general merchandise, auto dealers, service stations and other businesses. (Supp. AR 9, Tab 25,  
13 4147.) Even before the closure of the Ralph's, Rosemead's sales per capita at grocery stores were  
14 only about half of the state average and 60% of neighboring Montebello (Supp. AR 9, Tab 25,  
15 4147). It was projected that Wal-Mart would capture approximately \$24 million annually in  
16 grocery sales, with only about 3 percent coming from within the existing sales area. (AR 2, Tab 5,  
17 1268-1269.)

18           The Administrative Record also makes clear that Wal-Mart will provide needed sales tax  
19 revenue to augment the City's tax base as well as provide needed jobs.(AR 5, Tab 8, 2735-2736,  
20 2737; AR 8, Tab 20, 3947, 3948-3949; AR 8, Tab 21,4021:lines 19-24, 4027:line 20 - 4028:line  
21 1, 4069:lines 10-20, 4072:lines 3-13, 4073:lines 4-9, 4100:line 19 - 4102:line 9; Supp AR 9, Tab  
22 26, 4243:lines 12-25, 4338:lines 7-8; Supp AR 10, Tab 27, 4491:lines 2-23, 4503:lines19-20)  
23 Currently Rosemead ranks almost at the bottom of all cities in Los Angeles County in terms of  
24 retail sales, averaging no more than \$4,170 in retail sales per capita while the average in Los  
25 Angeles County is at least \$7,593 per capita (Supp AR 9, Tab 26, 4206:lines 5-7; Supp AR 9, Tab  
26

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27           <sup>6</sup>“Supp AR” refers to the Supplemental Administrative Record which was provided to  
28 Petitioners in conjunction with City's Opposition and consists of documents which were part of the  
Administrative Record in the certification of the Original EIR.

1 25, 4146). It is estimated that there is \$189 million in sales tax leakage to other communities,  
2 including from other Wal-Marts (Supp AR 9, Tab 26, 4206:13-17; Supp AR 10, Tab 27,  
3 4438:lines 12-24), \$9.3 million of which is in grocery sales (AR 1, Tab 4, 176; AR 2, Tab 5,  
4 1269). A 2004 Fiscal Impact Analysis prepared on the Wal-Mart Project shows that the project  
5 would generate \$671,724 in annual sales tax revenue. (AR 5, Tab 9, 2749.) Wal-Mart is also  
6 expected to augment the City's tax base by increasing sales for other businesses in the area. (Supp  
7 AR 9, Tab 26, 4334:line 24 - 4335:line 10; Supp AR 10, Tab 27, 4513:line 17-4514:line 21; AR  
8 14, Tab 41, 5027:line 18 - 5028:line 20.) Even the Chamber of Commerce supported the Wal-  
9 Mart. (Supp AR 10, Tab 26, 4532:line 9 - 4534:line 2.)

10 According to 2000 census data, more than 15,000 residents out of the approximately  
11 57,000 residents in the City were on some form of public assistance. (Supp AR 10, Tab 27,  
12 4517:lines 18-25.) The Executive Director of the Chamber of Commerce estimated that Wal-  
13 Mart would provide approximately 300 – 350 jobs and the other businesses on the outpads would  
14 generate another 100 – 150 jobs. (Supp AR 9, Tab 26, 4334:lines 15–18.) The EIR made clear  
15 that these jobs would primarily be in the service or sales positions and could be filled by the local  
16 workforce (AR 3, Tab 6, 1556 [Response JK 20]), especially since Rosemead has one of the  
17 highest unemployment rates in the San Gabriel Valley (Supp AR 9, Tab 26, 4333:lines 19–22;  
18 Supp AR 10, Tab 27, 4546:line 21 – 4547:line 9.) Career Partners, a corporation that assists  
19 unemployed residents, also fully supported Wal-Mart as it would bring needed jobs to the area.  
20 (AR 5, Tab 8, 2513; Supp AR 10, Tab 27, 4516:line 8 – 4517:line 17.)

21 The property on which the Wal-Mart is built is just one-half mile from the SR-60 freeway  
22 (AR 3, Tab 6, 1379) and is bordered by two streets designated as truck routes (AR 1, Tab 4, 208  
23 [Walnut Grove Avenue and Rush Street]), providing for excellent access *GRC report*. This is the  
24 last parcel in the City which can support this type of retail development (AR 8, Tab 15, 3728,  
25 3836) and provide the needed benefits to the City.

26  
27 **VII. CONCLUSION**

28 Based on the foregoing, the City of Rosemead respectfully requests that the petition for

1 writ of mandate be denied in its entirety.

2 Dated: July 24, 2006

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LISA E. KRANITZ  
Attorneys for Respondent  
City of Rosemead

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1 **DECLARATION OF LISA E. KRANITZ**

2 I, Lisa E. Kranitz, do hereby declare as follows:

3 1. I am an attorney licensed to practice law in the State of California. I am the  
4 Assistant City Attorney for the City of Rosemead and the attorney primarily responsible for the  
5 litigation relating to the development of the Wal-Mart Supercenter.

6 2. On or about February 15, 2006 I was in City Hall working on the preparation of the  
7 Administrative Record for the present case. While there a representative from the Department of  
8 Alcohol Beverage Control came in to discuss the conditions that had been placed on the Wal-Mart  
9 with regard to hours of operation.

10 3. I went to the front counter and discussed the fact that the City had revised the  
11 conditions of approval to limit the hours of operation from a twenty-four hour store to ?? a.m. to  
12 10:00 p.m. I showed the representative the final conditions which are contained in the Final  
13 Revised EIR and also showed her a copy of the resolution which discussed the limitation of the  
14 hours. I believe that the representative took copies of these documents.

15 Executed this \_\_\_\_\_ day of July, 2006 at Santa Monica, California.

16 I declare under penalty of perjury that the foregoing is true and correct and if called upon  
17 could and would competently testify thereto in a court of law.

18  
19 \_\_\_\_\_  
20 Lisa E. Kranitz  
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of  
4 eighteen and not a party to the within action, my business address is 2800 28<sup>th</sup> Street, Suite 315,  
5 Santa Monica, California 90405.

6 On \_\_\_\_\_ 2006, I served the foregoing document described as:  
7 \_\_\_\_\_ on the interested parties in this  
8 action by placing \_\_\_\_\_ the original  X  a true copy thereof enclosed in sealed envelopes as  
9 follows:

10 Jennifer Guenther  
11 GRESHAM, SAVAGE, NOLAN & TILDEN  
12 P.O. Box 1240  
13 3750 University Avenue, Suite 250  
14 Riverside, CA 92502-1240

15 Cory J. Briggs  
16 BRIGGS LAW CORPORATION  
17 99 East "C" Street, Suite 111  
18 Upland, CA 91786

19  **BY U.S. FIRST CLASS MAIL.** I am readily familiar with the firm's practice of collection  
20 and processing correspondence for mailing. Under that practice it would be deposited with the  
21 U.S. Postal Service on that same date with postage thereon fully prepaid at Santa Monica,  
22 California in the ordinary course of business. I am aware that on motion of the party served,  
23 service is presumed invalid if postal cancellation date or postage meter date is more than one day  
24 after the date of deposit for mailing in affidavit. Executed on February 8, 2006 at Santa Monica,  
25 California 90405.

26  **BY PERSONAL SERVICE.** I caused such envelope to be hand delivered to the office of the  
27 addressee above. Executed on \*\*\* at Santa Monica, California 90405.

28  **BY CALIFORNIA OVERNIGHT.** I personally delivered such envelope to a California  
Overnight drop box or office in Santa Monica, California 90405. Executed on \*\*\* at Santa  
Monica, California 90405.

**BY FACSIMILE.** I faxed such document to the addressee at the facsimile number listed for  
each addressee on \*\*\* to:

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

\_\_\_\_\_