

September 6, 2018

VIA EMAIL AND FEDERAL EXPRESS

Heather Hines
Planning Manager
City of Petaluma
11 English Court
Petaluma, CA 94952

Re: Safeway Fuel Center Project

Dear Ms. Hines:

We write on behalf of our client, Safeway, Inc., regarding the proposed Safeway Fuel Center Project (the “Project”) at 335 S. McDowell Boulevard (the “Property”) in the City of Petaluma (the “City”). The Project has been reviewed by the City for nearly six years and was the subject of numerous studies prepared by expert consultants as well as a detailed mitigated negative declaration (“MND”) prepared by M-Group, the City’s contract planning staff.

After continuing its May 8, 2018 hearing to obtain more information regarding air quality and traffic, and to allow additional review by Petaluma City Schools, the Planning Commission approved the Project on June 26, 2018. On July 9, 2018, an appeal of the Planning Commission’s action was filed by JoAnn McEachin and others. The appeal is scheduled for consideration by the City Council at its September 17, 2018 hearing.

In connection with its consideration of the appeal, we are voluntarily providing updates and supplemental information for the benefit of the City Council, City Staff, and the public record. The updates and supplemental information relate to: (1) the health risk assessment (“HRA”) prepared for the Project; (2) the community outreach conducted by Safeway concerning the Project; (3) an analysis of the City’s discretionary review authority over the Project; (4) an analysis of the Project’s consistency with the City’s General Plan; and (5) a summary of the City’s approval of other gas station projects.

Summaries of the updates and supplemental information are provided below; more detailed responses are provided in the enclosed attachments.

1. Letter from Moira Sullivan to City Council dated August 14, 2018.

In an August 14, 2018 letter to the City Council, Moira Sullivan opines on gas stations, her opinions on the highest and best use of the Property, and questions the health risks of the Project. Although Ms. Sullivan advises she works as a toxicologist for the State of California, her opinions

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are submitted on her own behalf and not on behalf of the State. As explained in the September 4, 2018 memorandum by Illingworth & Rodkin (attached hereto as **Exhibit A**), a health risk assessment (“HRA”) was prepared for the Project. Employing conservative assumptions and accepted methodologies per federal, state, and local guidelines, the HRA concludes that the project will result in less than significant impacts with respect to community risk for all categories of sensitive receptors.

2. Summary of community outreach efforts made by Safeway concerning the Project.

Safeway has utilized various methods for creating community awareness and citizens have been offered multiple opportunities for input during the City’s six-year review process. A summary of those methods and opportunities is provided in the document prepared by Safeway attached hereto as **Exhibit B**. We will provide an update again prior to the hearing.

3. The scope of the City’s discretionary review authority over the Project.

As explained in the September 5, 2018 memorandum prepared by our firm, attached hereto as **Exhibit C**, the City has limited discretionary review authority over the Project. As a permitted use, the only discretionary approval needed for the Project is Site Plan and Architectural Review. The scope of the City’s discretion is accordingly limited to aesthetic and design issues.

4. The Project’s consistency with the City’s General Plan.

The Project is consistent with the site’s Community Commercial land use designation as well as numerous policies contained in the City’s General Plan. An analysis of the Project’s consistency with the General Plan is included in the September 5, 2018 memorandum prepared by our firm, attached hereto as **Exhibit D**.

5. The City’s approval of other gas stations.

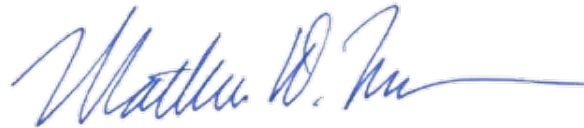
The City has recently approved planning or building permits for other gas stations (“Other Gas Stations”). These include City Permit File Nos. BLDG-17-1089 (Chevron-1440 E. Washington); BLDG-18-0641 (Chevron-4999 N. Petaluma Boulevard); BLDG-18-0215 (Valero-910 Baywood); PLMA-18-0001 (Valero-532 E. Washington); and PLSR-15-0013 (Unocal 76- 4998 N. Petaluma Boulevard. We hereby incorporate by reference into the record of proceedings for the Project, the record of proceedings for the Other Gas Stations, including all permits, correspondence, applications, drawings, fee summaries, notices, staff reports, studies, environmental documents, transcripts, recordings, and minutes of any public hearing.

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Thank you very much for your assistance on this matter. Please do not hesitate to contact me with any questions regarding the enclosed information.

Very truly yours,

RUTAN & TUCKER, LLP



Matthew D. Francois

MDF:mtr

cc: John Brown, City Manager, City of Petaluma
Natalie Mattei, Senior Real Estate Manager, Safeway Inc.
Mark Friedman, President, Fulcrum Property

EXHIBIT A

ILLINGWORTH & RODKIN, INC.
Acoustics • Air Quality

1 Willowbrook Court, Suite 120
Petaluma, California 94954

Tel: 707-794-0400
www.illingworthrodkin.com

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illro@illingworthrodkin.com

M E M O

Date: September 4, 2018

To: **Natalie Mattei**
Senior Real Estate Manager
Albertsons Companies
11555 Dublin Canyon Road
Pleasanton, CA 94588

From: James A. Reyff
Illingworth & Rodkin, Inc.
1 Willowbrook Court, Suite 120
Petaluma, CA 94954

RE: Safeway Fuel Center CEQA document - Petaluma, CA

SUBJECT: Safeway Fuel Center Health Risk Assessment, Response to Comments made by Moira Sullivan - Job#13-205

This memo addresses comments made by Moira Sullivan, M.S. in a letter dated August 14, 2018 to the Petaluma City Council regarding health risk effects from the planned Safeway fuel center project. The commenter references general studies in regard to the toxicology of benzene and other vehicular-related toxic air contaminants (TAC). Guidance provided by the U.S. EPA regarding siting of schools is also cited in this letter. The commenter claims that the City of Petaluma and Safeway have not considered the health risks of the project. As explained below, these concerns were addressed.

Benzene and other TACs emitted by motor vehicles and the fueling of these vehicles is a known concern. This is addressed in guidance from both the U.S. Environmental Protection Agency (U.S. EPA) (as pointed out by the commenter) and the California Air Resources Board (CARB) that recommend that fuel stations near sensitive receptors be studied for their potential adverse health impacts. For this reason, a health risk assessment (HRA) of the project was prepared. Based on the comments provided by Ms. Sullivan, we have to presume that she has not read the study. We point the commenter to this study: *Safeway Fuel Center Health Risk Assessment, Petaluma, CA* – prepared January 8, 2014, revised September 19, 2017 (Illingworth & Rodkin, Inc.). Responses to comments regarding the HRA were also provided to the City of Petaluma in memoranda

prepared by Illingworth & Rodkin dated May 8, 2018 and June 6, 2018.

Benzene is the primary TAC associated with the operation of gasoline fuel stations. Regulators and health specialists in California and the Bay Area are quite aware of the toxicity of benzene. The City and Safeway are aware also and as a result, Illingworth & Rodkin, Inc. prepared the HRA for the project at the direction of City Staff and per the guidelines issued by U.S. EPA, CARB, and the Bay Area Air Quality Management District (BAAQMD). That risk assessment addressed all aspects of the project that could lead to emissions of TACs and conducted dispersion modeling to predict exposures of not only school children but nearby residences (infants, children and adults).

The study also evaluated the combined effects of construction emissions, evaporative emissions from the operation of the fuel station, emissions from vehicles that travel to and from the station and potentially idle at the station, and emissions from fueling trucks that would service the station. Contrary to a higher figure cited in Ms. Sullivan's letter, the annual throughput of gasoline associated with the project will not exceed 8.5 million gallons per year, and this figure was used in the analysis of project health risk. The study was quite extensive and addressed exposures to daycare children, elementary school children, and residences. The dispersion modeling utilized meteorological data collected in Petaluma and provided by BAAQMD.

Cancer risk computations were made using the predicted exposures following guidance developed by California's Office of Environmental Health Hazards Assessment (OEHHA). The HRA predicted exposures for various child and residential receptors near the project. The cancer risk computations considered the toxicity of the various TACs as well as the increased sensitivity of infants and children to cancer-causing TACs.

The HRA that was originally prepared in 2014 was updated in 2017 to reflect the new OEHHA guidance that is more protective of infants and children. For instance, the HRA considered TACs (including benzene and diesel particulate matter) to have a potency that is 10 times greater for infants and 3 times greater for children than adults. In addition, the HRA considered the higher breathing rates and maximum exposure times that these more sensitive receptors could have. These factors are based on the latest OEHHA guidance that was issued in 2015 and is considered the state-of-the-art information for conducting health risk assessments in California.¹ The HRA considered that the maximum exposed sensitive receptors would be exposed to diesel particulate matter from construction and then the operational TACs from the project.

Employing conservative assumptions and accepted methodologies, the HRA concludes that the project will result in a less than significant impact with respect to community risk for all categories of sensitive receptors.

It must also be borne in mind that California likely has the most extensive control requirements for gasoline emissions in the world. These requirements are developed and enforced by CARB and BAAQMD permitting requirements. The evaporative emissions from volatile organic compounds from gasoline, which include benzene, have been greatly reduced over the past two decades.

¹ OEHHA. 2015. *Air Toxics Hot Spots Program Risk, Assessment Guidelines - Guidance Manual for Preparation of Health Risk Assessments*. February.

CARB has adopted a number of significant advancements as part of the Enhanced Vapor Recovery (EVR) program to reduce these emissions. Phase I EVR, which addresses transfer of bulk fuel from transfer trucks, requires more durable and leak-tight components, along with an increased collection efficiency of vapors to be 98 percent. Phase II EVR, which addresses fueling of vehicles that purchase gasoline, includes three major advancements: (1) dispensing nozzles with less spillage and required compatibility with onboard refueling vapor recovery (ORVR) vehicles, (2) a processor to control the static pressure of the ullage, or vapor space, in the underground storage tank, and (3) an in-station diagnostic system that provides warning alarms to alert the facility operators of potential vapor recovery system malfunctions. Phase I EVR was fully implemented in 2005. Phase II EVR was fully implemented between 2009 and 2011. **Attachment 1** includes a summary of the mandatory emission controls implemented at gas stations in California.

In addition, a majority of the vehicles on the road today in California have ORVR systems. These systems were phased in beginning with 1998 model year passenger vehicles, and are now installed on all passenger, light-duty, and medium-duty vehicles manufactured since the 2006 model year. When an ORVR vehicle is fueled, almost all the gasoline vapor displaced from the fuel tank is routed to a carbon canister in the vehicle fuel system. As a result of these achievements, emissions of TACs (including benzene) from gasoline fuel stations are substantially reduced. These technological achievements are reflected in the newer emission factors developed by CARB in 2013, which were used in the project HRA. In light of the extensive regulation of gasoline emissions in California, the commenter's reliance on older studies from other countries (e.g., France and Spain) are not reflective of this project.

As a result of the improvements described above in addition to the reformulation of gasoline that occurred in the late 1990s, emissions of benzene and other TACs from gasoline have decreased substantially in the last 10 to 20 years. A report recently released by OEHHA in 2018² describes the trend in exposure and health risk to TACs from gasoline (the press release for this study is included as **Attachment 2**). In this report, emissions of benzene statewide are described as being reduced by 70 percent since 1996 as reflected in ambient statewide benzene concentrations that decreased at or greater than that rate. The report describes the primary source of benzene emissions as from on-road mobile sources, where gasoline production and distribution make up a small fraction of the overall emissions. Benzene concentrations in the air are primarily the result of emissions from traffic. While the report addresses California as a whole, monitoring data in the Bay Area support these conclusions.³

The commenter raises broad comments concerning health risks of fuel stations generally. The commenter does not appear to have read the HRA for the project. Employing conservative assumptions and accepted methodologies, the HRA concludes that the project will result in a less than significant impact with respect to community risk for all categories of sensitive receptors.

² OEHHA. 2018. *Gasoline-Related Air Pollutants in California - Trends in Exposure and Health Risk, 1996 to 2014*. January

³ Measured benzene levels in San Francisco are reported at this CARB website. Within the Bay Area, benzene is only monitored in San Francisco. Note that levels in Petaluma are expected to be lower due to the less intensive urban environment. <https://www.arb.ca.gov/adam/toxics/sitepages/benzsfo.html>. Accessed August 28, 2018.

Attachment 1: Vapor Recovery Summary

Attachment 2: Trend in Exposure and Health Risk to TACs from Gasoline

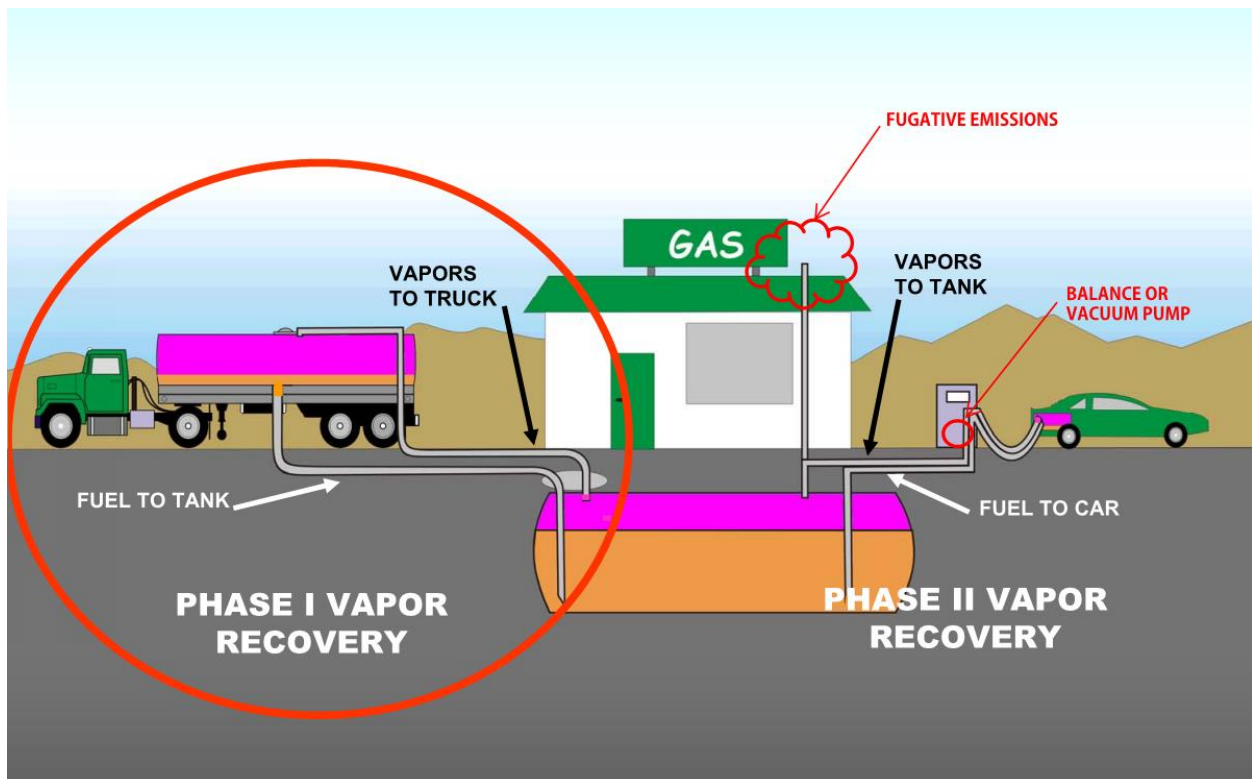
Vapor Recovery Summary

Phase I and Phase II vapor recovery were implemented in California 1987 in an effort to reduce fugitive VOC emissions from fueling facilities. Most of the US states implemented the requirement in 1990. **Before Vapor recovery was introduced fugitive emissions from a fuel dispensing facility were 8.4 lbs. of hydrocarbons per 1,000 gallons dispensed.**

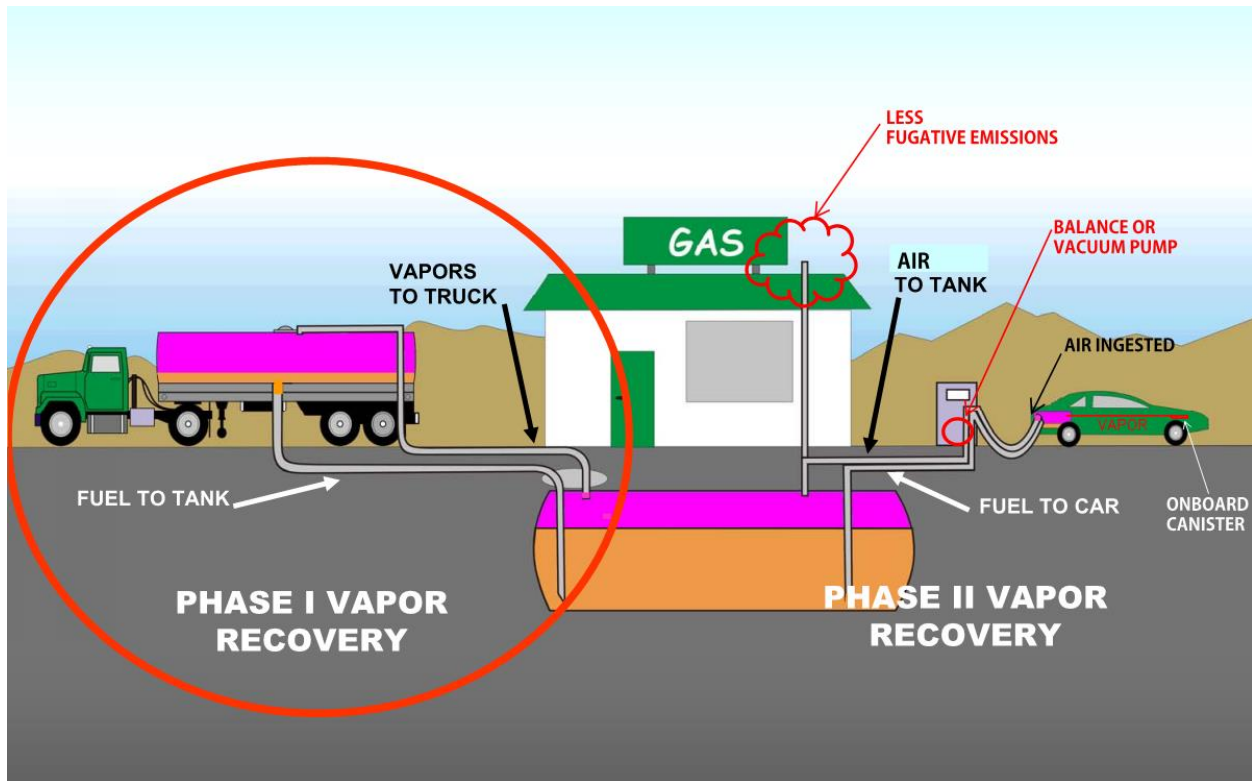
Phase I vapor recovery is the reclaim of vapors from a storage tank back into the truck that is delivering fuel. As the tank is filled, a second hose is connected to the tank. As the tanks fill, the vapors are pushed through the hose back into the delivery truck.

Phase II vapor recovery occurs at the fuel dispenser. When a vehicle is adding fuel to the tank, the vapors are pushed back through the nozzle and hose, through the dispenser and back into the fuel storage tank(s). Some systems use a vacuum pump to pull the vapors from the vehicles tank and push them back into the fuel storage tank.

The recovery of vapors can pressurize the storage tank. When this happens, the pressure is released through the tank vents. This releases fugitive emissions. **A fuel dispensing facility with Standard Vapor Recovery and non-ORVR vehicles produces 2.4 lbs. of hydrocarbons per 1,000 gallons dispensed.**



ORVR is the acronym for Onboard Refueling Vapor Recovery. This process is handled inside the vehicle. Newer vehicles are equipped with a canister system that collects fuel vapors as the vehicle is refueling. In 1998, the first vehicles with ORVR were produced. Since 2006, all vehicles produced are required to have ORVR. **A fuel dispensing facility with Standard Vapor Recovery and ORVR vehicles produces 0.12 lbs. of hydrocarbons per 1,000 gallons dispensed.**



Enhanced Vapor Recovery occurs at the vent riser. EVR requires introducing a means to capture the fugitive emissions from the vent riser. There are 3 approved methods available.

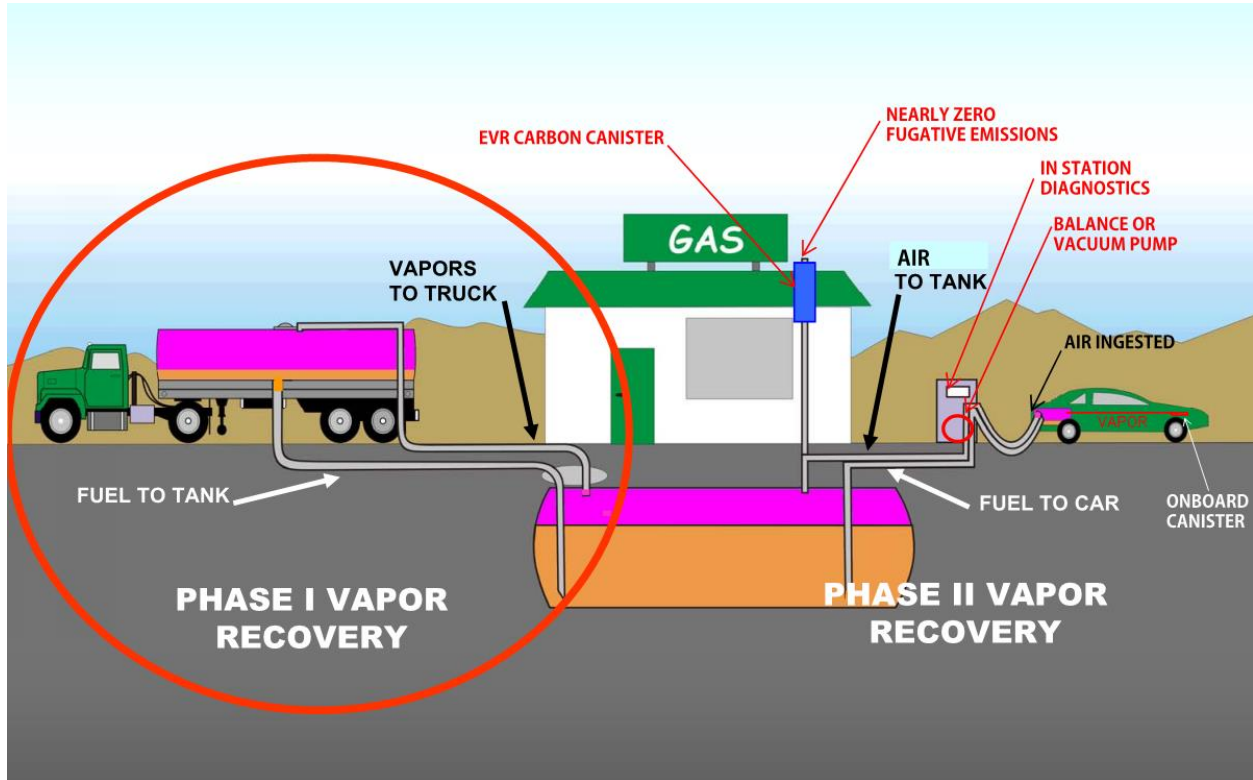
A Veeder Root carbon canister captures vapors in a carbon filter. The carbon is refreshed as the storage tank returns to normal pressure and clean air is pulled through the carbon canister.

The Healy system is a large bladder tank that captures vapors in a bladder tank and returns them to the storage tanks when the pressure returns to normal.

The Hirt system is a furnace that burns the vapors as they are released.

With all 3 systems, the vapors are now captured instead of being released through the vents.

The combination of Enhanced Vapor Recovery and ORVR have significantly reduced fugitive emissions to nearly zero percent. **A fuel dispensing facility with Enhanced Vapor Recovery and ORVR vehicles produces 0.021 lbs. of hydrocarbons per 1,000 gallons dispensed.**



Press Release

California Environmental Protection Agency
Office of Environmental Health Hazard Assessment
Lauren Zeise, PhD, Director

For Immediate Release:
January 24, 2018

Contact:
Sam Delson (916) 324-0955 (O)
(916) 764-0955 (C)

State's Cleaner Gasoline is Significantly Reducing Air Pollution, OEHHA Study Shows

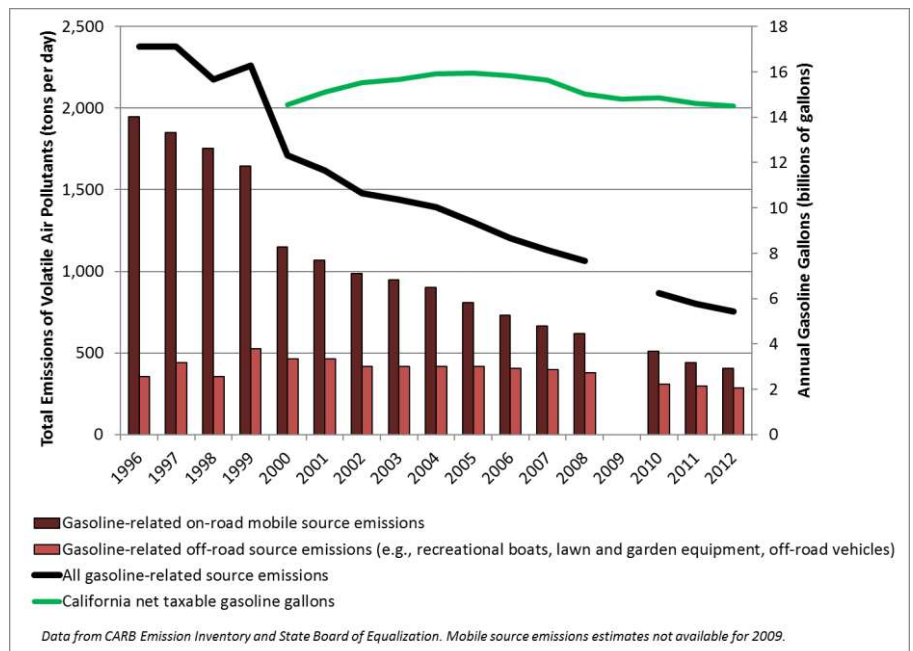
Gasoline-related pollutants associated with health concerns steadily declining

SACRAMENTO – A [new analysis](#) released today by state environmental health researchers shows that California's cleaner gasoline and vehicle controls have significantly reduced emissions of toxic pollutants and lowered cancer risks. Since 1996, estimated total emissions of volatile air pollutants from gasoline-related sources declined nearly 70% statewide, including significant declines for toxic chemicals such as benzene and toluene.

"These reductions in toxic gasoline-related chemicals demonstrate the substantial progress California has made in reducing air pollution," said Dr. Lauren Zeise, Director of the Office of Environmental Health Hazard Assessment (OEHHA). "When we reduce air pollution, important public health benefits follow."

Using emissions data and ambient air-quality measurements from the California Air Resources Board (CARB) and other sources, OEHHA researchers estimated average gasoline-related exposures and associated health risks statewide and for five major air basins. OEHHA's analysis covers the years 1996 to 2014. Significant findings include:

- Estimated emissions of total volatile air pollutants from gasoline-related sources declined nearly 70% statewide between 1996 and 2012. Pollutants with the most substantial declines include harmful carcinogens like benzene and reproductive toxicants like toluene.
- Emissions of gasoline-related pollutants declined even while gasoline sales remained steady and California's population grew. By 2012, total emissions from on-road gasoline-powered vehicles had decreased so



substantially that they were not much higher than the total emissions from off-road sources like lawn and garden equipment, recreational boats, and off-road vehicles. (See chart)

- Cancer risks associated with average gasoline-related exposures to the most highly emitted carcinogens declined by more than 80% between 1996 and 2014.

Since 1996, CARB has worked to adjust the state's gasoline formula in an effort to reduce gasoline-related pollutants. To maximize those benefits, the Board has also promoted cleaner vehicle technologies.

"California's fuel standards are clearly working, but clean gasoline is only part of the solution," said CARB Executive Officer Richard W. Corey. "Californians will see progressively cleaner air—and savings in fuel costs—as the number of electric and hydrogen powered vehicles increase."

Researchers recommend a future study focused specifically on exposures in high traffic areas, especially in disadvantaged communities. Recently enacted legislation, AB 617 (C. Garcia, Chapter 136, Statutes of 2017), aims to reduce air pollution exposure in California's most burdened communities. CARB will consult with OEHHA on this new effort.

The analysis—[Gasoline-Related Air Pollutants in California: Trends in Exposure and Health Risk 1996 to 2014](http://oehha.ca.gov)—can be found at <http://oehha.ca.gov>.

OEHHA is the primary state entity for the assessment of risks posed by chemical contaminants in the environment. Its mission is to protect and enhance public health and the environment by scientific evaluation of risks posed by hazardous substances.

###

EXHIBIT B

PUBLIC DISCUSSION AND OUTREACH ACTIVITIES FOR SAFEWAY GAS STATION

****As of September 6, 2018****

PUBLIC DISCUSSION AND REVIEW

- **6 Years** of public discussion and debate
- **15+ Public Hearings** that discussed, reviewed or affected the project
- **Planning Commission approval** on June 26, 2018
- **4 Resubmittals of Application** until deemed complete
- **Multiple On-Site Meetings** with City Staff
- **60+ amendments and revisions** incorporating feedback from City Staff and community

COMMUNITY OUTREACH AND MEDIA

- **2,400+ “YES” votes on supporter Petitions**
- **502 Petaluma residents interviewed** in June 2018 public opinion survey – 55% support for project (versus 35% opposed)
- **35+ Media** Articles, Editorials, Op-Ed’s and Letters to the Editor on the topic
- **Two Open Houses** with an additional two scheduled for September 8 and 11
- **September 2018 Mailer** providing project details and updates (English and Spanish)
- **Multiple calls and meetings** with representatives of Petaluma City Schools, North Bay Children’s Center, and 4Cs Petaluma Child Development Center
- **Multiple calls and meetings** with neighbors and community members
- **Extensive In-Store** communication with customers, including FAQ and on-site tabling
- Formal endorsement from the **Petaluma Area Chamber of Commerce**
- Meetings with **Pedestrian & Bicycle Advisory Committee & Transit Advisory Committee**
- **Outreach via project website (English and Spanish) and Social Media**

EXHIBIT C

MEMORANDUM

TO: Natalie Mattei

FROM: Matthew D. Francois

DATE: September 5, 2018

FILE NO.: 031700-0001

RE: Safeway Fuel Center: Scope of City's Discretionary Review Authority Over The Project

The Property is zoned Commercial 2 ("C2"). Gas stations are permitted uses in the C2 zone. The only discretionary approval needed from the City for the Project is Site Plan and Architectural Review ("SPAR"). The purpose of SPAR approval is to "secure compliance with the Zoning Ordinance and to promote the orderly and harmonious development" of the City. (Implementing Zoning Ordinance ("IZO") § 24.010.A.)

In taking action to approve a SPAR application, the reviewing body must consider the following:

- Any controls to be exercised to achieve a satisfactory quality of design in the individual building and its site, appropriateness of the building to its intended use, and the harmony of the development with its surroundings. Satisfactory quality design and harmony will involve among other things:
 - The appropriate use of quality materials and harmony and proportion of the overall design.
 - The architectural style which should be appropriate for the project in question, and compatible with the overall character of the neighborhood.
 - The siting of the structure on the property, as compared to the siting of other structures in the immediate neighborhood.
 - The size, location, design, color, number, lighting, and materials of all signs and outdoor advertising structures.
 - The bulk, height, and color of the proposed structures as compared to the bulk, height, and color of other structures in the immediate neighborhood.

- Landscaping to approved City standards shall be required on the site and shall be in keeping with character or design of the site. Existing trees shall be preserved wherever possible, and shall not be removed unless approved by the Planning Commission.
- Ingress, egress, internal circulation for bicycles and automobiles, off-street automobiles and bicycle parking facilities and pedestrian ways shall be so designed as to promote safety and convenience, and shall conform to approved City standards.
- It is recognized that good design character may require participation by a recognized professional designer, such as an architect, landscape architect or other practicing urban designer and the reviewing body shall have the authority to require that an applicant hire such a professional, when deemed necessary to achieve good design character.

(IZO § 24.010.G.)

The above “considerations” are in stark contrast to the “findings” required for a conditional use permit. For a conditional use permit, the Planning Commission (or City Council on appeal) can approve (or disapprove) such a permit only when it finds that the proposed structure or use “will (or will not) conform to the requirements of the [IZO] and the Petaluma General Plan” and that such use “will not (or will), under the circumstances of the case, constitute a nuisance or be detrimental to the public welfare of the community.” (IZO § 24.030.H.) As a principally permitted use, the Project does not require a conditional use permit. It only requires design review (or SPAR) approval from the City.

As correctly noted in the Staff Report for the May 8, 2018 Planning Commission hearing, the Project achieves a satisfactory quality of design and harmony with its surroundings. It incorporates an appropriate use of quality materials and reflects a harmonious and proportional design. The architectural style is appropriate for the Project and compatible with the overall character of the neighborhood. The siting of the structure is compatible with the siting of other structures in the immediate neighborhood. Project signage shall be designed to conform with the City’s Sign Code and any applicable Sign Program. The bulk, height, and color of the structure is compatible with the bulk, height, and color of other structures in the immediate vicinity.

Further, landscaping to approved City standards will be provided in keeping with the character and design of the site. Circulation patterns will not be substantially altered by the Project and will conform to approved City standards. In addition, the Project was appropriately designed

by a professional architect, with extensive review and input from City Staff, the Pedestrian and Bicycle Advisory Committee, and the Transit Advisory Committee.

As detailed above, the City's discretion over the Project under the IZO is very narrow and limited to design issues. To the extent, the City attempts to expand its limited design-review discretion to preclude the Project, its efforts would be in contravention of the law. (*See, e.g., Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004 [Court of Appeal rules that design review ordinance does not confer on a city the unrestrained power to decide who may and may not do business in the city].)

Further, nothing in the California Environmental Quality Act ("CEQA") expands the City's discretionary review authority over the Project. To the contrary, the scope of environmental review is constrained by the discretion an agency possesses over the project, which is extremely minimal here. (Public Resources Code § 21004; CEQA Guidelines § 15040; *Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, 28.) In *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, the court rejected a CEQA challenge to a design review approval for a large mixed-use development project for allegedly failing to consider the impacts of global climate change. The court reasoned that since the agency had no authority to impose mitigation for this issue, CEQA review "would be a meaningless exercise."¹

In *California Water Impact Network v. County of San Luis Obispo* (2018) 25 Cal.App.5th 666, the court of appeal reaffirmed *San Diego Navy Broadway Complex Coalition* in a case that did not involve subsequent review. In that case, an agency's issuance of well permits was challenged for failure to comply with CEQA. The court upheld the agency's finding that the permit were ministerial and thus exempt from CEQA. The court noted that even if the ordinance gave the county discretion over water quality issues, that did not extend to water supply issues, which were the subject of challenge in that case.

Notwithstanding the above case law, City Staff claimed that CEQA review extends to all environmental resource categories reasoning that CEQA applies to the whole of an action. (Staff Report for June 26, 2018 Planning Commission hearing, pp. 4-5.) The fact that CEQA requires an analysis of the whole of an action does not mean that CEQA somehow expands an agency's discretionary review authority. It does not.

In addition, it is well settled that "[e]conomic or social effects of a project shall not be treated as significant effects on the environment." (CEQA Guidelines § 15131.) Specifically, CEQA does not extend to social or economic issues, such as quality of life matters. (CEQA

¹ Although this case arose in the context of supplemental environmental review, "the court based its holding on generally applicable CEQA principles and did not limit it to the supplemental EIR context, so this holding may apply more broadly to EIRs generally." (Kostka & Zischke, Practice Under the California Environmental Quality Act § 13.22.)

Guidelines § 15131; *Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 460; *City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810; *Cathay Mortuary, Inc. v. San Francisco Planning Com.* (1989) 207 Cal.App.3d 275; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748.) As noted by the California Supreme Court, CEQA “must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 576.)

Even though the scope of environmental review could legitimately be confined to aesthetic issues since SPAR is the only needed discretionary entitlement, all applicable environmental resource categories were studied in the Mitigated Negative Declaration (“MND”) and associated reports prepared by expert consultants. The MND concludes that the Project’s potentially significant impacts will be reduced to a less than significant level through the imposition of mitigation measures. The MND’s conclusions are fully supported by substantial evidence in the record and must be upheld.

In sum, the City has limited discretion over the Project. The scope of discretion relates to aesthetic and design issues. To the extent the City attempts to employ this limited discretion to preclude a use that it or some of its residents or outside parties do not want, it would be acting in contravention of the law.

EXHIBIT D

MEMORANDUM

TO: Natalie Mattei
FROM: Matthew Francois and Hannah Goodwin
DATE: September 5, 2018
FILE NO.: 031700-0001
RE: Safeway Fuel Center Project: Consistency with Petaluma General Plan

Safeway, Inc. has proposed the Safeway Fuel Center Project (“Project”) at 335 S. McDowell Boulevard (the “Property”) in the City of Petaluma (“City”). This memo summarizes the Project’s consistency with the City’s General Plan 2025 (the “General Plan” or “GP”).

The City’s General Plan “reflects a commitment on the part of the City Council and their appointed representatives and staff to carry out the Plan” and “[e]stablishes a basis for judging whether specific development proposals and public projects are in harmony with Plan policies and standards.” (GP § i.2.) As set forth below, the Project is consistent with the City’s General Plan.¹

1. Land Use, Growth Management, and the Built Environment

Community Commercial (Land Use Designation): “This category includes shopping center sand commercial districts, including regionally-oriented centers.”

The Property is designated Community Commercial by the General Plan. This category includes shopping centers, commercial districts, and regionally-oriented centers. As a commercial use in an existing shopping center, the Project is consistent with the Property’s land use designation.

GP Policy 1-P-6: “Encourage mixed-use development, which include opportunities for increased transit access.”

The Project’s consistency with Policy 1-P-6 is discussed in Section 4 below.

GP Policy 1-P-11: “Allow land use intensification at strategic locations along the arterial corridors leading to Downtown and Central Petaluma, including aging commercial and industrial sites.”

¹ In its May 8, 2018 Staff Report for the Project, the City’s professional Planning Staff likewise found the Project to be consistent with the City’s General Plan.

The Project will replace an existing, dated commercial building in the Washington Square Shopping Center, allowing for more convenient access to daily needs and cross-shopping. The Project site is well connected to the rest of Petaluma as it is located along a major arterial with nearby connectivity to Highway 101. Moreover, the Project will provide improvements to enhance the Eastside Transit Center, thereby improving public transit conditions.

GP Policy 1-P-14: “Require provision of street trees, landscaping, parking and access features to help integrate land uses and achieve an effective transition between uses of disparate intensities.”

The Project’s consistency with Policy 1-P-14 is discussed in Section 2 below.

In sum, the Project is consistent with the Property’s land use designation as well as pertinent General Plan policies regarding land use.

2. Community Design, Character, and Green Building

GP Policy 2-P-5: “Strengthen the visual and aesthetic character of major arterial corridors,” through the use of, among others, “[s]idewalk improvements including trees, lighting fixtures, planters, curbs, shading devices, public and commercial-related seating, and paving materials.”

Consistent with Policies 1-P-14 and 2-P-5, the Project will incorporate numerous sidewalk improvements and promote the community aesthetic. The Project is architecturally compatible with the surrounding neighborhood, and will incorporate an updated building design and neutral colored materials. The Project will more than double the existing landscape on-site and will include new street trees and evergreen hedges to screen the facility, in addition to flowering and low water-use plants. Mitigation Measure AES-1 will further the Project’s aesthetic value by providing for sufficient screening by placement of grasses, shrubs, and other groundcover species, in addition to a dense landscaping screen to eliminate glare from headlights. The Project’s landscaping improvements and improved and compatible design will strengthen the visual and aesthetic character of major arterial corridors, in compliance with the General Plan.

In sum, the Project is consistent with General Plan policies regarding aesthetics and community design.

3. The Natural Environment

GP Goal 4-G-4: “Reduce reliance on non-renewable energy sources in existing and new development.”

GP Policy 4-P-10: “Require electric vehicle charging and alternative fuel facilities at all new and remodeled gas stations.”

In accordance with Goal 4-G-4 and Policy 4-P-10, the Project will include one (1) electric-vehicle charging station.

GP Policy 4-P-12: “Prohibit new drive-thru food and service facilities with the exception of vehicle serving businesses. . . . Discretionary approvals for such facilities shall include provisions which decrease or eliminate idling vehicles, to the extent feasible and practical.”

While the Project is exempt from this provision as a vehicle-serving business, Policy 4-P-12 is nonetheless incorporated into the Project’s conditions and mitigation measures. Condition 17 requires that signs prohibiting vehicle idling be installed as indicated on the proposed Project plans. Mitigation Measure TRANS-1 further provides for the dedication of employees to serve as fuel ambassadors during peak hours in order to facilitate efficient fueling and “maintain constant egress/ingress” of vehicles. This measure will ensure that idling vehicles will be minimized to the extent feasible and practical. Further, the Project’s operational emissions, including traffic generation, vehicle idling, and fuel vapor emissions, have been found to have a “less-than significant impact with respect to emissions of air pollutants that could cause a violation of an air quality standard or cumulatively contribute to existing violations of air quality standards.” (Air Pollutant and Greenhouse Gas Emissions Assessment, p. 9; *see also* Health Risk Assessment, p. 14.)

GP Policy 4-P-16: Encourage inclusion in construction contracts of requirements and measures “to reduce combustion emissions during construction and demolition phases.”

Policy 4-P-16 has likewise been accounted for in the Project’s mitigation measures. Pursuant to Mitigation Measure AQ-1, air quality construction measures will be implemented, including, without limitation, watering of all active construction areas, idling time restrictions for construction vehicles, and restrictions on the use of diesel-powered equipment. In analyzing the Project’s construction emissions, the “[c]onstruction air pollutant emissions were predicted and found to be well below the BAAQMD significance thresholds.” (Air Pollutant and Greenhouse Gas Emissions Assessment, p. 9.) The Project will employ best management practices with regard to construction emissions in order to minimize its air quality impacts. (*Id.*, p. 9.) As a result, the Assessment concluded that “air pollutant and GHG emissions from construction activity are considered less than significant.” (*Id.*, p. 6-9.) Actual emissions will be even less than those studied due to Safeway’s agreement to employ Tier 3 construction equipment.

GP Goal 4-G-3: “Improve air quality by reducing the generation of air pollutants from stationary and mobile sources.”

GP Policy 4-P-7: “Reduce motor vehicle related air pollution.”

GP Policy 4-P-17: “[A]void potential health effects and citizen complaints that may be caused by sources of odors, dust from agricultural uses, or toxic air contaminants . . .”

The Project includes numerous improvements to the bus transit system, as well as improved pedestrian and bicyclist access, as discussed in Section 4 below. In accordance with Goal 4-G-3 and Policies 4-P-7 and 4-P-17, these improvements will have the effect of reducing reliance on motor vehicles and promoting the use of alternative means of transportation. By improving public transit and non-motor vehicle access to the Shopping Center and nearby school, the Project will promote a reduction in motor vehicle use and improve air quality. Further, increasing local retail options will discourage consumers from traveling by motor vehicle to other markets for affordable fuel options. As noted above, measures have been incorporated into the Project to ensure that idling vehicles will be minimized to the extent feasible and practical. Further, the health risk assessment prepared for the Project concludes that it will result in less than significant impacts with respect to community risk for all categories of sensitive receptors.

In sum, the Project is consistent with General Plan policies regarding the natural environment, particularly the promotion of alternative fuel vehicles, reduction of idling vehicles, reduction of construction emissions, and improvement of air quality.

4. Mobility

GP Policy 5-P-22: “Preserve and enhance pedestrian connectivity in existing neighborhoods and require a well[-]connected pedestrian network linking new and existing developments to adjacent land uses.”

GP Policy 5-P-23: “Require the provision of pedestrian site access for all new development.”

GP Policy 5-P-32: “Promote bicycle and pedestrian safety” through, among others, the Safe Routes to School program.

GP Policy 5-P-42: “Expand the bus transit system so that it is convenient and provides frequent, regular service along major City corridors serving education, shopping, and employment destinations, and SMART park-and-ride lots.”

The Project will bring marked improvements to the bus transit system, in compliance with Policies 1-P-6 and 5-P-42. The Project will construct a new bus turn bay for Petaluma Transit’s Eastside Transit Center, one of the City’s busiest bus stops, and will accommodate up to three (3) buses lining up simultaneously during normally timed transfers. In addition to promoting frequent, regular bus service, the Project will include improvements to the bus facilities such as a transit kiosk, three benches, covered shelters, enhanced signage, and perimeter landscaping. In compliance with the General Plan, such improvements will increase transit access to the neighboring commercial center and promote the use of bus transit for nearby residents.

In accordance with Policies 5-P-23, 5-P-32, and 7-P-15 (discussed in Section 6 below), the Project will improve sidewalks and promote pedestrian access to the neighboring commercial districts and 4Cs Petaluma Child Development Center, North Bay Children’s Center, and

McDowell Elementary School. The Project will be positioned to establish a new, pedestrian path connecting the structure to the existing sidewalk, and will establish a pedestrian-friendly building edge along the street. The Project will also replace the existing sidewalks and curb ramps that are broken or cracked, and new pedestrian-friendly infrastructure will be installed, including a pedestrian ramp, crosswalk striping, and warning signage at proposed driveway entrances. These measures will promote pedestrian access and safety, particularly as to the school-bound pedestrians in the vicinity, in compliance with the Safe Routes to School Program.

Likewise, the Project will promote bicyclist safety and access in adherence with the above-listed policies and objectives.

In sum, the Project is in compliance with applicable General Plan policies regarding mobility.

5. Recreation, Music, Parks, and the Arts

GP Policy 6-P-29: “Integrate the arts into the planning process in the city and encourage the arts as an integral part of development proposals and capital improvement projects.”

In accordance with Policy 6-P-29, Safeway will pay the public art in-lieu fee at the time of building permit issuance to contribute to public art projects for all nonresidential development in the City. The Project thus is consistent with pertinent policies regarding the arts.

6. Community Facilities, Services, and Education

GP Policy 7-P-15: “Improve and expand safe pedestrian, bicycle, and transit access to all school sites and campuses.”

The Project’s consistency with Policy 7-P-15 is discussed in Section 4 above. The Project thus is consistent with pertinent policies regarding education and community services.

7. Economic Health & Sustainability

GP Guiding Principle No. 8: Foster and promote economic diversity and opportunities.

GP Guiding Principle No. 9: Expand retail opportunities to meet residents’ needs and promote the city’s fiscal health, while ensuring that new development keeps with Petaluma’s character.

GP Policy 9-P-1: “Retain and attract ‘basic’ economic activities that bring dollars into the local economy by exporting products and services,” including “serving unmet local demands for goods [and] services,” “generating revenue for the City,” and “providing jobs for un- and under-employed segments of the work force.”

GP Policy 9-P-3: “Provide an array of employment opportunities to existing and future residents by assuring diversity in Petaluma’s industry and enterprise mix.”

GP Policy 9-P-8: “Pursue economic development that is consistent with and supportive of Petaluma’s quality of life.”

GP Policy 9-P-10: “Encourage economic development that will enhance job opportunities for existing City residents by providing incentives for proposals that. . . [p]rovide jobs that match the skills (occupations) of unemployed or underemployed workers who live in Petaluma. . . .”

GP Policy 9-P-13: “Expand and diversify Petaluma’s retail base” and encourage expansion of “local choice in types of retail enterprises.”

GP Policy 9-P-16: “Strengthen existing retail concentrations”, particularly those “serving Petaluma’s residential neighborhoods.”

In accordance to the above-listed General Plan policies and principles, the Project promotes the City’s economic health and retail base. At present, the Project location is an underutilized commercial/retail space which does not generate revenue or provide employment opportunities. By contrast, the Project will generate a number of retail employment opportunities for the community, particularly for un- and under-employed segments of the City’s work force. In addition to the primary sales of gas, the convenience store will sell fresh produce, pre-packaged items, including non-alcoholic beverages and auto-related items. The Project will diversify residents’ choice in retail options and will keep dollars in the local economy by offering consumers a convenient and affordable fuel option. As a community-serving commercial land use, the Project will complement the surrounding commercial uses and strengthen the existing retail base at the East Washington Square Shopping Center.

In sum, the Project will provide numerous retail and employment benefits to Petaluma and is in compliance with the General Plan’s economic policies.

8. Health and Safety

GP Policy 10-P-3: “Protect public health and welfare by eliminating or minimizing the effects of existing noise problems, and by minimizing the increase of noise levels in the future.”

In accordance with Policy 10-P-3, the Project will include mitigation measures to limit construction and delivery hours and regulate the operation of noise-producing equipment. A site-specific Noise Assessment analyzed noise levels generated by construction and operation of the Project, and concluded a “less than significant impact” on noise levels. Noise from parking/fueling operations, truck delivery, mechanical equipment, traffic, and on-site operations were all found to be below or within the range of current noise levels and below the noise exposure limits allowed by applicable zoning ordinances. (Environmental Noise Assessment, p. 17.) Further, Mitigation

Measure NOI-1 will promote minimization of noise by imposing several conditions on construction contracts, including, without limitation, limited hours of operation, intake/exhaust mufflers on all combustion engine driven equipment, temporary noise barriers, and designation of an individual to respond to any noise complaints.

GP Policy 10-P-4: “Minimize the risk to life and property from the production, use, storage, and transportation of hazardous materials and waste by complying with all applicable State and local regulations.”

Safeway will satisfy Policy 10-P-4 by complying with all federal, state, and local regulations pertaining to the use, storage, and transportation of fuel.

In sum, the Project is consistent with pertinent General Plan policies regarding health and safety.