



Outside the Box

Guidelines for Retail Store Siting

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July 11, 2005

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Acknowledgements

The authors would like to thank the following people for their thoughtful comments and helpful assistance: Jeffrey MacDonagh, Loring Wolcott & Coolidge; Gary Brouse, Interfaith Center on Corporate Responsibility; Stu Dalheim, Calvert Asset Management Company; and Susan White, The Oneida Trust Committee of the Oneida Tribe of Indians of Wisconsin.

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Outside the Box: Guidelines for Retail Store Siting

Executive Summary

The growth of the large scale retail industry has brought with it a growing number of concerns, ranging from controversies with communities affected by retail siting decisions to environmental damage. These controversies present business risks as well, including:

- Financial liabilities from unforeseen events.
- Increased regulatory, legislative and legal risks.
- Reputational risks, including loss of consumer confidence.

As socially responsible investors, we believe that these risks could largely be averted through effective due diligence policies and procedures that are sensitive to the social and environmental issues presented by each prospective site and that encourage meaningful communication and interaction with affected stakeholders.

However, as far as can be determined from publicly available sources—including company documents—to date there have been few attempts by retailers to gain a broad overview of the range of social and environmental challenges associated with retail store siting. Consequently, we are unaware of any comprehensive set of guidelines to guide companies as they seek to mitigate these wide-ranging sets of risks.

Christian Brothers Investment Services and Domini Social Investments have created this document to meet the need for an overview of store siting issues and to provide guidance to companies seeking to formulate responses to them. We have crafted a set of nine Guidelines that we believe capture the broad range of social and environmental issues presented by retail store siting activities. Each Guideline is followed by a brief rationale to elaborate the set of risks it is designed to mitigate. We have designed these Guidelines to be open-ended in order to provide companies with a starting place to craft policies that are suited to their business models and future plans, while alerting them to the range of concerns that commonly arise and the risks these issues can present.

A variety of examples, resources and suggested actions have been provided following each Guideline. The examples and resources are provided to illustrate the range of issues that have arisen in the past and to demonstrate how some companies, governments and non-governmental organizations have responded to them. We have deliberately refrained from offering an opinion on each controversy described. Regardless of our view of each company's actions, each instance illustrates a risk associated with store siting. Some examples may be viewed as cautionary tales, others as best practices. Similarly, we do not formally endorse the resources listed. Rather, they are provided because we believe that companies may find them of use in crafting their own sets of guidelines.

In sum, we invite companies to use these Guidelines as a starting point as they incorporate social and environmental concerns into their store siting policies. We welcome feedback from companies and corporate stakeholders on their usefulness.

Introduction

As socially responsible investment firms that hold a number of large retailers in our portfolios, Christian Brothers Investment Services and Domini Social Investments have been concerned to see a substantial number of controversies in recent years surrounding land acquisition, leasing, and siting decisions by retail companies. While many communities welcome retailers for the shopping convenience and job opportunities they offer, many companies have also faced opposition because of the social and/or environmental impact of their land use practices. For example, retailers have been criticized for building on land sacred to Indigenous peoples, acquiring private property that local governments seized using their powers of eminent domain, and destroying historic buildings. In many locations, concerns about traffic, pollution, sprawl, and the preservation of a community's environment, character, and cultural history have fueled resistance to retail projects. These conflicts have generated substantial press coverage and have in some cases inspired local governments to propose legislation restricting retail development.

Because store siting is such a central component of a retailer's business, we see these incidents as posing a number of risks to shareholder value and to companies' future expansion plans. They may increase financial liabilities from unforeseen events and regulatory, legislative and legal risks, damage a company's reputation, and impact consumer confidence. A number of investors have been concerned about these issues for several years, and some retailers also have recognized that problems with community acceptance may pose challenges to their continued growth. These Guidelines for Retail Store Siting are intended to outline these challenges and to suggest responses to them.

Social and Environmental Business Risks of Retail Store Siting

According to a recent report by Bernstein Investment Research and Management, communities successfully blocked the opening of 35 large retail store openings in 2004, a 60% increase compared to 2000. The retailers affected included Bed Bath & Beyond, Best Buy, Circuit City, Costco, Home Depot, Kohl's, Linens n' Things, Target and Wal-Mart. Bernstein notes that successful attempts to block new stores grew 21% annually from 2002-2004. If this trend continues through 2009, Bernstein predicts that community opposition to store siting could impact retailers' annual square footage growth. Even a modest slowing of annual square footage growth, in turn, could lead both to lower earnings and to lower valuations of big-box retailers' stock.¹

In addition, in a number of cases where communities have been ultimately unsuccessful in blocking a project, companies have still suffered extended and costly delays. For example, a Costco store in Boca Raton, Florida that provoked community concerns about the project's impact on traffic and the aesthetic character of the area ultimately took over three years to build.² Also, as discussed later in this document, community opposition led Wal-Mart to abandon plans for a site in Inglewood, California that the company had sought to develop for at least two years

¹ Emme P. Kozloff, Ian J. Gordon, and Robert Higginbotham, "Not in My Backyard: An Analysis of Community Opposition to Big Box Retail," *Bernstein Research Call*, April 25, 2005, p. 2.

² *Ibid.*, p. 8.

(see “Community Consultation” below), as well as for a site in Leeds, New York that had been under consideration for four years (see “Respect for Indigenous Cultures” below).

Community opposition to big-box retail should be of particular concern, because resistance is most concentrated in precisely those geographic regions of the U.S. that have been least saturated by big-box retail and that represent the most attractive growth markets for future retail development due to their population size, density, and income levels. These regions include California, Texas, Florida and the Northeast.³ Similarly, many retailers have growth opportunities in emerging markets, where communities have also expressed serious concerns about the cultural and environmental impacts of retail development. Several examples from Mexico are discussed later in this document under “Preservation of Cultural Heritage.”

One of the most visible indicators of growing community opposition to big-box retail is the number of states, counties and municipalities that have drafted legislation in recent years restricting retail development. In addition to bills restricting building in certain areas, measures have also been proposed that would limit the square footage of stores or parking areas, establish product line restrictions, and impose building design requirements.⁴

The geographic range of localities that have considered legislation governing retail development demonstrates that concern about this issue is widespread. In recent years, state lawmakers in New Jersey have proposed legislation providing for economic impact studies and community input regarding new retail development. The town of Wayne, New Jersey also approved a master plan banning new big-box stores, after having forced Lowe's to abandon its plans for a 162,000-square-foot store due to concerns over traffic and noise.⁵ In Wauwatosa, Wisconsin, meanwhile, an ordinance was proposed to require developers of big-box stores to set aside money to demolish their buildings in the event that the stores are abandoned. The provision, similar to those imposed in recent years in communities in Pennsylvania and Wyoming, is intended to protect the city from unsightly “ghost box” outlets.⁶ Several states, including New Jersey and Massachusetts, also have or are developing impact fee legislation that contains components designed to recover certain costs (such as transportation improvements or water treatment and management costs) associated with retail development.⁷ In addition, as described later in this document, Austin, Texas has passed a law restricting retail development in the recharge zone of its main aquifer. Since 2000, additional zoning laws imposing size caps for

³ Ibid., p. 1.

⁴ “Opposition to Big Box Development,” International Council of Shopping Centers, <http://growthmanagement-icsc.org/bigbox>.

⁵ “New Jersey Considers Regional Impact Studies for Big-Box Stores,” Institute for Local Self-Reliance, http://www.newrules.org/retail/news_slug.php?slugid=275; Hugh R. Morley, “Big-Store Foes Seek Help in Trenton,” *The Record*, December 31, 2004; “New Jersey Big-Box Legislation Tabled Following Adamant Opposition,” National Association of Industrial and Office Properties <http://www.naiop.org/governmentaffairs/newsletter/041217.cfm#new>.

⁶ Annysa Johnson, “Tosa Wants to Put a Lid on Big Boxes - Developers Expected to Ante Up; Abandoned Stores Would Be Razed,” *Milwaukee Journal Sentinel*, January 3, 2005.

⁷ Massachusetts, Senate Bill 168 - An Act to Promote Land Use Reform in Massachusetts (2005) (<http://www.mass.gov/legis/bills/senate/st00/st00168.htm>); “Impact Fees,” International Council of Shopping Centers, <http://growthmanagement-icsc.org/local/impactfees.asp>.

retail stores have been passed in Arizona, California, Montana, Maryland, Massachusetts, New Mexico, Maine and New Hampshire.⁸

It is in retailers' interests to address community concerns voluntarily, thus obviating the need for potentially costly legislative remedies. While store siting issues are not the only community concerns that create support for these ordinances, they can be a significant motivator. Even in cases where the proposed laws are not enacted, moreover, the fact that these kinds of laws are being considered demonstrates that many people in communities are troubled by the way retail expansion often proceeds and are seeking solutions that will allow them to have a greater degree of control over how their community is to be developed.

Another indication of community opposition to retail development is the substantial number of court cases in which property owners have sued governments for transferring their property to retailers using their powers of eminent domain (see "Relations with Governments" later in this document). In September 2004, this issue reached the U.S. Supreme Court with a case brought by the Institute for Justice, a property-rights law firm, on behalf of property owners from New London, Connecticut.⁹ The landowners challenged the city's plan to clear nonblighted homes and businesses in order to build a waterfront hotel, office park, and townhouses, which the city argued would increase tax revenue.¹⁰ In June 2005, a narrowly divided Court ruled that it is constitutional for state or local governments to invoke the power of eminent domain to seize private property as part of an economic development plan. However, this decision is unlikely to end controversies over eminent domain. In her dissent, Justice O'Connor wrote that the decision's "beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms."¹¹ If this is the case, community resistance to the practice is likely to continue. The Court also made clear that it was not imposing any limits on a state's ability to limit the use of eminent domain proceedings, suggesting that retailers could encounter legislation of this kind in the future.

Even when companies' actions do not expose them to financial, legislative or other legal risks, store siting practices have the potential either to enhance or to damage a company's reputation. A positive reputation is increasingly recognized as critical to a business' long-term success. For example, "Corporate Reputation: Not Worth Risking," a 2002 report produced by the Wharton Business School, cited reputation as the biggest business risk in a survey of 2,000 top private and public sector organizations.¹² Confirming this assessment, a July 2002 Wirthlin Worldwide survey found that 85% of American consumers say that corporate reputation influences their overall image of a company and 60% say they will not knowingly purchase products from companies that are not good corporate citizens.¹³ In addition, a 2003 study by researchers at Stanford University and UC-Santa Barbara revealed that 94% of MBA students at 11 leading business schools would accept a lower salary--an average of 14% lower--to work for a firm with

⁸ Kozloff et.al., p. 5.

⁹ *Kelo v. New London*, 545 U.S. ____ (2005) (slip op.)

¹⁰ David G. Savage, "Cases Lift Hopes for Property Rights," *The Los Angeles Times*, February 22, 2005.

¹¹ *Kelo* at 12.

¹² "Corporate Reputation: Not Worth Risking," *Knowledge@Wharton*, http://www.aon.com/about/publications/issues/2002_wharton_reputation.jsp.

¹³ "The Study on Corporate Reputation," *The Wirthlin Report*, April 2000, Vol. 10, No.1, <http://www.harrisinteractive.com/news/WirthlinReport/2000/twr0004.pdf>.

a reputation for being environmentally friendly, treating employees well, and caring about outside stakeholders, such as the communities in which it operates.¹⁴

The criticism of influential stakeholders can generate widespread negative publicity that may impact corporate reputation. For example, in 2004, there was substantial press coverage of the decision by the National Trust for Historic Preservation to list the entire state of Vermont as one of America's 11 Most Endangered Historic Places because it was threatened by development from Wal-Mart and other big-box retailers.¹⁵ As discussed later in this document, a number of retailers have also garnered negative publicity for projects impacting Indigenous sites, significant architectural structures, or local eco-systems. While the monetary costs of resolving these issues may be manageable, the reputational effects of these controversies can be lasting and significant. It is therefore in retailers' interest to protect their reputations by maintaining positive relationships with the communities in which they locate and other stakeholders concerned with store siting.

Given these financial, legislative, legal and reputational factors, we believe that community opposition poses significant risks to retail companies and to the value of our investment in them. Investors and companies should be seeking to understand the roots of community resistance to the growth of this industry, and developing effective mechanisms to address these concerns. To mitigate these risks, we believe that retailers should take proactive steps to incorporate social and environmental considerations into their store siting decisions. However, as far as can be determined from publicly available sources—including company documents—there have so far been few attempts by retailers to gain a broad overview of and approach to the range of social and environmental challenges associated with retail store siting. Christian Brothers Investment Services and Domini Social Investments have created this document both in order to meet this need for an overview of store siting issues and in order to help companies formulate their responses to them.

We have identified nine basic Guidelines that we believe address the major social and environmental concerns associated with retail store siting. The central idea behind these Guidelines is that retailers have an obligation to act as responsible stewards of the environment and constructive members of the communities in which they do business. In order to do so, companies may sometimes need to take actions that are not required by law, but are necessary to gain the good will of their neighbors and to ensure the preservation of the environment and the communities in which they seek to do business. Retailers that demonstrate leadership in these areas may enhance their public profile with current and future customers and may enjoy a competitive advantage within the sector.

In addition to CBIS and Domini, the nine guidelines are supported by the following 20 organizations, institutional investors and mutual fund families representing \$33 billion in assets under management: Boston Common Asset Management, Calvert Group, Catholic Healthcare

¹⁴ David Montgomery and Catherine Ramus, "Corporate Social Responsibility Reputation Effects on MBA Job Choice," Stanford Graduate School of Business Research Paper #1805, May, 2003, <http://gobi.stanford.edu/ResearchPapers/Library/RP1805.pdf>.

¹⁵ "America's 11 Most Endangered Historic Places 2004," *National Trust for Historic Preservation*, <http://www.nationaltrust.org/11most/2004/vermont.html>.

West, Dominican Sisters of Springfield, Illinois, Evangelical Lutheran Church in America, General Board of Pension and Health Benefits United Methodist Church, Program Directors for Energy & Environment and Contract Supplier and Human Rights Working Groups of the Interfaith Center on Corporate Responsibility, Maryknoll Sisters, NorthStar Asset Management, Inc., Progressive Investment Management, Sisters of the Blessed Sacrament Social Justice Office, Sisters of St. Francis of Philadelphia, Office of Peace and Justice Sisters of St. Joseph, Nazareth, Michigan, Sisters of St. Joseph of Philadelphia, Pax World Funds, Sierra Club Mutual Funds, The Ethical Funds Company, The Oneida Trust Committee of the Oneida Tribe of Indians of Wisconsin, Trillium Asset Management, and Walden Asset Management.

How to Use This Document

We invite companies to view these Guidelines as constructive guidelines, and to carefully consider how they might be adapted to their business model. We have deliberately framed the Guidelines in an open-ended and flexible way to allow companies to adapt them to their businesses. We are aware that, in some cases, taking these factors into account may impose additional costs and time commitments. Corporations will need to evaluate how the considerations raised in these Guidelines may best be integrated into their business decisions. When making these assessments, however, we believe that companies must also recognize the risks of ignoring these social and environmental factors. Ignoring these nonfinancial issues in the initial stages of a project may cause delays and may lead to community opposition, increased costs, and damage to a company's brand name and reputation, as well as unnecessary damage to communities and the environment.

We recognize that companies vary widely. Each retailer may have different challenges, strengths and experiences with regard to store siting. For this reason, these Guidelines are not intended as a manual for store siting or a catalog of all of the issues that companies may confront while making siting decisions. Nor are the Guidelines meant to specify implementation measures. Rather, they are meant to serve as a resource for companies seeking to address these concerns in their own operations. While we have sought to provide specific examples of how some companies are currently grappling with these issues, our primary purpose is to encourage each company to carefully consider the Guidelines, explore how they might be usefully applied to its own business, and adapt them as necessary. Because the Guidelines were crafted in response to the major concerns that communities and investors are currently expressing about retail land acquisition practices, they provide basic standards to which companies can aspire.

While we realize that each company adapting these Guidelines will do so somewhat differently, we believe that all companies should have a clearly formulated, well-monitored and effective policy for assessing and mitigating the social and environmental risks associated with store siting.

This policy should be periodically reviewed and updated to incorporate lessons learned from the corporation's experiences and should include goals and benchmarks for continuous improvement. Although a policy of this kind should take account of cultural and regional differences, the basic standards it applies should be uniform wherever the company operates.

We also strongly encourage public disclosure of store siting policies and practices. As noted in many places below, public disclosure is critical to establishing community goodwill and enhancing corporate reputation. Companies will, of course, need to take into account concerns about proprietary information as they consider such disclosure. However, the experience of many companies with codes of ethics, supplier codes of conduct, and environmental policies demonstrates that it is possible to provide the public with an understanding of the key elements and overall goals of a policy as well as periodic performance reports, while still protecting confidential information.

Finally, while we include a number of possible actions and resources for each Guideline, including relevant examples to illustrate the import of each Guideline, Christian Brothers and Domini Social Investments do not formally endorse these resources, and do not advocate that all companies take these particular actions, or follow the examples provided (some of which are provided as cautionary tales). Instead, we have provided this information to assist companies in designing their own approach to the social and environmental aspects of store siting.

Scope of Guidelines

The Guidelines are intended to provide guidance on store siting decisions, whether a company is buying or leasing the space in question. They are designed to apply both to retailers themselves and to any developers, contractors, or other parties who may select and develop sites on a retailer's behalf or for eventual use by a retailer. They do not discuss store operations, which raise many additional social and environmental issues. We are, of course, aware that some operations-related issues can fuel opposition to retailers' locating in certain communities. For example, concerns are often expressed about small, independent retailers losing business to larger retailers or being displaced by them. At the same time, certain retailers seeking to open stores have faced opposition due to concerns about their wage and benefit policies. Questions are also often raised about the working conditions in non-US factories from which many retailers source goods. These are all important issues for retailers to address.

Positive relations with communities and local businesses, as well as strong policies ensuring the fair treatment of workers, are all good business and important aspects of corporate citizenship. We also believe that companies with positive records in these areas will enjoy a competitive advantage in regard to store siting, since they are more likely to be welcomed in new locations. However, these issues lie outside the scope of the current project and are not discussed in the remainder of this document.

While discussing store siting, the Guidelines examine the relationships among retailers and a number of other entities or groups that may have interests at stake in retail development projects. These stakeholders include local communities, governments, nongovernmental organizations, customers, and investors, among others. The Guidelines recognize and describe both the importance of productive relationships with these stakeholder groups and the ways that some stakeholders may crucially affect companies' location decisions.

One of the key stakeholders in retail projects are governments, which, with their zoning and regulatory powers, have a major impact on land use. For this reason, many community groups

and nongovernmental organizations are currently seeking to influence government policy in this area. Our document, however, has been written from the viewpoint of social investment firms concerned with improving the long-term performance of the companies we hold in our portfolios. For this reason, we focus throughout the document on corporations' role in land use and development.

It is also important to note that while many of the companies mentioned in this document have important programs and policies that demonstrate their commitment to corporate responsibility, this document centers solely on those corporate actions directly related to land procurement and store siting. Therefore, the document does not mention or provide examples of certain corporate initiatives that would be worthy of attention in other contexts. For example, Wal-Mart recently announced "Acres for America," a partnership with The National Fish and Wildlife Foundation under which the company will contribute \$35 million to permanently conserve at least one acre of wildlife habitat in the United States for every acre of its existing footprint and planned expansion in the next 10 years. While this conservation program represents an important commitment by the company, it does not directly address or provide guidelines to mitigate the environmental and social impacts associated with the siting of the company's individual stores.

Finally, most of our examples come from the U.S. and we recognize that the experience of retailers operating in other countries may vary. However, the Guidelines are intended to be general enough to apply in any international context. In addition, Wal-Mart is mentioned in the largest number of examples, in part because it is the largest retailer in the world. With approximately 5,200 stores worldwide, Wal-Mart has roughly three times as many locations as Home Depot, four times as many as Target, five times as many as Lowe's, and ten times as many as Costco.¹⁶ Regardless of size, however, we believe that all major retailers confront similar social and environmental issues regarding store siting and can learn from one another's experiences.

¹⁶ Information obtained from each company's latest Form 10-K Annual Report submitted to the Securities and Exchange Commission.

1. Social and Environmental Due Diligence

The company will incorporate social and environmental factors into its due diligence process. The company will research the history, natural environment, and cultural attributes of each site it is considering acquiring or building upon and will consult with local community members and organizations to explore challenges and opportunities that may arise during development of the site. These research and consultation processes will inform corporate decisions about site development and, in certain instances, may lead the company to seek alternatives to especially sensitive sites.

Rationale: Due diligence is the level of care and prudence that a person would reasonably be expected to take to avoid harm. In the simplest sense, it involves asking the right questions, conducting research to get the answers, and deciding upon the next steps based on the information received. In regard to social and environmental issues, thorough due diligence can identify and preempt a wide range of problems that may impair a project's success or a company's reputation. Conversely, without proper attention to this type of due diligence, companies can become subject to risks — including reputational, operational, and legal risks — that can result in significant financial costs.

Proper environmental and social due diligence would ensure not only that the project has passed the proper legally required environmental reviews and has received appropriate licenses and permits, but also that it is being conducted in accordance with the spirit of the laws and of internationally respected norms regarding social, environmental and cultural issues. It also would involve conducting research to ascertain the significance of the intended site for relevant stakeholders and to identify any likely grounds for opposition to retail development of the site. The due diligence process should identify situations that require special environmental or social impact assessments (including those that require the skills of outside experts in subjects such as biodiversity or cultural heritage).

Adequate due diligence procedures will enable companies to take all reasonable precautions to protect sensitive environmental and cultural areas and to engage productively with communities and other stakeholders. In addition, due diligence procedures should identify instances where development may be considered off-limits, due to the excessive nature of the risks involved.

Examples:

- In 2004, IKEA proposed building a 340,000-square-foot store on waterfront property in Red Hook, Brooklyn as part of a community development plan to revitalize a waterfront area. Initially, IKEA kept the community informed about key project components via a dedicated website that contained site renderings, details of their transportation plans, and an animated “fly-over” of the new store and its surroundings (<http://www.ikearedhook.com>). However, the project later faced opposition from groups concerned about IKEA's demolition of Civil War-era buildings and a 1930s graving dock in a former shipyard, which some residents feel are part of the character and history of the neighborhood. Additional concerns were raised when asbestos was found in the shingles of the buildings. Allegations were made that IKEA had understated the level of asbestos in filings it made with the Department of Environmental Protection, and may have moved too quickly with

the project before receiving permits. The company and its contractors were required to temporarily halt the demolition and faced potential fines for exposing workers and residents to dangerous substances. In the view of several members of the local community, IKEA's due diligence and community consultation process failed to adequately address cultural history and worker health.¹⁷

- Some companies in the extractive sector have developed guidelines limiting their development of culturally or environmentally sensitive sites. These companies' policies may be useful examples for retail companies also confronting these issues. For example, Royal Dutch/Shell Group has declared United Nation-designated environmentally sensitive areas "no go" zones for oil and gas exploration and development. The ban applies to the 172 sites on the World Heritage List, which is maintained by the U.N. Educational, Scientific, and Cultural Organization (UNESCO). In announcing the ban, Shell noted that it had previously abandoned oil exploration in two areas on the UNESCO list.¹⁸

Suggested Actions and Resources:

- Provide appropriate training and education to employees, as well as to external consultants and partners hired to conduct due diligence investigations, so that all personnel understand and carry out work according to the company's environmental and social policies, practices and procedures.
- Develop monitoring mechanisms to ensure that employees follow appropriate policies, practices and procedures. Document in writing results from site visits, problems identified, corrective actions taken, and feedback from stakeholders. This information should be collected and evaluated on a regular basis to ensure thorough implementation of social and environmental policies and to inform and enhance future projects.
- Commit to periodic monitoring and verification by third-party independent agencies or groups regarding application of the company's due diligence policy. This monitoring shall be transparent and take into account input from stakeholders (including community groups, non-governmental organizations, and local business associations).
- Update due diligence procedures regularly so that newly identified best practices in the areas of environment, human rights, and stakeholder consultation are incorporated and so that lessons learned from previous projects are included in an improved policy for the future.
- While it is standard practice for some businesses conducting environmental site assessments to use ASTM E1527, a standard set by ASTM International (formerly the American Society for Testing and Materials), it may be more prudent to follow the more

¹⁷ Carolyn Galgano, "IKEA Moves into Historic Brooklyn Shipyard," *Preservation Magazine*, February 9, 2005; Maura Yates, "Group Plans to Save Buildings, Dry Dock in IKEA Parking Lot," *The New York Sun*, February 15, 2005; Hugh Son, "Asbestos Find Halts Ikea Demolition Project," *New York Daily News*, January 12, 2005.

¹⁸ Jonathan Fowler, "Protected Sites Are a "No Go" Zone for Oil, Gas Prospecting, Says Shell Chief," *Associated Press*, August 28, 2003.

rigorous process outlined in the U.S. National Environmental Policy Act (NEPA). While ASTM E1527 helps to identify the presence or likely presence of any hazardous substances or petroleum products on a property and the threat of a release into the ground, groundwater or surface water or the property, NEPA also calls for detailed statements on such things as the environmental impact of a proposed action, any adverse environmental effects that cannot be avoided should the proposal be implemented, alternatives to the proposed action, and any irreversible and irretrievable commitments of resources that would be involved should the proposed action be implemented. While intended for U.S. federal government agencies, corporations might find using the NEPA standard to be beneficial, since it outlines a more stringent standard that might better protect the company from unknown risks. In addition, the detailed statements NEPA requires about the company's actions, potential impacts and alternatives could enrich the evaluation of proposed sites. See www.ceq.eh.doe.gov/nepa/regs/nepa/nepaeqia.htm.

- The due diligence checklist provided at http://www.redlisted.com/due_diligence_checklist.html, although not geared to the retail sector, can provide some useful information to avoid risks associated with project development. The website was created by a consortium of finance, business, and environmental organizations seeking to promote analysis of social and environmental risks in Latin America.
- “Impact – a survey of Environmental Due Diligence,” a survey of social and environmental risks among 105 of the top 500 companies in Europe, recommends that environmental due diligence be integrated with commercial, legal and financial due diligence assessments and include issues of corporate social responsibility and reputational risk. Although the report focuses on risk evaluation following a merger or acquisition, the same lessons can be applied to site development. The study, by global accounting firm KPMG LLP (U.K.), is available at www.kpmg.co.uk/pubs/208251.pdf; <http://www.environmental-expert.com/articles/article3484/article3484.pdf>.
- The World Resources Institute (WRI) argues that in certain instances, companies could be better served using a rigorous risk evaluation process, such as the establishment of an external panel of experts to review environmental and social impact assessments. The report suggests this approach because company employees or often-used consulting firms might have an incentive to minimize environmental and social concerns in order to ensure project approval and enhance the likelihood for additional work. By hiring leading academic professors, university experts or governmental specialists for particular situations, the company could gain fresh and unique insight into the challenges and solutions associated with a project. While the WRI has made these points in a report concerned with mining, its conclusions may also apply to the retail sector.¹⁹

¹⁹ Marta Miranda et. al., “Mining and Critical Ecosystems – Mapping the Risks,” *World Resources Institute*, 2003.

2. Transparency

The company will publicly disclose its environmental and social policies and guidelines on store siting, as well as its plans to develop sites. It will clearly communicate its store siting guidelines and project plans to local communities, to investors and to the public.

Rationale: Transparency is an important aspect of corporate social responsibility and is a critical tool for building trust with investors and the public. It can also help to identify a variety of risks early in the siting process rather than later when they may be more expensive to address.

Responding to interest from communities, stockowners, and other stakeholders about company policies and programs to address social and environmental issues, many companies are describing their initiatives in corporate social responsibility (CSR) or sustainability reports. Over 1500 companies in the world issued sustainability or environmental reports in 2004, including almost half (49) of the 100 largest companies in the world.²⁰ In the retail sector, companies issuing such reports include Home Depot, IKEA, Lowe's and Target. Other common venues for disclosure of social and environmental information include corporate codes of ethics, annual reports, and websites. In some cases, companies also have found it helpful to communicate in a variety of other ways, including public meetings, open houses, newspaper inserts, radio announcements, and direct mail.

Companies should use appropriate methods of communication to share with communities their expansion plans and their store siting standards, as well as the methods they use to ensure compliance with those standards and to remediate problems when they arise.

In order to be effective, disclosure regarding store siting policies and decisions must be timely and accessible to its intended audience. Relationships with the community begin poorly if residents see land being cleared for unknown purposes, without having received advance information about a new development. Therefore, it is recommended that acquisition plans be disclosed as early as possible. In addition, when building internationally or in bilingual neighborhoods, information disseminated to the public should be clearly expressed in appropriate languages and formats, so that residents will understand how the proposed development will impact them. In many cases where local law already requires that plans be publicly disclosed, companies may need to consider whether the legally required disclosure is adequate to inform the affected community.

When deciding which particular aspects of its store siting plans and policies to make public, each company may seek to avoid revealing proprietary information and internal policies and procedures. However, with thoughtful planning, a company can create a version of a policy intended for the public that will provide stakeholders with the information they seek about a project without disclosing strategies that would put the company at a competitive disadvantage. Well-informed community members understand more fully proposed changes to their neighborhoods; this can translate into goodwill and facilitate community support of retail

²⁰ "Towards Transparency: Progress on Global Sustainability Reporting 2004," *Association of Chartered Certified Accountants and CorporateRegister.com*, 2004 (http://www.accaglobal.com/pdfs/environment/towards_trans_2004); "Material World: The 2003 Benchmark Survey Report," CSR Network, Press Release, June 2, 2003, (<http://www.csrwire.com/article.cgi/1875.html>).

development. At the same time, investors can use this information to help them determine which companies are adequately addressing the business risks associated with the siting of retail stores.

In addition, companies should periodically disclose information about the implementation of their store siting policies in order to permit their stakeholders to gain a more informed opinion about corporate performance in this area. Over time, this information should allow companies to establish an easily understood track record that may help alleviate community opposition. This information should also permit the company to more effectively measure its own performance against its stated policies.

Examples:

- Target includes a section on “Sustainable Real Estate Development & Design” in its 2004 Social Responsibility Report. Stating that the company plans to build about 100 new stores a year, the section contains information on the company’s environmental due diligence procedures when acquiring property, its practice of siting retail stores in metropolitan areas on environmentally restored properties known as brownfields, and its efforts to consult communities and local planning commissions in the early stages of its projects. (See http://www.targetcorp.com/targetcorp_group/investor-relations/investor-relations.jhtml).
- McDonald’s’ 2002 sustainability report includes a section on “Construction and Design,” in which it describes its efforts to respect local culture and community planning preferences while building and designing stores in historic areas. (See the report at www.mcdonalds.com/corp/values/socialrespons/sr_report/otherreports.html).
- Some retailers disclose general expansion plans in their Securities and Exchange Commission (SEC) filings. For example, in its 2004 Annual Report, Lowe’s reported, “the Company began construction on an additional regional distribution center located in Poinciana, Florida, which is expected to be operational in the third quarter of 2004. The Company has begun construction on an additional regional distribution center in Plainfield, Connecticut, to be open in fiscal 2005.” Companies should consider when such disclosure may be considered material to their investors and required to be disclosed in their filings. See <http://www.sec.gov/Archives/edgar/data/60667/000006066704000192/exhibit13.htm>.

Suggested Actions and Resources:

- Include information on store siting policies and expansion plans in such documents as CSR reports, SEC filings, on the company website and in the company’s Statement or Code of Ethics. Wal-Mart and Costco have publicly disclosed ethics codes on their websites (http://media.corporate-ir.net/media_files/IROL/11/112761/corpgov/Ethics%20Current.pdf and http://media.corporate-ir.net/media_files/NSD/cost/reports/our_mission.pdf) that cover policies on such issues as labor standards, bribery, and ethical behavior. Store siting policies would be an appropriate addition to such disclosure.

- The International Finance Corporation (IFC), the private sector development arm of the World Bank, is the largest multilateral source of loan and equity financing for private sector projects in the developing world. IFC has produced a good practices manual that includes a section on transparency and disclosure of information. See “Doing Better Business Through Effective Public Consultation and Disclosure,” *International Finance Corporation Environment Division*, 1998, at <http://www2.ifc.org/publications/pubs/env/>.

3. Community Consultation

The company will seek the consent of and input from communities in the preliminary development stage of a project and will solicit community input during all stages of development. In order to do this, the company will consult in a structured and culturally appropriate way with people affected by its projects, including local residents and civil society groups.

Rationale: Businesses increasingly realize that their success depends not only on receiving legal permits and licenses, but also on the acceptance and cooperation of the communities they affect. This is frequently referred to as a “social license to operate.” It is especially important for retailers to have good relationships with communities in which they are located, since their customers and employees come from these communities. Given these realities, consultation is a necessary investment in the future of a project, since successful consultation can lay the groundwork for positive community relations and can raise consumer confidence. Lack of consultation can increase community opposition and pose financial and reputational risks from permit delays, legal disputes, protests, work stoppages and negative publicity.

Community consultation is an ongoing, interactive process of engagement between a company and the public in which a company informs a community about project plans and impacts, provides ways for community members to express their views of the project, and integrates the feedback received into the company’s project plans. Consultation should begin at the site selection stage and should continue throughout a facility’s construction. It should begin with research to identify and facilitate the involvement of affected parties and to identify local regulatory requirements calling for public involvement. The stakeholders a company may decide to engage include: local residents, community-based organizations and elected officials; local, national and international nongovernmental organizations (NGOs); religious groups, research centers and universities; and other private sector businesses and industry associations. Special care should be taken to ensure that consultation reflects the social diversity of the community being consulted and includes often overlooked stakeholders, such as the poor, young people, the elderly, people with disabilities, people from non-English speaking backgrounds and Indigenous peoples.

The consultation process should involve regular meetings and communications with these stakeholders, who should be provided with information to allow them to adequately evaluate the effects of the project, both positive and negative. At an early stage, the company should establish mechanisms for stakeholders to initiate communication and convey concerns to the company. A clear grievance procedure should be established to address stakeholder concerns.

Finally, consultation must involve company employees directly responsible for site design and construction, as well as top management. The roles and responsibilities of these various employees should be clearly defined to ensure accountability, and any outside consultants employed to evaluate aspects of the project should also be educated about the importance of integrating stakeholder feedback into project plans.

Examples:

- In 2003, Wal-Mart received negative publicity for allegedly trying to circumvent the community consultation process for store siting in Inglewood, a suburb of Los Angeles. In 2002, the Inglewood City Council had passed an ordinance requiring public review and approval of megastores, in order to ensure that such projects meet community needs. To bypass this review process for a proposed Wal-Mart in the town, a community group called Citizens' Committee to Welcome Wal-Mart to Inglewood gathered signatures for a ballot initiative that would have allowed the company to forego an environmental impact study and obtain its building permits without a public hearing. Some residents believed the group to be a front for Wal-Mart.²¹ While the group succeeded in bringing this referendum before the voters, Inglewood residents defeated it by 61% to 39%. In interviews in major newspapers and on television, Wal-Mart CEO Lee Scott cited the Inglewood case as one of the company's missteps, which has helped fuel other community opposition to its projects. Referring to the ballot initiative, Scott said, "We decided to move through a process that didn't go through City Hall. We paid a price for that... It comes across not as good business; it comes across as arrogance."²² Recognizing the need to communicate with stakeholders, the company began a nationwide campaign to tell community and elected leaders about its operations and policies. The initiative included town-hall meetings featuring Mr. Scott, full-page ads in more than 100 major newspapers, television spots and sponsorships of National Public Radio programs.²³
- A number of companies in the chemical, mining, oil, and power sectors have developed policies and procedures for community engagement that may be useful for retailers confronting similar issues. For example, Shell describes in detail its approach to interacting with the community, acknowledging that it needs broad acceptance and support of its business from the communities and societies in which it operates. Shell requires an integrated environmental, social and health impact assessment to be carried out prior to any new project as a way to better identify impacts. Shell also conducts social performance reviews of how specific operations have been managing their social performance and interacting with communities. The company uses this information to improve the company's overall management of its social impacts. The company website contains more

²¹Jonathan Tasini, "The Wal-Mart Myth," *TomPaine.common sense*, April 12, 2004 (<http://www.tompaine.com/scontent/10226.html>).

²²Nancy Cleeland and Debora Vrana, "CEO Takes His Case to California," *The Los Angeles Times*, February 24, 2005.

²³Michael Barbaro, "Wal-Mart Chief Defends Closing Unionized Store - Scott Says Labor Costs Guided Quebec Decision," *The Washington Post*, February 11, 2005; Gene C. Johnson, "Wal-Mart Supercenters Are Targeted on Two Fronts; Coalition Files Suit To Block Company-Backed Inglewood Ballot Measure April 4," *Wave West*, December 25th, 2004; Barrie McKenna and Peter Kennedy, "Chastened Wal-Mart Abandons 'Bully' Tactics," *The Globe and Mail*, February 25, 2005.

information, case studies, and policies and standards at [http://www.shell.com/home/Framework?siteId=royal-en&FC2=/royal-en/html/iwgen/environment and society/key issues and topics/issues/local communities /zzz_lhn.html&FC3=/royal-en/html/iwgen/environment and society/key issues and topics/issues/local communities /local communities_shell_approach.html](http://www.shell.com/home/Framework?siteId=royal-en&FC2=/royal-en/html/iwgen/environment%20and%20society/key%20issues%20and%20topics/issues/local%20communities/zzz_lhn.html&FC3=/royal-en/html/iwgen/environment%20and%20society/key%20issues%20and%20topics/issues/local%20communities/local%20communities_shell_approach.html).

- Columbia Power Corporation, a public company owned by the Province of British Columbia, has a mandate to work with local businesses and residents to develop power projects to benefit the Columbia Basin socially, economically and environmentally. According to its website, public input and consultation are an important part of all the company's projects. To ensure that residents are aware of upcoming and ongoing projects, staff regularly attend trade fairs and community group meetings, air radio and print ads, hold public meetings and open houses, mail information to households, and post project updates on the website. On its website, the company also outlines its consultation process, which includes the preparation of archaeology, wildlife, and water resource studies and the creation of community-based committees made up of local residents, along with municipal and regional representatives. See <http://www.columbiapower.org/content/consultation.html>.

Suggested Actions and Resources:

- "Ideas for Community Consultation - A discussion on Principles and Procedures for Making Consultation Work," by Dr. Lyn Carson and Dr. Katharine Gelber, prepared for Australia's New South Wales Department of Urban Affairs and Planning (February 2001), explains consultation methods such as polling, consensus-building conferences, and focus groups. It offers advice on participant selection and choosing among consulting methodologies. While it is intended to assist government agencies in using community consultation techniques, corporations can apply the same tools. See http://www.planning.nsw.gov.au/planfirst/pdf/principles_procedures_final.pdf.
- The International Association for Public Participation (www.iap2.org) offers training on public consultation and helpful tools for the practitioner. Resources include a chart of the spectrum of various forms of consultation, with examples of consultative and information-sharing techniques. See www.iap2.org/practitionertools/toolbox.pdf.
- The EPA's "Framework for Implementing EPA's Public Involvement Policy" provides case studies organized according to the type of process, including constructive engagement, advisory committees, and negotiation. Examples include Lucent Technology's local environmental advisory group and Intel's Project XL stakeholder group. See <http://www.epa.gov/publicinvolvement/pdf/appd1.pdf>.
- The International Finance Corporation (IFC) has produced a good practices manual: *Doing Better Business Through Effective Public Consultation and Disclosure*, International Finance Corporation, Environment Division, 1998. See <http://www2.ifc.org/publications/pubs/env/>.

- Local, state or federal laws sometimes require community consultation. For example, when Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, in 1980, it required specific community involvement activities that must occur at certain points throughout the Superfund process.²⁴ In addition, many of the regulations and laws that govern the actions of the U.S. Environmental Protection Agency (EPA) suggest or require that the EPA provide certain public involvement opportunities, such as public notification, public comment periods, public meetings, public access to information, and/or other opportunities for the public to participate in the specified decision-making process.²⁵ These mechanisms may also prove useful to corporations.

4. Relations with Governments

The company's dealings with national, regional and local governments will be consistent with the protection and promotion of good government. The company will not allow any employees, partners, or contractors involved in its projects to engage in bribery. The company will not induce a government to seize private property in order to subsequently sell it to the company. The company will disclose any lobbying, political contributions, or other activities it undertakes to influence public policy with regard to land use.

Rationale: Allegations or perceptions that a company is inappropriately influencing government officials or policy can seriously damage corporate reputation, with a resulting loss of consumer and policy makers' confidence. Honest and transparent government is a necessary prerequisite for the long-term economic prosperity of communities, and prosperous communities, in turn, provide a strong consumer base for the products retail companies sell and the best environment for long-term business success.²⁶

In the United States, many retailers have recently faced controversies regarding local governments' use of eminent domain to transfer private property to these companies. The power of eminent domain was designed to allow governments to take possession of private land for public uses (such as highways or schools). In recent decades, it has also been used in the service of retail development, on the grounds that such projects serve the public interest by increasing a locality's tax base and creating jobs. However, many communities have objected to overriding private property rights to favor corporate interests. As a result, retail companies that acquired these properties have sometimes been the targets of protests and lawsuits. In 2005, the debate over this issue reached the U.S. Supreme Court, which ruled 5-4 that it is legal for governments

²⁴ "Superfund Community Involvement Handbook," *U.S. Environmental Protection Agency - Office of Emergency and Remedial Response*, April 2002. http://www.epa.gov/superfund/tools/cag/ci_handbook.pdf

²⁵ "Framework for Implementing EPA's Public Involvement Policy," *U.S. Environmental Protection Agency - Office of Policy, Economics and Innovation*, May 2003. <http://www.epa.gov/publicinvolvement/policy2003/framework.pdf>

²⁶ See, e.g., Lee, Charles M.C., and David T. Ng, "Corruption and International Valuation: Does Virtue Pay?" Cornell University, Working Paper, November 2002 (http://aem.cornell.edu/faculty_sites/dtn4/leeng_0403.pdf). The study examines data in 46 countries. Using measures of political corruption, as well as sophisticated valuation theory, the authors demonstrate the impact of corruption in a country on shareholder value of firms. The authors note that political corruption drives up prices; reduces investment; and reduces legal protection of shareholders.

to seize non-blighted land from a private owner for economic development purposes.²⁷ However, this decision is unlikely to end controversies over eminent domain. In her dissent, Justice O'Connor wrote that the decision's "beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms."²⁸ If this is the case, community resistance to the practice is likely to continue, and companies that purchase property that has been seized using eminent domain may face mounting risks to their reputations and their relationships with communities. The Court also made clear that the decision did not impair an individual State's ability to limit its own authority to take private property through the exercise of eminent domain proceedings.²⁹ Retailers could therefore encounter legislation of this kind in the future.

At the same time, investors and corporations increasingly recognize the importance of strong anti-bribery policies in protecting corporate reputations and promoting a fair and competitive business environment. For American companies, these policies typically go beyond compliance with the Foreign Corrupt Practices Act and other laws, and include such measures as a clear chain of accountability for policy implementation; strong whistleblower protection; and robust audit mechanisms to evaluate compliance.

Finally, public concern about corporate political influence is widespread. Many investors are concerned that corporate spending that advances companies' goals in opposition to large or influential segments of a community may adversely affect corporate reputations. In addition, even for companies that do not engage in such activities, the absence of adequate disclosure of corporate political activity may fuel unfavorable speculation about what they are doing in this area. Because their land use projects so often require the approval and collaboration of government, retail companies are particularly vulnerable to speculation and criticism about their political activities, and would especially benefit from disclosure on this issue. Furthermore, contributions or activities that appear to contradict the company's stated policies on store siting may also present reputational risks.

Examples:

- In New Rochelle, New York in 2001-2002, local residents defeated city plans to condemn a small suburban neighborhood to make way for an IKEA store. Community members organized rallies, demonstrations, and pickets at the Swedish consulate and spoke out against the condemnation plans at public hearings. The city council eventually voted the plan down.³⁰
- Property owners are using the courts to fight local government's use of eminent domain. For example, in East Harlem, New York, a group of property owners filed a lawsuit challenging a city plan to condemn a number of buildings to make way for a Costco and a Home Depot. The buildings under threat included the home of a cabinetry and furniture-

²⁷ *Kelo v. New London*, 545 U.S. ____ (2005) (slip op.)

²⁸ *Ibid.* at 12.

²⁹ *Ibid.* at 19. See also, "Justices Refuse to Increase Land-Use Oversight," *Associated Press*, June 23, 2005.

³⁰ Dana Berliner, "Public Power, Private Gain," *Castle Coalition*, April 2003 (<http://www.castlecoalition.org/report>), p.150.

making store that had been in one family for 70 years.³¹ In another example, a lawsuit was filed by landowners challenging plans by the city of Port Chester, New York to clear a marina, an antiques store and several other businesses to make way for retailers, including Costco and Bed Bath & Beyond.³² While lawsuits of this kind do not always succeed, they generate negative publicity and may be evidence of significant community opposition to the developments in question.

- Eminent domain controversies continue to receive substantive press coverage both in local press and in national business publications. For example, in an article entitled "Cities Use Eminent Domain to Clear Lots for Big-Box Stores" (December 8, 2004), the *Wall Street Journal* discussed a number of controversies regarding the use of eminent domain, including city plans to seize land for a Home Depot in Pittsburg, Kansas, a Target store in St. Louis, and a Wal-Mart in Maplewood, Missouri. In May 2002, a *Journal* editorial criticized plans by the town of Cypress, California to transfer land owned by a church to Costco using eminent domain ("The First Church of Costco," *Wall Street Journal*, May 30, 2002). Calling the invocation of eminent domain on behalf of a private business "the worst form of political collusion," the *Journal* wrote that businesses "should buy their land in the open market instead of relying on local governments to seize a juicy location at below-market prices."
- In Mexico, both Costco and Wal-Mart have encountered allegations of bribery connected with their construction of stores on or near sites of historic significance. In the city of Cuernavaca, community groups opposed Costco's acquisition of a notable hotel, and a number of prominent citizens suggested publicly that the officials facilitating the project may have been bribed.³³ Recently, Costco has strengthened the antibribery provisions of its code of ethics. The improved code, available at http://media.corporate-ir.net/media_files/NSD/cost/reports/our_mission.pdf, clearly prohibits giving or receiving bribes, states that violations of the code may be punished by disciplinary action including dismissal, and encourages employees to report any code violations they observe.³⁴ Wal-Mart faced similar problems surrounding its construction of a superstore within sight of the famous Mexican archaeological site of Teotihuacán. In September 2004, the *New York Times* reported that local merchants accused the town, state and federal authorities of corruption for allowing Wal-Mart to build on legally protected farmland.³⁵ These companies' experiences suggest that such allegations, even if unproven, may adversely impact corporate reputation in both local markets and their home countries, and that strong,

³¹ Ibid., p. 145.

³² Ibid., p. 153.

³³ Guadalupe Sámano Popoca, "Luto por el Casino de la Selva," *Kronos*, July 22, 2001, 19; Jéssica Gómez Macias, "José Raúl Hernández Avila, único culpable del acervo cultural perdido," *El Sol de Cuernavaca*, July 18, 2001; Andres Serrano Chacon, "Asegura JRHA que los diputados están en todo su derecho de hacer el ridículo: Documento del PRI Establece que Hubo Violaciones a Reglamentos de Construcción," *La Jornada Morelos*, July 28, 2001, 3.

³⁴ In 2003, Domini filed a shareholder resolution asking Costco to adopt an improved code of ethics addressing bribery and corruption. The resolution was omitted by the SEC and did not appear on the company's ballot.

³⁵ James McKinley Jr., "No, The Conquistadors Are Not Back. It's Just Wal-Mart," *New York Times*, September 28, 2004, A4.

rigorously enforced anticorruption codes may help protect corporations from such controversies.

- In Dunkirk, Maryland, in 2004, the county imposed a store size-cap law in order to restrict large-scale retail development. In 2005, in what *The Washington Post* called “a novel way around the rules,” Wal-Mart proposed building two stores, side-by-side. The plan was strongly criticized because it violated the intent of the county law. While each of the proposed stores would be allowable under the cap, the two-building complex would exceed its size limitations by 30%.³⁶

Suggested Actions and Resources:

- To reduce controversies regarding eminent domain, companies could work with retailing and real estate trade associations to develop a code of ethics addressing eminent domain and to encourage the development of best practices in avoiding its use. Before beginning a project, retailers may wish to conduct joint meetings with local governments, project developers, and property owners to see if an agreement can be reached without eminent domain being invoked.
- To increase transparency about their political activities, companies should disclose public policy positions, lobbying activities, and corporate political contributions (either generally or those specifically related to land use and development) on a regular basis.³⁷
- *Public Power, Private Gain*, a publication by the Castle Coalition (see <http://www.castlecoalition.org/report/>), describes the key issues surrounding the use of eminent domain, describes many eminent domain controversies involving retailers as well as other businesses, and describes a number of cases in which eminent domain conflicts have been satisfactorily resolved.
- “Condemning Condemnation: Alternatives to Eminent Domain,” a report from the Goldwater Institute Center for Constitutional Government, offers twelve market-based alternatives to eminent domain, including the potential for land swaps, joint ventures and preferred stock deals. See www.goldwaterinstitute.org/pdf/materials/454.pdf.
- Over the course of the last decade, the Organization for Economic Cooperation and Development (OECD), the International Chamber of Commerce (ICC), and Transparency International have all worked to raise awareness of the importance of corporate anticorruption programs, to develop codes of conduct for private companies, and to assist companies in developing their individual codes. (See, for example, the OECD’s Anticorruption Instruments and the OECD Guidelines for Multinational Enterprises at www.oecd.org/dataoecd/0/33/2638728.pdf, the ICC’s Rules of Conduct to Combat

³⁶ “Wal-Mart Tries to Skirt Maryland Size Cap Law,” Institute for Local Self-Reliance, March 9, 2005. http://www.newrules.org/retail/news_slug.php?slugid=289

³⁷ For the connection between political contributions disclosure and shareholder value, see “The Green Canary: Alerting Shareholders and Protecting their Investments,” *The Center for Political Accountability*, February 2005 (<http://www.politicalaccountability.net/gcreport/indexgc.htm>).

Extortion and Bribery at www.iccwbo.org/home/statements_rules/rules/1996/briberydoc.asp and Transparency International's Anti-Bribery Toolkit at www.transparency-usa.org/Toolkit3a.html.

5. Respect for Indigenous Cultures

The company will respect Indigenous peoples' inherited cultural rights to the lands they have traditionally used for subsistence and cultural activities and will not deprive them of these rights. The company will not damage any archaeological, sacred, burial or historical sites, traditional cultural properties, or artifacts of Indigenous culture and will consult in appropriate ways with any Indigenous peoples that may be affected by its projects.

Rationale: The rights of Indigenous peoples are frequently violated, even in situations where they are technically protected by law. Companies should ensure that their activities do not adversely affect Indigenous peoples by consulting directly with them. Some governments maintain lists of officially recognized Indigenous peoples, which are often defined as groups that trace their ancestry to the people that inhabited an area before Europeans or other outside cultures colonized it. (For example, the U.S. Department of the Interior's Bureau of Indian Affairs cites 562 federally recognized tribal governments in the United States.) However, these lists may be incomplete, and a people's self-definition as Indigenous should be respected.

Companies should also be aware that in many cases, the living people most culturally connected to certain archaeological sites may be far away from them geographically, since Indigenous peoples have been the victims of forced relocations and genocide. In addition, since retailers developing properties may encounter sites important to a range of Indigenous peoples, companies could benefit from engaging nationwide Indigenous organizations in the countries where they operate.

During the engagement process, companies should abide by Indigenous peoples' own definitions of sacred places and seek solutions in line with their wishes regarding the protection of cultural sites. Companies should recognize that cultural sites can be damaged by the removal, replacement, exchange or disruption of artifacts.

Examples:

A number of controversies over the treatment of Native American sites have generated negative publicity for Wal-Mart and complicated or slowed some of the company's expansion efforts. While in some cases the company has taken steps to address these concerns, and has been able to resolve disputes arising from them, there are several other cases where criticism of the company has continued beyond a project's completion. The recurring nature of these controversies illustrates that in order to protect corporate reputation, it is important to adopt a proactive and systematic approach to Indigenous issues. Consultation with Indigenous peoples should be a central part of any such approach.

- In 1996, Wal-Mart abandoned a plan to develop a site in Leeds, New York that contained Mohican artifacts and burial sites. Members of the tribe had filed suit against the

town for changing zoning regulations to accommodate the retailer and had publicly opposed the development.³⁸

- In October 2004, a Wal-Mart in Hawaii opened amid protests from Indigenous Hawaiians seeking prompt reburial of the remains of 44 of their ancestors unearthed during the store's construction. The company argued that it was preserving the remains appropriately in an air-conditioned trailer on the site while questions about their final resting place was resolved. However, the Indigenous Hawaiians believed it was disrespectful and offensive to begin conducting business on the site before the remains were underground.³⁹
- In 1997, plans for a shopping center near Nashville, Tennessee that was to include both a Wal-Mart and a Lowe's home improvement store became controversial when a number of 800-year old Native American graves were discovered on the site. Demonstrations, lawsuits, and calls for boycotts followed. While the stores were eventually built after the human remains were relocated, Native Americans protested this move, which they considered a desecration of the graves.⁴⁰ This incident prompted the filing of a shareholder resolution asking Wal-Mart to report on the impacts of its store locations on Indigenous sites. In response to the resolution, Wal-Mart stated that its site assessment process did include an investigation of Native American sacred sites, but, as noted above, the recurrence of similar controversies suggests that the company's approach to Indigenous issues could be strengthened.⁴¹
- In several cases, Wal-Mart has attempted to reconcile the preservation of cultural artifacts with the company's development plans. While opinions may vary about the success of these efforts, they illustrate that the company has begun to consider the relevance of Indigenous issues for its business. For instance, in Halifax, Massachusetts in 1996, and in Casa Grande, Arizona in 1999, the company agreed to conduct archaeological surveys of possible store sites before building in order to search for Native American artifacts.⁴² In Canton, Georgia in 1995, Wal-Mart funded an archaeological excavation on the site of a proposed store, then displayed Native-American artifacts the dig unearthed.⁴³

³⁸ "Tribe Says Developer Threatens Sacred Site," *New York Times*, May 27, 1996; "Wal-Mart Abandons 4-year Plan to Build Store in Leeds," *The Times Union*, November 6, 1996, E1.

³⁹ "Native Islanders Seek Delay in Wal-Mart Opening," *Associated Press*, October 3, 2004; James Gonser, "State to Look into Handling of Remains at Wal-Mart Site," *Honolulu Advertiser*, July 23, 2004; "Customer Surge Dwarfs Protests at Opening of Hawaiian Wal-Mart Where Graves Unearthed," *Associated Press*, October 14, 2004.

⁴⁰ "In Wal-Mart Plan, Indians See New Trail of Tears," *New York Times*, August 3, 1996, A18; "New Trail of Tears, Wal-Mart Style," *Palm Beach Post*, August 6, 1997, A8; "Removal of Graves at Wal-Mart Site Temporarily Halted," *News from Indian Country*, April 15, 1998, 12A; "Natives Protest Wal-Mart Opening," *News from Indian Country*, November 30, 1998, A11.

⁴¹ Peter DeSimone, "Costco Wholesale Environment: Management and Reporting," *Social Issues 2005 Company Report, Investor Responsibility Research Center*, January 6, 2005.

⁴² "State Won't Conduct Environmental Study on Wal-Mart," *Patriot Ledger*, February 3, 1996; "Chandler Says No; Agreement Reached in Casa Grande Dispute," *Associated Press*, July 22, 1999.

⁴³ "New Trail of Tears, Wal-Mart Style," *Palm Beach Post*, August 6, 1997, p. A8; Mike Toner, "Atlanta-Area Road Would Cross Archeological Sites," *Atlanta Journal and Constitution*, April 1, 2002; "Indian Artifacts Find Home in Waleska," *Atlanta Journal and Constitution*, October 29, 1988.

Suggested Actions and Resources:

- Companies should include an investigation of a site's significance to Indigenous peoples as a standard part of the due diligence policy for site selection. While consultants may be hired for this purpose, companies may also gain valuable information from a local university's anthropology or archaeology department, as well as from other local cultural and historical organizations.
- If a site has relevance to Indigenous culture, companies should consult members of the Indigenous community at an early stage of the development of the project and involve them in decisions that affect them.
- The American Indigenous Coalition on Institutional Accountability focuses specifically on the relations between corporations and the Indigenous community. The Coalition can be reached through the Interfaith Center on Corporate Responsibility at www.iccr.org.
- The First Nations Development Institute (www.firstnations.org) works to protect the cultural and economic assets of Native Americans and can be consulted for information on Native American communities.
- Although the scope and breadth of projects greatly differ, retailers can learn from a review of the Indigenous community relations policies created by mining, oil, and gas companies (such as Placer Dome, Rio Tinto, Enbridge, Royal Dutch/Shell Group, and BP) that have significant experience working with Indigenous communities.
- Business for Social Responsibility offers an *Issue Brief on the Rights of Indigenous Peoples* that includes examples of corporate policies. The brief recommends that firms consider creating a policy concerning Indigenous rights and/or include Indigenous peoples' rights as part of a human rights policy. At a minimum, the policy should ensure that the company does not violate Indigenous peoples' rights and that it considers Indigenous communities' concerns when making decisions. See www.bsr.org/CSRResources/IssueBriefDetail.cfm?DocumentID=49771.
- The U.S. Department of the Interior's (DOI) Bureau of Land Management offers numerous links to government agencies and intertribal organizations that provide information on Indigenous issues (see <http://www.doi.gov/bureau-indian-affairs.html>). The DOI also provides details of procedures and information on specific laws, including the Native American Graves Protection and Repatriation Act and the American Indian Religious Freedom Act. See <http://www.blm.gov/nhp/efoia/wo/handbook/h8160-1.html#F.%20%20Federal%20Land%20Policy%20and%20Management>.
- A group of Native American religious leaders, tribal representatives, and cultural specialists has developed a list of essential elements of any public policy to protect Native American sacred places. One of these elements is the recognition that sacred places include traditional lands, bodies of water, burial grounds, massacre sites, and battlefields, as well

as sites of spiritual commemoration, ceremony, gathering and worship. Additional elements of the recommended policy include recognition of and reliance on traditional tribal knowledge, oral history, and religious leaders as the authorities on Native American sacred places, and respect for traditional religious tenets and tribal law regarding nondisclosure of confidential and private information about sacred places.

The group also identified elements that should not be part of any policy on Native American sacred places. For example, the policy should not explicitly define the term “sacred,” since no other American laws regarding religion define it, and it would be discriminatory and unduly burdensome to require only Native Americans to do so. In addition, policies should not prioritize some sacred places above others and should not permit mitigation (rather than avoidance) of damage to sacred places. To view an expanded discussion of the group’s findings, see http://www.thenativepress.com/sacred_statement.html.

- Civil society organizations such as Human Rights Watch (www.humanrightswatch.org), Amnesty International (www.amnesty.org), and the Forest Peoples Programme (www.forestpeoples.gn.apc.org) are also resources for Indigenous issues.

6. Preservation of Cultural Heritage

The company will protect and preserve the cultural heritage of the areas in which it locates, including outstanding works of architecture, sculpture, painting, landscape design or other artworks that bear testimony to a cultural tradition or civilization.

Communities are often concerned that retail projects may threaten aspects of their physical environment that are culturally and historically important. American companies have faced controversies both at home and abroad regarding the impact of their projects on cultural and historical sites. These controversies have often led to project delays, unforeseen expenses, and negative publicity. Such controversies can be especially intense in emerging markets, where U.S. retailers can be seen as threatening traditional local cultures.

While companies have sometimes found ways to constructively address specific controversies once they occur, a proactive cultural heritage policy would allow corporations to avoid these controversies altogether. Although making judgments about cultural importance can sometimes be a complex endeavor, a research and engagement process can provide guidance. Companies with an awareness of cultural issues can find ways to reconcile business interests with the preservation of cultural heritage, thereby generating good will and building consumer confidence.

Many governmental and nongovernmental organizations can provide assistance in cultural matters. On the international level, the United Nations Educational, Scientific and Cultural Organization (UNESCO), defines cultural heritage as “monuments, groups of buildings and properties with historical, aesthetic, archaeological, scientific, ethnological or anthropological value” and is dedicated to protecting and preserving key sites with outstanding value to humanity (see “Resources” below for their database of World Cultural Heritage sites). In individual

countries, national and local organizations, including landmark commissions and historical societies, also work to identify and protect sites of cultural importance. In addition, Indigenous peoples may define artwork to include rock art, pictographs, and carvings, and may have organizations to protect such artifacts. Companies can employ consultants with knowledge of local history and should engage directly with community groups to inform themselves about historical and cultural issues relevant to a given site.

Examples:

- In Mexico, Wal-Mart saw repeated protests in 2004 regarding its construction of a store near the 2,000-year old pyramids of Teotihuacán, which are recognized by the United Nations Educational, Scientific and Cultural Organization (UNESCO) as a World Cultural Heritage site. Opponents of the project accused the Mexican authorities that approved the project of corruption, petitioned the President to halt the project, and filed suit to attempt to stop construction. The controversy was covered in both the U.S. and the Mexican press.⁴⁴
- In 2001, Costco acquired a site in Cuernavaca, Mexico that contained a historic hotel decorated with murals by renowned artists. While the hotel was not listed as a UNESCO site, a number of stakeholder groups considered it culturally valuable. Costco, and its partner Commercial Mexicano's subsequent development of the site, which entailed the destruction of the hotel, was opposed by several community groups, whose protests against the project generated negative publicity for the company in Mexico. In an effort to improve its relations with the community, Costco later spent several million dollars on a cultural center to display Mexican art on the site.⁴⁵ In response to this controversy, Christian Brothers Investment Services, Domini Social Investments, and other shareholders⁴⁶ filed a resolution that was voted on in 2004 and 2005, asking Costco to adopt a store siting policy that would include environmental and social factors. The vote received 5.7% and 4.8%, respectively.
- In 1996, Wal-Mart provoked strong opposition when it planned to build a store on part of Ferry Farm, the childhood home of George Washington, where legend says the first President chopped down a cherry tree and then confessed to the deed. In response to public

⁴⁴ James C. McKinley, Jr., "No, the Conquistadors Are Not Back. It's Just Wal-Mart," *The New York Times*, September 28, 2004, A4; Susana Hayward, "Mexicans Battle Wal-Mart Desecration of Ancient Aztec City of Teotihuacan," Organic Consumers Association, October 22, 2004

(<http://www.organicconsumers.org/corp/mexicowalmart1020504.cfm>); Mark Stevenson, "Group Faces Uphill Battle to Stop Wal-Mart Progress," *Las Vegas Review Journal*, September 4, 2004, A28.

⁴⁵ Guadalupe Sámano Popoca, "Luto por el Casino de la Selva," *Kronos*, July 22, 2001, 19; Jéssica Gómez Macias, "José Raúl Hernández Avila, único culpable del acervo cultural perdido," *El Sol de Cuernavaca*, July 18, 2001; Andres Serrano Chacon, "Asegura JRHA que los diputados están en todo su derecho de hacer el ridículo: Documento del PRI Establece que Hubo Violaciones a Reglamentos de Construcción," *La Jornada Morelos*, July 28, 2001, 3; "A Culture of Commitment: The Story of Costco in Cuernavaca," Costco Wholesale Corporation, (<http://www.costco.com/frameset.asp?trg=images%2FProdImagesToProd%2FPDFs%2FCostco%5FCuernavaca%2Epdf&log=>).

⁴⁶ In addition to Christian Brothers Investment Services, the 2005 shareholder resolution was filed by: Adrian Dominican Sisters, Jack and Sandra Brill, Citizens Funds, Domini Social Investments, Needmor Fund, Newground Social Investment, NorthStar Asset Management, Progressive Investment Management, Sierra Club Mutual Funds, Trillium Asset Management.

outcry, the company eventually reached an agreement to sell the land in question to a local historical society, and to build its store at an alternative site nearby.⁴⁷ Two years later in Maryland, Wal-Mart agreed to do an archaeological survey before building on a proposed site in Maryland that was known to have been a significant battleground in the war of 1812.⁴⁸

- In the summer of 2004, construction of a Lowe's store in Silicon Valley was delayed by court order after preservationists sued to prevent the demolition of an IBM building that was known as a revolutionary example of modern workplace architecture. The building's features included colorful friezes and outdoor terraces, along with a steel-and-glass design.⁴⁹
- CVS has faced a number of controversies about its impact on historic town centers, and has sometimes modified its designs in response to them. In Londonderry, New Hampshire, for example, the company worked out a deal that preserved a nineteenth-century house behind one of its stores, and it has also preserved architectural features of theatres it converted to stores in Washington, D.C. and Philadelphia.⁵⁰ In St. Petersburg, Florida, in order to reassure residents concerned about its presence in their historic neighborhood, the company reduced the size of its proposed store, used an Art Deco design, and agreed to preserve an apartment building on one corner of its site.⁵¹ In several cases where the company has proceeded with the demolition of allegedly historic buildings in the face of protest, moreover, it has agreed to modify the architectural style of the store it subsequently built in order to blend in with the surrounding environment.⁵²

Suggested Actions and Resources:

- Conduct an assessment of the cultural heritage of an area as part of routine due diligence. Engage with community groups and relevant organizations, and employ consultants who are knowledgeable in cultural and architectural issues to assess sites.
- Before choosing a site, consult the UNESCO list of World Heritage Sites for the area (see <http://whc.unesco.org/>), as well as any lists maintained by national, state/provincial, or local registers of historic places, in order to ensure that construction will not adversely impact such sites.

⁴⁷ Gregory Gilligan, "Young Washington Slept Here," *Richmond Times Dispatch*, August 21, 2003.

⁴⁸ Suzanne Loudermilk, "Wal-Mart Allows Land Survey," *The Baltimore Sun Company*, June 10, 1998.

⁴⁹ Rodney Foo, "Preservationists rally for San Jose Structures," *San Jose Mercury News*, May 16, 2004; Rodney Foo, "Judge's Ruling Delays Construction of Lowe's in S.J.," *San Jose Mercury News*, July 17, 2004; and Alan Hess, "IBM's Building 25 Inspired Today's Office Buildings," *San Jose Mercury News*, November 16, 2003.

⁵⁰ Chris Herbert, "Robie House Contents on Block," *New Hampshire Sunday News*, July 26, 1998; David Lazar, "Trying to Preserve History," *The Union Leader*, February 13, 2004.

⁵¹ Shelia Mullane Estrada, "CVS, Neighbors Come to Terms on North Shore Store," *St. Petersburg Times*, September 10, 2000.

⁵² Jane Dee, "'Yes' on Saving Newington Firehouse Sends Officials in Search of 'How,'" *Hartford Courant*, November 7, 1996; Jane Dee, "Developer to Revise CVS Proposal," *Hartford Courant*, July 11, 1997; John Horton, "CVS May Face Historic Battle," *Akron Beacon Journal*, November 6, 1998: B2; John Horton, "CVS Moving Ahead With New Store Plans," *Akron Beacon Journal*, October 23, 1998.

- In the United States, the Advisory Council on Historic Preservation (ACHP) (www.achp.gov) is an independent federal agency with a mission to promote the preservation, enhancement, and productive use of the nation's historic resources. Companies can receive advice on cultural resources, including cemeteries, archaeological sites, historic structures, and traditional cultural properties from each state's ACHP offices. The ACHP website also provides information on case examples, regulations, and the National Historic Preservation Act (see www.achp.org).
- Develop ongoing relationships with national preservation societies in countries of operation. For example, in the United States, the National Trust for Historic Preservation, a private nonprofit organization, has a corporate outreach program (<http://www.nationaltrust.org/>). Recognizing the need to train professionals in charge of land use decisions in the architectural and cultural history of the countries in which they operate, the Trust also works with ERA Franchise Systems, a real estate broker, to educate real estate professionals in American architectural history. More information can be found at <http://www.era.com/eraabout/nationaltrust.html>.

7. Environmental Stewardship

The company will select its sites in such a way as to avoid or greatly minimize adverse environmental impacts, and will maintain high environmental standards across the company's operations.

Rationale: Good corporate citizenship regarding store siting requires careful management of natural resources, including watersheds, wetlands, and green space. At the same time, companies with a strong record of environmental stewardship may have a lower cost of capital, since financiers increasingly recognize and reward the efficient management of environmental risk, and may restrict investments in environmentally damaging projects. For example, Citigroup does not finance projects that significantly convert or degrade critical natural habitat, and limits its financing of projects affecting forests with high ecological value. Poor environmental management, on the other hand, may endanger a company's reputation and raise costs through environmental fines, loss of permits, or regulatory delays.

For each construction project, an initial study should be conducted to identify the projected environmental impacts of the project on land, water, soil and ecosystems. If there is evidence and/or concern that a preferred site is environmentally sensitive (for example, that developing it could reduce the habitat of an endangered species, or damage a wetland), the retailer or developer should commission a full environmental assessment. A plan should then be designed that favors avoidance or prevention of impacts over reduction and minimization of harm. In creating such a plan, companies may need to go beyond compliance with law.

During construction, companies can also protect the environment by eliminating or reducing waste, the release of pollutants, and the unnecessary use of hazardous materials. As construction nears completion, it is good practice to retain and use native trees and other vegetation that can beautify the area, provide habitat for wildlife, and lower maintenance costs.

It is also important to consider a facility's long-term environmental impact at the time of site selection, since certain aspects of a facility's environmental impact (such as the feasibility of its using renewable energy sources such as solar or wind) may be critically affected by the original choice of site. Moreover, companies should consider the impact of their siting decisions on natural carbon-sinks, such as forests and wetlands, which play a role in the regulation of climate. Finally, environmental laws may vary in different locations. Companies will of course need to comply with the particular laws governing each of their projects. All projects, however, should at a minimum comply with the standards of US federal law.

Examples:

- Water scarcity is growing throughout the American West as the area's population increases and more and more land is developed. In order to replenish an aquifer from which drinking water is drawn, sufficient rainwater must be able to penetrate the earth in that aquifer's recharge zone. If too much of the recharge zone is covered with impermeable surfaces (such as roads and parking lots), the aquifer will not be refilled to its customary levels and the area's groundwater will be depleted over time. To address this problem, the city of Austin enacted an ordinance to limit the amount of building in a key recharge area. Wal-Mart subsequently abandoned plans for a supercenter in the area, while Lowe's succeeded, after a protracted legal battle, in reaching an agreement with the city council that accommodated the company's plans to erect a store, while complying with the spirit of the ordinance. Ongoing community concerns about retailers' environmental stewardship, however, led to passage of an Austin city ordinance, passed in December 2003, banning large stores from the southwest part of the city.⁵³ These events suggest that retailers demonstrating an awareness of watershed protection and a proactive concern for it would be likely to be welcomed in this community and others with similar concerns.
- Across the United States, awareness of the importance of wetland preservation is also growing. In addition to providing important wildlife habitat, wetlands improve ground water quality by filtering and breaking down contaminants, play a key role in the prevention of flooding, and may help to maintain a balanced climate, since they store carbon in their soil and plant life that would otherwise be released into the atmosphere.⁵⁴ In 2003, Costco was faced with community concerns and possible lawsuits regarding its development of a wetland site in Clark County, Washington, but the company successfully resolved the situation and avoided litigation through multistakeholder negotiations. In response to environmental concerns, Costco created storm-water storage capability on the site equivalent to that of the original wetlands, and offset the loss of wetlands at a ratio of three to one.⁵⁵

⁵³ Ralph K.H. Haurwitz, "It's Decision Time for City in Lowe's Dispute," November 4, 2003, A1; Jonathan Osborne and Shonda Novak, "Costco Wants to Put Big Box Over Aquifer," *The Austin American Statesman*, December 17, 2003.

⁵⁴ See EPA website at <http://www.epa.gov/owow/wetlands/functions.html>.

⁵⁵ See Erin Middlewood, "Environmental Group Drops Challenge to Costco," July 1, 2003; Bill Stewart, "Panel, Costco Compromise," *The Oregonian*, July 1, 2003; Kathie Durbin, "Costco Project May Resume," *The Columbian*, April 7, 2004; Elizabeth Shogren, "Clean Water Act Now Protects Some Canals and Ditches Too," April 9, 2004; "Corp to Regulate Canals, Ditches Under Settlement," April 9, 2004 (<http://www.greenwire.org>).

- As the suburbs become increasingly saturated with development, big-box retailers are trying to access new markets in urban areas. With this shift come new layouts and designs to accommodate the limited and expensive space.⁵⁶ For example, in 2005 Wal-Mart proposed an environmentally advanced building for its 120,000-sq.-ft. store in the city of Vancouver, featuring climate-controlled skylights, ground source heating and cooling (geothermal), and wind turbines to power its mechanical systems.⁵⁷
- In 2004, the US Environmental Protection Agency, the States of Tennessee and Utah, and other agencies reached a Clean Water Act settlement with Wal-Mart for storm water violations at various construction sites across the country. (According to the EPA, runoff from improperly managed construction sites is a primary contributor to water pollution, since storm water from such sites often contains chemicals, sediment and debris.⁵⁸) As part of the settlement, Wal-Mart agreed to implement stronger measures to reduce runoff and to pay \$3.1 million, the largest civil penalty ever paid for violations of the storm water regulations. Wal-Mart must also ensure rigorous oversight of its 150 contractors, use qualified personnel to oversee construction, conduct training and frequent inspections, take quick corrective action when necessary, and report to the EPA on its efforts. The complaint filed against Wal-Mart had alleged a series of violations in the company's management of sediment and runoff before and during construction. After the settlement, however, the EPA commended Wal-Mart for negotiating a solution that will be good for the environment and good for business.⁵⁹

Suggested Actions and Resources:

- Develop training programs for contractors about environmental issues of particular concern. For example, as part of a settlement of storm water violations, Wal-Mart developed a storm-water training program for its contractors.
- Chicago's "Sustainable Development Principles for Protecting Nature" was created to support the city's wilderness plan, and focuses on the natural resource aspects of sustainable development. However, the guidance provided can be applicable to the land development process in other regions. Topics include: ways to minimize changes to natural topography, soils, and vegetation to preserve land; preserving permanent open space as an integral part of new development; and locating and planning new development in ways that

⁵⁶ John Greenwood, "Wal-Mart With A Grass Roof?" *National Post*, July 07, 2003; John Greenwood, "Wal-Mart Heeds 'Green' Critics," *National Post*, July 08, 2003.

⁵⁷ Barrie McKenna and Peter Kennedy, "Chastened Wal-Mart Abandons 'Bully' Tactics," *The Globe and Mail*, February 25, 2005

(<http://aol.theglobeandmail.com/servlet/ArticleNews/aolstory/TGAM/20050225/RWALMART25>).

⁵⁸ "U.S. Announces Major Clean Water Act Settlement with Retail Giant Wal-Mart," *U.S. Environmental Protection Agency*, Press Release, May 12, 2004.

<http://yosemite.epa.gov/opa/admpress.nsf/b1ab9f485b098972852562e7004dc686/5702a09ae47131c085256e920060d460?OpenDocument>

⁵⁹ "U.S. v. Wal-Mart Stores, Inc. Fact Sheet," *The U.S. Environmental Protection Agency*, May 12, 2004.

<http://www.epa.gov/compliance/resources/cases/civil/cwa/walmart2-fs.pdf>; "U.S. Announces Major Clean Water Act Settlement with Retail Giant Wal-Mart," *U.S. Environmental Protection Agency*, May 12, 2004.

protect natural resources and habitat. See <http://www.chicagowilderness.org/pubprod/miscpdf/DESIGNPRINCIPLES1.pdf> .

- The Water Permits Division (WPD) within the U.S. Environmental Protection Agency's Office of Wastewater Management leads and manages the National Pollutant Discharge Elimination System (NPDES) permit program in partnership with EPA Regional Offices, states, tribes, and other stakeholders. The primary method to control storm water discharges is through the use of best management practices as specified in these permits. See <http://cfpub.epa.gov/npdes/stormwater/const.cfm>.
- The Construction Industry Compliance Assistance Center, a project funded by the U.S. Environmental Protection Agency, explains Federal and state environmental rules for the construction industry. It also provides a compliance summary tool on the environmental responsibilities found in federal and state laws, as well as information on hazardous waste, asbestos, wetlands, construction debris, and endangered species. The center's database is searchable by state, type of construction, and by environmental impact. See <http://www.cicacenter.org/index.cfm>.
- Many communities have a general plan, zoning rules, and/or design guidelines, some of which will relate to environmental responsibilities of developers. These local rules often place limits on development and define what is permissible. It is important for retailers to know and respect these standards.

8. Protection of Biodiversity and Natural Heritage

The company will not damage significant biodiversity habitats, sites that contain outstanding examples of major stages of geologic history or the evolution of life on earth, or ecosystems that are rare or unique in their geographic region. Before completing a purchase, the company will educate itself about any local or regional conservation efforts that may affect the property and will engage with relevant groups in order to seek a mutually agreeable development plan for the land.

Rationale: Consumers and companies are increasingly aware that certain sites require special protection because of their importance to particular species or ecosystems, or because of their importance in the earth's history. Companies whose actions negatively impact areas rich in biodiversity or natural heritage can cause community ill will and prompt legal battles that endanger their reputations, and may face increased regulatory and financial risk. Without proper care and compliance with laws and permitting processes, buildings may need to be re-sited, work may be slowed or stopped, or a project may be cancelled altogether.

In addition, actions which adversely impact fundamental features of an ecosystem—for example, by limiting access to clean water or by producing excessive soil erosion—may impair a business's own ability to operate. *Is Biodiversity A Material Risk for Companies?*, a 2004 report issued by investment firm F&C Asset Management plc (formerly ISIS Asset Management), found that a number of companies in the energy, construction, and extractive sectors had begun to take substantive action to reduce their biodiversity risk. F&C notes, however, that the issue

has not been addressed by many other sectors also likely to be affected by biodiversity risk, including the food and drug retail industry. We believe these risks may also extend to any retail company that is a large land user.

Examples:

Several examples from the state of California and one from Florida demonstrate how retail developments or other land-use projects that endanger habitats or rare ecosystems can provoke strong public opposition that eventually require serious modification or even abandonment of a project. While all the situations discussed below were eventually resolved, a proactive approach to biodiversity and natural heritage might have concluded the controversies sooner, saving the companies time and sparing them negative publicity.

- In 2003, Washington Mutual abandoned plans to develop Ahmanson Ranch, a 3,000-acre site north of Los Angeles that it had acquired along with its purchase of Ahmanson Bank in 1998. Since 1986, a number of builders had proposed residential, commercial and/or recreational uses for the Ranch. However, because the site was one of the area's few remaining open spaces and provided a habitat for two endangered species, plans to develop it faced strong community opposition and were dogged by more than a dozen lawsuits. Opponents of the project included Hollywood celebrities as well as nonprofit groups, and the company was criticized in radio and print ads, as well as through an Internet campaign. In 2003, the company agreed to sell the Ranch to the state of California.⁶⁰
- In 2002, the Playa Capital Company dramatically scaled back the size of a mixed-use development planned for Playa Vista, California, in order to preserve more of the Ballona wetlands. The company also agreed to make electric vehicles the dominant means of transportation at the development in order to reduce pollution, and worked to restore the Ballona Freshwater Marsh, which opened as a public park in 2003. The company's original development plan had provoked controversy both because the wetlands provide important wildlife habitat and because they act as a crucial storm-water management system for the Los Angeles area. Wetlands prevent flooding during times of excess rainfall by acting as sponges, absorbing large quantities of water and releasing it slowly to the ocean. They also act as filters that trap and break down contaminants that would otherwise pollute the ocean areas adjoining them—in this case, Santa Monica Bay.⁶¹
- In 1999, Home Depot made a request for a federal "take" permit for construction of an Orange City, Florida store that would impact prime habitat for the scrub jay, a bird unique to the peninsula region of Florida, which has lost much of its habitat to development over the past 100 years. A "take" is the trapping, killing or wounding of a protected animal. It is required when construction directly harms an endangered or threatened animal and relieves the applicant of any liability. According to an article in *The Orlando Sentinel*, Home Depot's permit request was "rare" and only one such permit had previously been issued in

⁶⁰ Matt Jenkins, "Big Development Gets Bought Out," *High Country News*, December 22, 2003; "Bank Takes Flak for Massive Golf Project," (<http://www.cybergolf.com/states/index.asp?id=841&placeID=25>).

⁶¹ "First Visitors Explore Restored Los Angeles Wetland," *Environmental News Service*, April 21, 2003.

the county. If approved, *The Sentinel* reported, “it would clear the way for construction of a 40-acre shopping plaza even though the creatures could be killed or injured and their habitat lost.” To obtain the permit, Home Depot had to provide an environmental assessment (EA) and a Habitat Conservation Plan (HCP) as required under the Endangered Species Act. While the permit was granted, Home Depot was required to stop construction for 3 months during the jay’s nesting period and to pay \$272,160 to conserve scrub jay habitat elsewhere in Florida.⁶²

Suggested Actions and Resources:

- Consult lists, definitions, and guidelines for identification of natural heritage and biodiversity sites maintained by international, national, and local authorities in the company’s areas of operation, in order to ensure that the company’s activities do not impact such sites. For example, UNESCO maintains a list of World Natural Heritage sites, and the United Nations Environment Programme and the World Conservation Union (IUCN) maintain the *United Nations List of Protected Areas*, including all of the world’s known protected areas. (See <http://www.unep.org/PDF/Un-list-protected-areas.pdf>.) The IUCN Red List provides a complete listing of plants and animals that are facing risk of global extinction (see <http://www.redlist.org/info/introduction.html>). Conservation International, Friends of the Earth, National Wildlife Federation, and the World Wildlife Fund may also be useful resources.
- Ensure that employees or consultants conducting environmental due diligence have been trained to evaluate and identify endangered and threatened species, as well as critical habitat rich in biodiversity. They should also be tasked with investigating the role of the particular site in the larger ecosystem of which it is a part, and evaluating how the company’s use of the site will impact that larger system as well as the individual site.
- Shell Group has created a Biodiversity Standard which acknowledges that the company’s “operations have impacts that, if not addressed, can result in the loss of biodiversity and can cost Shell in time, money and reputation. A failure to protect biodiversity could jeopardize our license to operate, while a strong reputation built on the effective management of biodiversity will be a competitive advantage.” (See http://www.shell.com/home/Framework?siteId=royal-en&FC2=/royal-en/html/iwgen/environment_and_society/commitment_policies_standards/biodiversity_standard/zzz_lhn.html&FC3=/royal-en/html/iwgen/environment_and_society/commitment_policies_standards/biodiversity_standard/bio_standard_final_13042004.html.)
- In the United States, under the authority of the Endangered Species Act (ESA), the U.S. Fish and Wildlife Service (FWS) regulates impacts to endangered species. A permit is

⁶² Ludmilla Lelis, “Home Depot Wants Federal Permission To Build On The Habitat,” *The Orlando Sentinel*, September 2, 1999; “Availability of an Environmental Assessment, and Receipt of Application for an Incidental Take Permit for a 40.6-Acre Mixed Commercial Development Project, in Volusia County, Florida,” *Federal Register*, September 1, 1999 (Volume 64, Number 169). [Notices -Page 47856-47857] (<http://www.epa.gov/EPA-SPECIES/1999/September/Day-01/e22716.htm>).

required if a retailer's construction project will impact or harm any threatened or endangered species. Also required is a habitat conservation plan (HCP) that includes: an assessment of impacts; a listing of measures that will be undertaken to monitor, minimize and mitigate any impacts; and a description of alternative actions considered, along with an explanation of why they were not taken. Many states also have additional laws and regulations that protect endangered species. A developer or builder must consult with FWS during the federal permitting process to receive a list of threatened or endangered species and designated critical habitats that may be present in a project area. To learn more about ESA permits, listed species, federal agencies, and the national endangered species tool to research state rules, visit <http://endangered.fws.gov/> or the Construction Industry Compliance Assistance Center, funded by the Environmental Protection Agency, at <http://www.cicacenter.org/espermits.html>.

- Create a Biodiversity Action Plan (BAP) to supplement the environmental management plan for a site. For information on how to create a BAP, see publications from Earthwatch ("Business and Biodiversity," Oxford, 2nd Edition, 2001, as well as "Business and Biodiversity: A Guide for UK Companies Operating Overseas," Oxford, 2002), and the World Business Council for Sustainable Development (see "Business and Biodiversity: A Handbook for Corporate Action," Geneva, 2002).

9. Smart Growth

The company will promote smart growth by considering sites near public transportation and providing a safe pedestrian and biking environment. The company will assess and seek to mitigate the negative effects of increased traffic flow resulting from its projects. When possible, the company will restore and reuse old commercial sites or environmentally degraded areas.

Rationale: Many communities have voiced objections to sprawl, which is typically defined as low-density, dispersed and auto-centered development that spreads out from the center of a city or town. Smart growth is a term used to refer to development that avoids sprawl and its attendant problems, making communities more livable and sustainable. Retailers who cooperate with or initiate smart growth initiatives can reap substantial benefits.

Local residents are often concerned that large-scale retail development will lead to increased traffic flow, with resulting increases in noise, congestion, and air pollution. They also object to the conversion of rural land into sprawling residential and commercial districts and to the destruction of architectural and aesthetic features that give a community its unique character. In addition, some public health experts have noted that far-flung urban or suburban development encourages sedentary, driving-centered lifestyles and increases air pollution, thus leading to higher rates of hypertension, heart disease, and respiratory ailments.

Sprawl is also a threat to the survival of wildlife and imperiled species. Without action to change development patterns, it is predicted that essential wildlife habitat in the U.S. will be almost completely gone within the next two decades, as the nation's fastest-growing metropolitan areas in the South and West expand. To address these concerns, a recent report authored by several leading anti-sprawl and environmental groups recommends providing incentives for

development in existing urban and suburban areas, building new development at higher densities, and setting aside natural areas as off-limits to new development.⁶³

In order to decrease impacts when site selection allows, retailers may choose to build where land has been previously disturbed or is environmentally degraded, so that development does not extend into undisturbed green space. Since land in urban areas is scarce and expensive, restoring and reusing old commercial sites and redeveloping brownfields may sometimes be cost-effective, especially since federal programs can provide money to offset costs. For successful completion of a project of this kind, close collaboration among engineers, bankers, environmental consultants, landscape architects, contractors, and lawyers will be necessary.⁶⁴

Examples:

- In 2003, Home Depot decided to build a store on the site of a former concrete plant in Placerville, California. Hangtown Creek, prior to the Company's plans, flowed through a concrete box channel that had little fish and wildlife value. Original development plans were to place the entire length of the channel through the site in an underground culvert. This design was not acceptable to the Resource Agencies that had regulatory and permitting authority. It was suggested that the development incorporate creek restoration to give tangential benefits to the development. Home Depot chose to work in collaboration with the regulatory agencies and eventually the company made plans to restore the 60-foot creek bed that flowed through the property. The design included attractive landscaping for its banks, and walkways and bridges for pedestrian access. The restoration of the stream channel will eventually provide added benefits to fish and wildlife by increasing available instream habitat, streamside vegetation, and wildlife habitat. In addition, departing from the company's traditional big-box style, the Placerville Home Depot was designed in a brown-and-tan color scheme, with heavy truss timber and a gabled roof meant to fit in with the foothills surrounding it. The company was praised for turning an eyesore into an amenity, revitalizing an existing business district, and for not contributing to sprawl with a store on the outskirts of town.⁶⁵
- Homebuilding company Pulte Homes, Inc. has adopted what it calls a Live-Work-Play philosophy, in an attempt to integrate smart growth concerns systematically into its business. This philosophy strives to: create communities that combine residential and commercial development; accommodate housing for individuals at different life stages; incorporate green space; reuse existing commercial sites; seek innovative ways to minimize land usage and build higher density housing; carefully evaluate environmental impacts of construction; and minimize energy use and the generation of waste. (See

⁶³ "Endangered By Sprawl: How Runaway Development Threatens America's Wildlife," *Smart Growth America, National Wildlife Federation and NatureServe*, (<http://www.smartgrowthamerica.org/ebsreport/endangeredbysprawl.pdf>).

⁶⁴ Wendy Talarico, "Evaluating Hidden Site Conditions: Understanding The Site-Both Above Ground And Below-Keeps Design Work Moving Forward And Forestalls Legal Problems," *Architectural Record*, May 1998. (http://archrecord.construction.com/resources/conteduc/archives/research/5_98_1.asp).

⁶⁵ Cathy Locke, "Placerville Council Welcomes Home Store," *Sacramento Bee*, March 16, 2003, N1.

http://pulte.com/about_us/lwp_guidelines.asp.) The company adopted this policy after discussing smart growth issues with the Calvert Group, a social investment firm.

- In a departure from the typical above-ground parking lot, a 2004 plan for a 203,000-square-foot Wal-Mart store in Monona, Wisconsin, featured 600 underground parking spaces that city officials believed would make better use of land, while keeping shoppers warm. Site owner Continental Properties also agreed to pay the city for a full traffic-impact study and traffic-related improvements, transportation for the elderly to and from the store site, and a reduction in storm-water runoff from the site by 20 percent from the current level. Following the agreement, the City Council rejected a proposed moratorium on big-box development.⁶⁶

Suggested Actions and Resources:

- A coalition of groups concerned about sprawl and development issues have formed an organization called Smart Growth America. Their website, www.smartgrowthamerica.com, is a valuable resource for information on smart growth. Their recent report, *Endangered By Sprawl: How Runaway Development Threatens America's Wildlife*, co-authored by the National Wildlife Federation and NatureServe, quantifies the impact of sprawling development on wildlife nationally. The report recommends that local governments protect their remaining open space and biodiversity by creating and maintaining natural resource and species inventories, developing green infrastructure protection plans, protecting critical natural habitats, and building reliable local funding sources for habitat protection. Retailers that collaborate on these efforts can improve the likelihood that their projects will be passed by city councils, gain the good will of the communities in which they operate, and potentially reduce controversies over their expansion.
- In 2003, the National Association of County and City Health Officials (NACCHO) passed a resolution stating that land-use decisions may contribute to health inequities and environmental problems and asking government to anticipate and avoid these harms whenever possible. More information can be found on their website at www.naccho.org.
- The health effects of sprawl were examined in a recent article by R. Sturm and D.A. Cohen, entitled "Suburban sprawl and physical and mental health," in *Public Health: Journal of the Royal Institute of Public Health* (2004) 118, 488-496.
- The Sierra Club describes the environmental and social impacts of sprawl at <http://www.sierraclub.org/sprawl/>.
- The American Institute of Architects (AIA) has developed principles for the design of a sustainable environment. According to the AIA's Declaration of Interdependence for a Sustainable Future, "Sustainable design integrates consideration of resource and energy

⁶⁶ Barry Adams, "Store To Have Underground Parking Spots," *Wisconsin State Journal*, November 17, 2004, B1; Karyn Saemann, "Monona Council Won't Delay On New Beltline Supercenter," *The Capital Times*, November 16, 2004, 1A.

efficiency, healthy buildings, ecologically and socially sensitive land use, and an aesthetic sensitivity that inspires, affirms, and ennobles.” More information can be found at the AIA website at http://www.aia.org/nacq_0604_knowledgeCMU.

OUTSIDE THE BOX: GUIDELINES FOR RETAIL STORE SITING

1. Social and Environmental Due Diligence

The company will incorporate social and environmental factors into its due diligence process. The company will research the history, natural environment, and cultural attributes of each site it is considering acquiring or building upon and will consult with local community members and organizations to explore challenges and opportunities that may arise during development of the site. These research and consultation processes will inform corporate decisions about site development and, in certain instances, may lead the company to seek alternatives to especially sensitive sites.

2. Transparency

The company will publicly disclose its environmental and social policies and guidelines on store siting, as well as its plans to develop sites. It will clearly communicate its store siting guidelines and project plans to local communities, to investors and to the public.

3. Community Consultation

The company will seek the consent of and input from communities in the preliminary development stage of a project and will solicit community input during all stages of development. In order to do this, the company will consult in a structured and culturally appropriate way with people affected by its projects, including local residents and civil society groups.

4. Relations with Governments

The company's dealings with national, regional and local governments will be consistent with the protection and promotion of good government. The company will not allow any employees, partners, or contractors involved in its projects to engage in bribery. The company will not induce a government to seize private property in order to subsequently sell it to the company. The company will disclose any lobbying, political contributions, or other activities it undertakes to influence public policy with regard to land use.

5. Respect for Indigenous Cultures

The company will respect Indigenous peoples' inherited cultural rights to the lands they have traditionally used for subsistence and cultural activities and will not deprive them of these rights. The company will not damage any archaeological, sacred, burial or historical sites, traditional cultural properties, or artifacts of Indigenous culture, and will consult in appropriate ways with any Indigenous peoples that may be affected by its projects.

6. Preservation of Cultural Heritage

The company will protect and preserve the cultural heritage of the areas in which it locates, including outstanding works of architecture, sculpture, painting, landscape design or other artworks that bear testimony to a cultural tradition or civilization.

7. Environmental Stewardship

The company will select its sites in such a way as to avoid or greatly minimize adverse environmental impacts, and will maintain high environmental standards across the company's operations.

8. Protection of Biodiversity and Natural Heritage

The company will not damage significant biodiversity habitats, sites that contain outstanding examples of major stages of geologic history or the evolution of life on earth, or ecosystems that are rare or unique in their geographic region. Before completing a purchase, the company will educate itself about any local or regional conservation efforts that may affect the property and will engage with relevant groups in order to seek a mutually agreeable development plan for the land.

9. Smart Growth

The company will promote smart growth by considering sites near public transportation and providing a safe pedestrian and biking environment. The company will assess and seek to mitigate the negative effects of increased traffic flow resulting from its projects. When possible, the company will restore and reuse old commercial sites or environmentally degraded areas.

Excerpted from the paper, *Outside the Box: Guidelines for Retail Store Siting*, by Julie Tanner, Christian Brothers Investment Services, Inc. and Kimberly Gladman, Domini Social Investments LLC. The CBIS/Domini full report may be viewed online at www.cbisonline.com and www.domini.com.

The nine guidelines are supported by the following organizations, institutional investors and mutual fund families representing \$33 billion in assets under management: Boston Common Asset Management • Calvert Group • Catholic Healthcare West • Dominican Sisters of Springfield, Illinois • Evangelical Lutheran Church in America • General Board of Pension and Health Benefits United Methodist Church • Program Directors for Energy & Environment and Contract Supplier and Human Rights Working Groups of the Interfaith Center on Corporate Responsibility • Maryknoll Sisters • NorthStar Asset Management, Inc. • Progressive Investment Management • Sisters of the Blessed Sacrament Social Justice Office • Sisters of St. Francis of Philadelphia • Office of Peace and Justice Sisters of St. Joseph, Nazareth, Michigan • Sisters of St. Joseph of Philadelphia • Pax World Funds • Sierra Club Mutual Funds • The Ethical Funds Company • The Oneida Trust Committee of the Oneida Tribe of Indians of Wisconsin • Trillium Asset Management • Walden Asset Management.

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