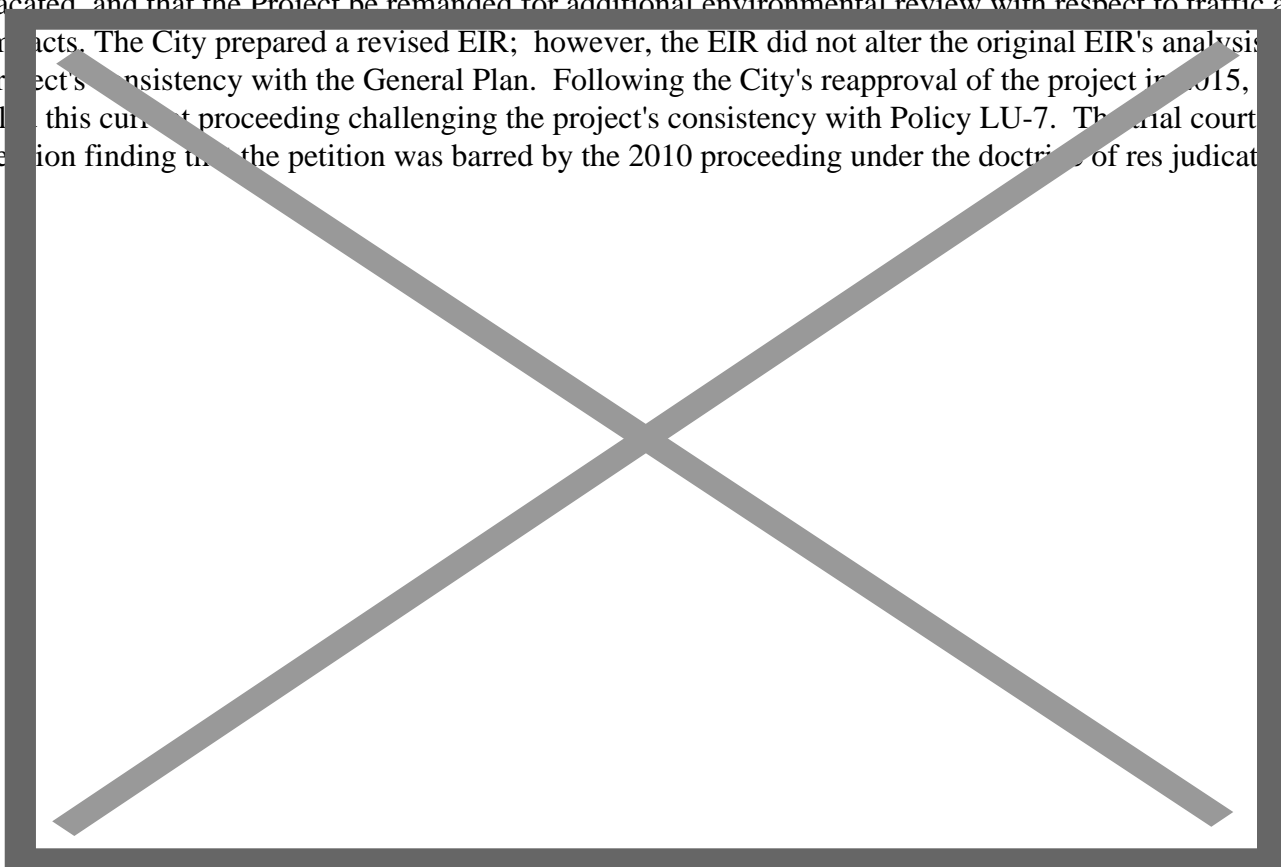


## **Court of Appeal Holds that Petition Challenging Wal-Mart Project is Barred by Earlier Lawsuit Raising the Same Issues**

The court of appeal held that the plaintiff's challenge to the City of Rohnert Park's reapproval of a Wal-Mart grocery store was barred by the doctrine of res judicata because a prior proceeding had raised the same issues. *Atwell v. City of Rohnert Park (Wal-Mart Stores, Inc.)*, 27 Cal. App. 5th 692 (2018). In 2010, the City approved the Wal-Mart project. Following the City's approval, the Sierra Club and Sonoma County Conservation Action (SCCA) filed a petition challenging the project on grounds that it violated CEQA and conflicted with the City's General Plan Policy LU-7. Policy LU-7 sought to "encourage new neighborhood commercial facilities and supermarkets to be located to maximize accessibility to all residential areas. ... to ensure that convenient shopping facilities such as supermarkets and drugstores are located close to where people live and facilitate access to these on foot or on bicycles ... this policy will encourage dispersion of supermarkets rather than their clustering in a few locations." While the plaintiffs in the 2010 proceeding alleged that the project conflicted with Policy LU-7 in their petition, the plaintiffs did not pursue the claim during the proceeding. The trial court ultimately granted the petition on the CEQA claims and ordered that the resolutions approving the Project be vacated, and that the Project be remanded for additional environmental review with respect to traffic and noise impacts. The City prepared a revised EIR; however, the EIR did not alter the original EIR's analysis of the project's consistency with the General Plan. Following the City's reapproval of the project in 2015, the plaintiffs filed this current proceeding challenging the project's consistency with Policy LU-7. The trial court denied the petition finding that the petition was barred by the 2010 proceeding under the doctrine of res judicata.



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doctrine of res judicata applies where a claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding, the prior proceeding resulted in a final judgment on the merits, and the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceedings. The court of appeal affirmed the trial court's finding that the prior and present proceedings both raised the claim that the project was inconsistent with Policy LU-7. The court rejected the plaintiff's argument that the actions raised distinct issues because the prior proceeding did not actually litigate the General Plan issue. Rather, the court held that the doctrine of res judicata applied to issues that could have been litigated, as well as to issues actually litigated, finding that "[n]othing in the record suggests appellants' current petition materially differs from the General Plan consistency claim raised in the [2010] Sierra Club action[.]" The court also rejected plaintiffs' argument that no privity existed between them and Sierra Club and SCCA. Privity within the context of res judicata concerns a person's relationship to the subject matter of the litigation. The court found that "[t]his case raises issues of harm to the community - namely, the detrimental impact to neighborhood supermarkets caused by having one located in a large commercial area. ... Likewise, Sierra Club and SCCA brought their petition on behalf of its members who are part of the community." Accordingly, the court held that there was privity as the relationships of plaintiffs, the Sierra Club and SCCA to the subject matter of the litigation were identical.

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