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We request *de novo* review pursuant to CCC 40.510.030H3(a) on all below listed errors.

We hereby globally and comprehensively challenge each and every aspect of the approval of the project, including, but not limited to:

I. INADEQUATE NOTICE - CCC 40.510.020.D.4

- The staff report/Decision of May 9, 2006 stated:

The appeal shall be filed with the Department of Community Development, Permit Services Center, 1300 Franklin Street, Vancouver, Washington, 98668, within fourteen (14) calendar days from the date the notice of final land use decision is mailed to parties of record. This decision was mailed on April 27, 2006. Therefore any appeal must be received in this office by 4:30 PM, May 11, 2006. (Emphasis added).

- County Code requires:

The mailing shall include a notice which includes the following information:

- a. A statement that the decision and SEPA determination are final, but may be appealed as provided in Section 40.510.020(H) to the hearing examiner within fourteen (14) calendar days after the notice of decision. The appeal closing date shall be listed in boldface type. The statement shall describe how a party may appeal the decision or SEPA determination or both, including applicable fees and the elements of an appeal statement; (emphasis added)

THE SEPA APPEAL AVAILABILITY WAS OMITTED FROM THE DECISION!!! Why?

Why is the appeal date wrong? Why no bold print for the appeal date?

This is not the only procedural defect in the Decision. Not only does the Decision refuse to name the real applicant (i.e., WalMart), it refuses to provide a copy of the proposed site map. Neither Exhibit "A", the site map, or Exhibit "B" was attached. After our objections, some, but no

all, of these defects were cured, but no additional time given the public. *Is this some kind of pro-WalMart bias?* Also see deletion of key opposing stormwater report, page 4.

II. COUNTY CODE REQUIRES PROOF OF INHERENT ABILITY TO MEET CODE COMPLIANCE AT PRELIMINARY STORMWATER PLAN PHASE.

The County Code requires the Responsible SEPA Official (and the Hearing Examiner) to determine the feasibility of the Applicant's stormwater proposal. CCC 40.380.060(C),(F). County Code requires that the Preliminary Stormwater Plan must contain proof that the Applicant's Stormwater Plan *actually works* and complies with all provisions of County Code.

CCC 40.380.060(C) Preliminary Stormwater Plan Submittals (1) Purpose states: The purpose of this plan is to determine whether a proposal *can meet the requirements set forth in Chapter 40.380.*

What does this mean? According to the dictionary definition of "can", this means: "to be able to do, make or accomplish; be physically or mentally able to; be inherently able or designed to" Webster's New Collegiate Dictionary.

In other words, the stormwater plan has to work, and meet all elements of the Stormwater Code, CCC 40.380. This is supported by ample other Code sections. For example:

- Final development plans shall be consistent with the preliminary stormwater plan. CCC 40.380.060(F)(2).
- To ensure adequate public review and avoid multiple reviews of preliminary plans by county staff, the preliminary stormwater plan shall not be significantly modified after public notice of the final SEPA determination without issuance of a new SEPA determination; CCC 40.380.060(C)(2)(h)(2).

- The responsible official may require additional site or vicinity information if needed to determine the feasibility of the stormwater proposal. CCC 40.380.060(F)(1)(I).

- Signatures. All plans, studies, and reports shall be stamped, signed and dated by the professional civil engineer(s), registered in the state of Washington, and registered soil scientist, if appropriate, responsible for their preparation, and by the project engineer responsible for preparation of the preliminary stormwater plan. CCC 40.380.060(A)(2).

It is clear that the Preliminary Stormwater Plan is supposed to be the plan that is actually used, because it is not legally allowed to be changed. The Responsible Official may require additional information to “determine the feasibility” of the proposal 40.380.060(F). Feasible is defined as “reasonably likely”. Webster’s New Collegiate Dictionary. The Preliminary Plan has to be prepared and signed by professional civil engineers registered in the State of Washington and registered soil scientists. If the Preliminary Stormwater Plan was not intended to be a detailed report meant to be followed, this kind of detailed engineering certification would be unnecessary.

Therefore, the Applicant must show that they are inherently able to/the feasibility of all aspects of their stormwater project to meet all Code requirements. They cannot for reasons including, but not limited to, the uncompacted fill/100 year storm failure on the NE corner of the site.

The uncompacted fill on the northeast corner of the site should be stabilized to prevent possible sloughing and a landslide/mudflow inundating portions of Waters Edge C. Seepage and

infiltration from the unlined storm water detention ponds during a time of complete ground saturation (which will occur during a major event such as a 100-year storm/flood) will put the uncompacted fill (as high as 11 feet) on the northeast corner of Salmon Creek Commercial Center property at that risk.

In addition, the project fails for its reliance on the “Waters Edge” site. No calculations from that site are provided, and no legal access is shown. In fact, the attached letter of Eric TenBrook, Waters Edge attorney, shows there is no legal access proven, and no capacity for this water. See Exhibit “1”. THIS DOCUMENT OF MARCH 3, 2006 WAS CURIOUSLY OMITTED FROM THE RECORD AS OF MAY 18, 2006. *Why does the County keep two sets of records for each project, the “official” record, and the “unofficial” documents that clearly request to be in the record like this? Is this a coverup?*

II. TRAFFIC.

Traffic issues include, but are not limited to:

A. ROAD MODIFICATIONS IMPROPERLY GRANTED.

- Reasons include, but are not limited to: lack of compliance with Manual or Uniform Traffic Control Devices as described in Engineering Report of Bruce F. Schafer, PE, see Exhibit “3”.

B. CONCURRENCY VIOLATED.

Including, but not limited to:

- Project’s “vested” trips should have been built out in 2005. See Bruce F. Schafer, PE, Report, Exhibit “3”.

C. MORATORIUM VIOLATED.

Including, but not limited to:

- County did not actually “reserve” the trips for applicant, trips apparently went to Legacy hospital. See Bruce F. Schafer, PE, Report Exhibit “3”.

D. TRIPS INADEQUATELY MEASURED.

Including, but not limited to:

- 2003 studies/data.
 - CCC 40.350.020D4 requires studies/data within 12 months.
- 4 different proposed uses on site; traffic studies changed back and forth.
- “Internal” trips really non-existent.
- See Bruce F. Schafer, PE, Report Exhibit “3”.

E. UNSTAMPED ENGINEERING REPORTS IMPROPERLY UTILIZED.

Included, but not limited to:

- Violation of RCW 18.43.070
- Violation of WAC 196-23-020
- Violation of CCC 40.350.020.D.3.
- See Bruce F. Schafer, PE, Report Exhibit “3”.

**F. TRIPS GENERATED SIGNIFICANT IMPACT - WARRANTS
MITIGATION/DENIAL UNDER 12.050.230.**

Including, but not limited to:

- System in MORATORIUM.
- No fix until approximately 2010 (estimated completion of 139th Street improvements)
- Significant new trips added to failing and overloaded system.
- CCC 12.05.230. The code states as follows:

“Nothing in this chapter shall be construed to preclude denial of a proposed development where off-site road conditions are inadequate to provide a minimum level of service as specified in Chapter 12.41 CCC or a *significant* traffic or safety hazard *would be caused or materially aggravated* by the proposed development: provided that the developer may voluntarily agree to mitigate such direct impacts in accordance with the provisions of RCW 82.02.020.” Decision at 12. (Emphasis in original)

- See Bruce F. Schafer, PE, Report, Exhibit “3”, which concludes denial is appropriate.

G. VIOLATES CCC 40.200.010.

- Does not “lessen congestion of streets” under this Code. The sum total of the road modifications, concurrency and moratorium exemptions, and sloppy traffic accounting actually *increases* congestion.

**III. PROJECT IS ILLEGAL “STRIP DEVELOPMENT”
UNDER CCC 40.230.010A5.**

- CCC 40.230.101.A.5 states:

Highway Commercial (CH) District. These commercial areas are intended to serve large areas of the county, the traveling public and also to recognize areas of existing strip development. These areas are generally located at the interchanges and along state highways and interstates. New commercial areas shall not contribute to additional strip development patterns. Uses allowed in this district may involve drive-in, large space users, outdoor sales, wholesale activities, repair services and other heavy commercial users. This district is limited to the general commercial comprehensive plan designation.

• County Code and the Comprehensive Plan strongly oppose strip commercial developmetns without defining these developments. Our review of the project’s archetectural drawings appear to be a strip commercial development. Therefore, this project appears to be a strip development project and also contributes to additional strip development patterns in violation of Code and the Comprehensive Plan.

IV. INADEQUATE FIRE FLOW.

- No prima facie case
- “A utility review from Clark Public Utilities indicates that sufficient water to support the required fire flow is not available at the site”. (Emphasis added) Decision at 24.

V. GEOTECH ADVERSE IMPACTS.

Includes, but is not limited to:

- Retaining walls should be required.
- Condition A-7b improperly delegates geotech mitigation, or lack thereof, to whatever future report applicant’s geotech writes.

V. VIOLATES SITE PLAN REVIEW STANDARDS 40.520.040(1)(b) &(c).

- Violates 40.520.040E1(b) & (c).
- b. If the responsible official finds that a site plan application does not comply with one (1) or more of the applicable approval or development standards. And that such compliance cannot be achieved by imposing a condition or conditions of approval, the responsible official shall deny the site plan application,.

c. If a site plan is subject to a standard(s) over which the responsible official does not have sole jurisdiction, then the responsible official shall not make a final decision regarding the site plan until the related decision(s) regarding the applicable standard(s) have been received.

• For reasons above, the project does not meet one or more development standards.

VI. SEPA.

A. INCOMPLETE AND UNAVAILABLE INFORMATION.

1. WAC 197-11-080 and 197-11-335 Require “Reasonably Sufficient and Complete Information”.

Here, SEPA requires the County to base its threshold determination on “reasonably sufficient information” and has procedures for determining what to do in the absence of this important information. WAC 197-11-335 says:

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The lead agency **shall** make its threshold determination based upon information reasonably sufficient to evaluate the environmental impact of a proposal. (Emphasis added.)

WAC 197-11-080 says:

(1) If information on significant adverse impacts essential to a reasoned choice among alternatives is not known, and the costs of obtaining it are not exorbitant, agencies shall obtain and include the information in their environmental documents. (Emphasis added.)

There was no “reasonably sufficient” information and the County did not require applicant to obtain the “incomplete” information listed below:

2. Failure to Disclose Ultimate Use Violates WAC 197-11-080/335.

• Can't determine impacts under SEPA unless know what development is actually being proposed. See Staff Report deferring requirements on stormwater, aquifer recharge, etc. to final review... after public hearing.

3. Offsite Stormwater Capacity Information Needed.

• Applicant relies on information from Waters Edge Stormwater Report; but does not provide said report.

4. Current Traffic Study Based on Actual Project Information Needed.

- Not 2003 data.
- For actual use (WalMart).
- For actual site configuration here, rather than Mill Plain WalMart.

B. IMPACTS SIGNIFICANT.

EIS required or additional mitigation required for the following significant impacts, including, but not limited to:

1. Traffic.

- Significant enough to warrant denial. See Bruce F. Schafer, PE, Report.

2. Stormwater.

- Should also include pollution from outdoor stored chemicals (fertilizers, pesticides, fungicides, rodenticides, etc.) runoff.

3. Geological.

- Retaining walls needed, not required.
- Possible landslide in stormwater area in northeast corner.

4. Land Use/Aesthetics

- Lack of lighting/crime/24 hour parking impacts.

5. Cumulative Impacts.

- A cumulative impacts study of all WalMarts county-wide necessary.

6. Collective/Marginal Impacts.

- WAC 197-11-330(3)(c): Several marginal impacts when considered together may result in a significant adverse impact
- Even if impacts here not individually significant, they are collectively significant enough to warrant an EIS.

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VII. CONCLUSION.

We hereby request a *De Novo* hearing, and that the Hearing Examiner require an EIS and deny the road modifications and the project for the reasons above.

DATED this 23rd day of May, 2006.

APPEAL OF FAIRGROUNDS
NEIGHBORHOOD ASSOCIATION
AND BRIDGET SCHWARZ - 11

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FAX 360/695-6016

John S. Karpinski, WSBA #13142
Attorney for Appellants

Attachments: Exhibit "1" TenBrook letter
Exhibit "2" County Exhibit List of 5/18/06
Exhibit "3" Bruce F. Schafer, PE, letter

APPEAL OF FAIRGROUNDS
NEIGHBORHOOD ASSOCIATION
AND BRIDGET SCHWARZ - 12

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DECLARATION OF BRIDGET SCHWARZ

Bridget Schwarz, being first duly sworn on oath, deposes and states as follows:

1. I am one of the Petitioners in the above entitled action, and am a member of the Executive Board of the Fairgrounds Neighborhood Association.

2. I verify that I have read the above and foregoing Appeal and believe the same to be true to the best of my knowledge.

3. I am beneficially interested in the aforementioned matter. I have standing in the case by vigorously participating in the proceedings before the Clark County staff, and by being a member of the Executive Board of the Fairgrounds Neighborhood Association, an officially recognized neighborhood association by Clark County. Our group includes nearby property owners such as Dan Golden and Homeowner Association Chair whose Association's interests could be severely hurt by this proposal, including but not limited to: increased traffic, flooding and water pollution, potentially diminished property values, geological impacts, land use/aesthetics, increased crime and vandalism, etc.

Vancouver, Washington
May 23, 2006

Bridget Schwarz, Member, Executive Board of
The Fairgrounds Neighborhood Association

Enclosures - Check for \$1,021.00 Appeal Fee
WallMart Appeal HE Fnl.052306.wpd

APPEAL OF FAIRGROUNDS
NEIGHBORHOOD ASSOCIATION
AND BRIDGET SCHWARZ - 13

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