

January 24, 2019

VIA E-MAIL AND FEDERAL EXPRESS

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
CITY OF PETALUMA
11 English Court
Petaluma, CA 94952

**Re: Safeway Fuel Center Project;
January 28, 2019 City Council Agenda, Item 5.A**

Dear Mayor Barrett and Members of the City Council:

We write on behalf of our client, Safeway, Inc., regarding the City Council's proposed reconsideration of the long-planned Safeway Fuel Center Project (the "Project") at 335 S. Mc Dowell Boulevard (the "Property") in the City of Petaluma (the "City"). The Project has already been reviewed by the City for more than six years and has been 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. Yet, on December 3, 2018, the City Council adopted Resolution No. 2018-80 (the "Resolution") purporting to uphold the appeal of the Project (the "Appeal") filed by JoAnn McEachin and others ("Appellants") and ordering the preparation of an environment impact report ("EIR").

On January 2, 2019, we wrote to demand that the City Council vacate the Resolution and conduct a new hearing to cure and correct specified violations of the Brown Act. The City noticed a new hearing on the Appeal for January 28, 2019. At that hearing, we strongly urge you to deny the Appeal and uphold the Planning Commission's approvals for the Project. This is the only lawful action that the City Council can take on the Project.¹

I. Executive Summary

The Project is a principally permitted use and requires design-related approvals only from the City. The City Council cannot lawfully uphold the Appeal for numerous reasons.

First, in a recently decided case, the First District Court of Appeal ruled that the scope of CEQA review for a design review permit such as that sought here does *not* extend to issues other than aesthetics. Were the City to persist in claiming that CEQA requires preparation of an EIR based

¹ Unless otherwise noted, emphasis in quotations is supplied and citations are omitted.

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 2

on grounds other than aesthetics, the City would be acting in direct contravention of this highly relevant and binding legal precedent.

Second, the Planning Commission's adoption of the MND was not timely appealed to the City Council and is now final and no longer subject to challenge.

Third, upholding the Appeal in the manner recommended by Staff is not requested by Appellants and is not authorized by and is contrary to the City Code.

Fourth, as there is no substantial evidence of a fair argument of significant environmental impacts, the City cannot lawfully require preparation of an EIR. Any reliance on a so-called "battle of the experts" would be flawed and not supported by the facts or the law.

Fifth, since a majority of the City Council members are biased, they cannot lawfully act to uphold the Appeal. The only lawful action that the City Council can take is to either deny the Appeal or abstain and allow the Planning Commission to stand.

Sixth, if the City Council were to uphold the Appeal, its action would be arbitrary and capricious and thus deprive Safeway of its constitutionally protected right to due process.

Seventh, subjecting Safeway to different or more burdensome requirements than imposed on similarly situated property owners (namely the requirement for an EIR when every other recent gas station project was processed with an exemption or negative declaration) would deprive Safeway of its constitutionally protected right to equal protection.

Eighth, if the City upholds the Appeal, it will have to compensate the Property owner and/or Safeway for an unconstitutional taking of its property.

Ninth, if the City upholds the Appeal, it would result in an unlawful interference with contractual relations.

Finally, based on the parties' substantial and detrimental reliance on the Property's zoning, the City would be estopped from upholding the Appeal.

In light of the serious legal impediments associated with upholding the Appeal, any one of which would be sufficient to overturn the City Council's action, and several of which would also

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 3

expose the City to an award of damages and attorneys' fees, we trust that the City Council will deny the Appeal in whole and reaffirm the Planning Commission's approval of the Project.²

II. Project Background

A. The Property has long been planned and zoned for gas station uses.

The Property is zoned Commercial 2 ("C2"). Gas stations are permitted uses in the C2 zone. (Implementing Zoning Ordinance ["IZO"], Table 4.4.) A new commercial use, like the Project requires only site plan and architectural review ("SPAR") approval from the City. (IZO § 24.010.A.) The purpose of SPAR is to "secure compliance with the Zoning Ordinance and to promote the orderly and harmonious development" of the City. (*Id.*)

In taking action to approve a SPAR application, the reviewing body must consider the following: (1) satisfactory quality of design and harmony with surroundings, (2) landscaping and circulation conform to approved City standards, (3) participation by a recognized professional designer. As correctly noted by Staff and adjudged by the Planning Commission, the Project conforms with all of these considerations.

The SPAR "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 if 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.

B. The City has considered the Project, a permitted use, for more than six years.

The Project will be located in the Washington Square Shopping Center (the "Shopping Center") on S. McDowell Boulevard between E. Washington Street and Maria Drive. The Shopping Center, which includes a newly remodeled Safeway grocery, has provided commercial uses for

² Such an action would be consistent with the Staff recommendation prior to the December 3, 2018 City Council meeting.

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 4

Petaluma residents since 1961.³ Historically, the Shopping Center had three gas stations. Today, there is only operating gas station—Chevron—located on the far north end of the center.

The Project includes eight fuel dispensers (16 total fueling positions), two underground storage tanks, a 697 square foot convenience store, landscaping, and parking. Offsite improvements consist of reconstruction of the adjacent Eastside Transit Center to increase the width of the bus turnout area to allow for buses to queue outside of the Maria Drive travel lane and to allow for improved egress from the Shopping Center. The Transit Center will also be enhanced to include new shelters, benches, landscaping, and a solar-powered arrival sign. Additional improvements to the intersection of S. McDowell and Maria Drive include a new handicap-accessible pedestrian ramp.

In accordance with the allowed land uses for the Property, and after having met with City Staff in 2012 and 2013 and received assurances that the Project was a permitted land use, Safeway applied for the Project on July 25, 2013.

Almost immediately after the Project application was submitted, multiple independent gas station owners spoke in opposition to the Project. They testified at the August 19, 2013 City Council hearing during the public comment portion of the agenda. Councilmember Mike Healy and then-Councilmember Teresa Barrett both responded indicating they would take action to address the Project. Ms. Barrett, who sits on the Board of Directors of the Bay Area Air Quality Management District (“BAAQMD”), indicated that she was in touch with her colleagues at BAAQMD. Mr. Healy referred to the Project as a “serious issue” and encouraged City Staff to “think outside the box” and “proactively” about legislative changes to address what he called a “dangerous precedent.” Mr. Healy also referred to the gas station owners having retained legal counsel and noted that the issue was “not going away lightly.”

On January 27, 2014, during the City Council’s discussion of a completely unrelated project—Maria Drive Apartments—Councilmember Healy mentioned the Safeway Project by name and then asked whether there was support on the Council to consider adopting a moratorium on the processing of gas stations in the community. Mr. Healy noted that the purpose of the moratorium would be allow the City Council to “consider adopting legislation that would give this Council the ability, at a minimum, to provide discretionary approval on that application and give Safeway the opportunity to convince us that it is a good thing for the community . . . which might be a difficult thing for them to do.” The Council agreed to place the issue of a temporary moratorium on the agenda of a future City Council meeting.

³ The Shopping Center is owned by Washington Square Associates, LLC (“Owners”) and managed by Fulcrum Property (“Fulcrum”).

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 5

On March 3, 2014, the moratorium on new gas stations came before the City Council. At the hearing, it was made clear that the proposed moratorium was aimed squarely at the Project and virtually all of the discussion centered on the Project. Ultimately, the moratorium was supported only by Councilmembers Healy, Miller, and Kearney and thus failed to receive enough votes to pass.

In response to a request from a developer to adjust the fee schedule so as to significantly increase the credit from a former gas station use on his proposed hotel site, the City Council voted to adjust the traffic impact fees applicable to gas station uses on July 1, 2014. As a result, the traffic fees for the Project increased from approximately \$12,000 to over \$1.7 million. No notice or outreach was provided to Safeway or the Owners prior to the enactment of the fee increase.

While the moratorium and traffic fees were pending, the City Staff sent three incompleteness letters to Safeway's architect concerning the Project application, requesting new information each time. Safeway and its expert consultants responded in full, providing a traffic study, noise study, air quality study, and a comprehensive health risk assessment. The Project application was finally deemed complete on September 13, 2014.

In November 2014, Safeway wrote to the City Attorney outlining the myriad legal flaws associated with the new traffic fees. Specifically, Safeway pointed out that the new fees did not have the requisite nexus to the impacts of the Project and resulted in new gas station owners being forced to bear an unfair and unlawful portion of the cost of public facilities. On December 7, 2015, the City Council corrected the significant errors in its traffic fee schedule.

In 2016, Safeway representatives met with City Staff to review the application status. In 2017, Staff requested additional data and information. Safeway responded by providing updating technical studies. After extensive review, Staff finally accepted these studies as adequate and prepared the MND. The MND was duly noticed and circulated for public review from April 5, 2018 to May 7, 2018, and the Project was scheduled for hearing before the Planning Commission on May 8, 2018.

On May 7, 2018 at 5:05 p.m., Planning Staff emailed Safeway a letter and peer review of air quality by Environmental Science Associates on behalf of Petaluma City Schools. Safeway and its expert consultants provided Staff with written responses to these comments prior to the commencement of the Planning Commission hearing. Notwithstanding Safeway's immediate reply to the School District's comments, the Planning Commission opened the public hearing on May 8, 2018, but continued it to a date certain of June 26, 2018.

After duly considering additional public comments as well as supplemental materials (including additional technical studies) provided by Safeway at the Planning Commission's request, the Planning Commission approved the Project on June 26, 2018. On July 9, 2018, the Appeal of

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 6

the Planning Commission's action was filed by Appellants. Nowhere in the appeal form or attached letter do the Appellants criticize the MND nor claim that an EIR is needed. The City duly filed a Notice of Determination ("NOD") on June 29, 2018, which was posted until July 30, 2018. No legal challenge to the MND was filed within that timeframe.

City Staff initially considered scheduling the Appeal for City Council consideration on September 10, 2018. Appellant JoAnn McEachin informed Staff that she would be traveling in Europe on that date and requested a September 17, 2018 hearing date instead. Staff accommodated Ms. McEachin's request and scheduled the Appeal for Monday, September 17, 2018.

On Friday, September 14, 2018 at 5:24 p.m., Patrick Soluri, on behalf of Joann McEachin and No Gas Here, submitted a letter contesting various aspects of the Project (including a peer review of traffic by Larry Wymer & Associates) and raising for the first time the argument that an EIR was needed. On Monday, September 17, 2018 at 11:17 a.m., Mr. Soluri submitted a report by Fox/Kapahi contesting the Project health risk assessment ("HRA"). Also on Monday, September 17, 2018, at 2:57 p.m., BAAQMD submitted a letter regarding the HRA. As a result, the Mayor and City Council continued the Appeal hearing to October 15, 2018, and subsequently to December 3, 2018.

Safeway and its consultants responded in full to the above comment letters and peer reviews. On Monday, September 17, 2018 at 1:17 p.m., Safeway responded to Mr. Soluri's comments and the traffic review by Larry Wymer & Associates. Safeway submitted a supplemental analysis for the HRA, including an updated HRA using the American Meteorological Society (AMS)/EPA Regulatory Model ("AERMOD") on October 10, 2018. As with the original analysis, the supplemental analysis prepared by Illingworth & Rodkin similarly concludes that the Project meets all thresholds and will not result in any significant impacts related to health risk. The supplemental analysis was promptly provided to BAAQMD and Mr. Soluri by City Staff.

In a November 8, 2018 letter, Daniel Breen, Deputy Air Pollution Control Officer with BAAQMD, accepted the updated analysis and stated that BAAQMD has no further comments on the Project's HRA. Conversely, Mr. Breen cited "several key concerns" with the Fox/Kapahi study, including its inappropriate use of Santa Rosa meteorological data and inaccurate application of emission factors and exposure assumptions.

On November 30, 2018 at 6:05 p.m., City Staff provided Safeway with a document entitled "Supplemental Health Risk Results" prepared by Fox/Kapahi. At 11:17 a.m. on December 3, 2018, the day of the City Council hearing, Safeway received a 90 page Response to Comments on the MND from Fox/Kapahi. Illingworth & Rodkin provided written responses to these last minute submittals on December 2, 2018 and December 3, 2018, respectively.

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 7

On December 3, 2018, the City Council held a hearing on the Appeal. The various agendas posted by the City for the City Council hearing on the Appeal failed to inform the public that the City Council was poised to take any potential CEQA action. The public notices provided by the City for the Appeal hearing likewise failed to indicate that the City was poised to take any potential CEQA action.

A heavily redlined version of the Resolution was provided to Safeway representatives only after the public hearing was underway. It and other documents do not appear to have been made available for public inspection as required by the Brown Act. Further, the City failed to disclose existing facts and circumstances giving rise to a threat of litigation as needed to conduct a closed session meeting. At the conclusion of the December 3rd hearing, with minimal questions or deliberation, the City Council voted to uphold the Appeal and ordered preparation of an EIR.

On January 2, 2019, we wrote to the City Clerk demanding that the City Council vacate its decision and conduct another hearing to cure and correct the above-referenced violations of the Appeal. On January 9, 2019, City Attorney Danly telephoned to inform me that the City would conduct a new hearing on the Appeal on January 28, 2019. He subsequently confirmed that the hearing would be a de novo hearing wherein the City Council would act to rescind the Resolution and replace it with one either denying or upholding the Appeal.

We write now to respond to the Staff Report published on January 22, 2019 (the “Staff Report”) after the close of business recommending that the City Council rescind the Resolution and adopt a replacement resolution upholding the Appeal and ordering preparation of an EIR. As set forth below, that recommendation does not comport with the law. We urge the City Council to deny the Appeal and/or abstain from action on the Appeal thereby allowing the Planning Commission to stand.⁴

⁴ In addition to all planning and permitting files for the Project, including, but not limited to PLSR No. 13-0012 and PLAP No. 18-0001, we hereby incorporate into the record of proceedings for this item, the Agendas, Staff Reports, Video Recordings, and Minutes as well as any proposed or adopted Resolutions or Ordinances of: (1) the Planning Commission meetings of May 8, 2018 and June 26, 2018 and (2) the following City Council meetings: August 19, 2013, September 9, 2013, October 21, 2013, January 27, 2014, February 24, 2014, March 3, 2014, July 7, 2014, December 7, 2015, November 29, 2016, September 17, 2018, October 15, 2018, December 3, 2018, and January 28, 2019. We also hereby incorporate into the record of proceedings all “documents” as that term is defined by the Public Records Act related to the above meetings.

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 8

III. The City cannot lawfully uphold the Appeal as recommended by Staff.

A. The requirement of an EIR is directly at odds with the recent ruling of the First District Court of Appeal in *McCorkle Eastside Neighborhood Group v. City of St. Helena*.

In *McCorkle Eastside Neighborhood Group v. City of St. Helena*, the First District Court of Appeal upheld the City of St. Helena’s approval of an eight-unit multifamily residential development based on the Class 32 (infill) exemption.⁵ The project was a permitted land use under the site’s zoning, requiring discretionary approval only of a design review permit. Project opponents argued that the project should not be approved citing various issues completely unrelated to the project’s design (e.g., parking, traffic, safety, and soil remediation) and claiming that an EIR was needed.

The St. Helena City Council approved the project, finding that the city’s discretion, and thus scope of its CEQA review, was limited to design issues since it had not authority or ability to meaningfully address non-design related issues or impacts by imposing conditions of approval or mitigation measures. The St. Helena City Council further found that even if the project were not exempt from CEQA under the infill exemption, and some level of CEQA review were required, the city would nevertheless be allowed to undertake only limited review based on design-related environmental issues, not the use-related issues asserted by the project opponents.

The project opponents sued alleging violations of CEQA and local zoning laws. The trial court denied the petition. The First District Court of Appeal affirmed, holding that the city did not err in limiting its scope of CEQA review to aesthetic considerations consistent with the design review approval needed for the project. The court reasoned that where only limited discretionary approvals are needed, only limited CEQA review is required. In other words, since the city could not deny the project for non-design matters, it could not impose mitigation measures for non-design related issues either.

The court cited extensively to the St. Helena design review ordinance, which contains factors that are substantially similar, if not identical, to Petaluma’s SPAR ordinance. It noted that the city found that the project was consistent with all its design considerations and concluded that CEQA review “was limited to design issues such as scale, orientation, bulk, mass, materials, and colors, and the proposed project would not result in design-related impacts.” (Opinion, p. 12.) Citing the city’s lack of discretion to address environmental effects unrelated to design matters, the court concluded that the city appropriately found “that the issues raised during design review did not require the separate invocation of CEQA.” (*Id.* at p. 13.)

⁵ A copy of the court’s published opinion [the “Opinion”] is attached hereto as Exhibit A,

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 9

The *McCorkle* opinion correctly reflects the law in that if the scope of an agency’s discretionary powers is limited to design issues, CEQA review is likewise limited to design-related matters. (Opinion, p. 13 [CEQA “applies only when the discretionary component of the project gives the agency the authority to mitigate environmental impacts.”].) The case builds on the well-established principle that the “touchstone” for determining whether an agency is required to prepare an EIR is “whether the approval process involved allow[s] the [agency] to shape the project in any way which could respond to any of the concerns which might be identified in an [EIR].” (*Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 266-267.)⁶ Both the CEQA statute and guidelines acknowledge that an agency’s discretion derives from laws other than CEQA and CEQA does not expand the scope of an agency’s discretion. (See, e.g., Public Resources Code § 21004 [“In mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than [CEQA].”]; CEQA Guidelines § 15040 [“CEQA is intended to be used in conjunction with discretionary powers granted to public agencies by other laws. CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws. . . .The exercise of discretionary powers for environmental protection shall be consistent with express or implied limitations provided by other laws.”].)

The *McCorkle* court cites to and relies on *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1013, wherein the court of appeal held that a city’s design review authority did not encompass the ability to “exclude a retail merchant that it, or some of its residents, do not like.” In that case, the court specifically noted that “the application of CEQA to a local ordinance is dependent upon the scope and interpretation of the ordinance rather than vice versa,” and stated that “CEQA does not enlarge an agency’s authority beyond the scope of a particular ordinance.” (83 Cal.App.4th at 1015.)

The *McCorkle* case also cites to and relies on *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924. In *San Diego Navy Broadway Complex*, 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 the project on global climate change. The court reasoned that since the agency had no authority to impose mitigation for climate change within the confines of discretionary design review, CEQA review of that topic “would be a meaningless exercise.” (185 Cal.App.4th at 940.)⁷

⁶ (*Accord, Leach v. City of San Diego* (1990) 220 Cal.App.3d 389, 395 [“The exercise of some discretion does not automatically qualify an agency action as a project subject to CEQA. To trigger CEQA compliance, the discretion must be of a certain kind; it must provide the agency with the ability and authority to mitigate environmental damage to some degree.”].)

⁷ Citing *San Diego Navy Broadway Complex*, the court in *Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, 28 stated that “the existence of discretion is irrelevant if it does not confer the ability to mitigate any potential environmental impacts in a meaningful way.”

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 10

When we previously cited the above authorities to Staff as precluding expansive CEQA review, Staff claimed that these authorities were distinguishable. But as *McCorkle* and the other cases plainly illustrate, Staff is incorrect.

The *McCorkle* court specifically rejected the rationale previously advanced by Staff that the City can lawfully consider environmental topics other than aesthetics. Staff claimed that “CEQA requires an analysis of the whole of the project, including potential environmental impacts to all environmental categories that may result from construction and operation of the project.” (Staff Report, June 26, 2018, p. 5; *see also* Staff Report, December 3, 2018, p. 13 [“the City insisted on its authority and obligation to consider all potential environmental impacts of the project, not merely those related to aesthetics, as the project applicant had argued.”].) Project opponents in *McCorkle* made the same argument. (Opinion, pp. 6, 13.) The court of appeal rejected it, noting that an agency only has discretion over the whole of the project “when the discretionary component of the project gives the agency the authority to mitigate environmental impacts” and stating that the city “properly found that its discretion was limited to design review, given that no use permit was required for [the project].” (Opinion, p. 10.)

Staff also claimed that because this is the first instance in which CEQA is being applied to the Project, the City must consider all environmental impact categories, not just aesthetics. (Staff Report, June 26, 2018, p. 5 [reasoning that because “there are no other environmental documents that have been prepared for the Safeway Fuel Center project, [a CEQA document] that analyzes the whole of the project is required.”].) Yet, in *McCorkle*, CEQA review was being applied for the first time to the project approval at issue there. Moreover, in *San Diego Navy Broadway Complex Coalition, supra*, 185 Cal.App.4th at 938, the court expressly noted that it was applying well-settled law applicable to an initial EIR in the subsequent review context.

The City’s lack of discretion here has been acknowledged by City decision-makers and Staff.⁸ In proposing the moratorium, Councilmember Healy pushed for legislative changes to provide the City “discretionary approval” authority over the Project application. (*See also* February 21, 2014 email from Mr. Healy to Malcolm Johnson, acknowledging that the SPAR process “will lead to an automatic approval for the [Project] without any discretionary approval required by the planning commission or the city council.”)⁹ In a January 27, 2014 news article, then-Mayor David Glass is quoted as saying that the City does not have discretionary authority over projects “that are permitted by the zoning ordinance.” Staff has acknowledged that construing

⁸ True and correct copies of the documents cited in this paragraph are attached hereto as Exhibit B.

⁹ (*Accord* July 9, 2018 email from Mike Healy to Robert & Linda Hartrich, acknowledging that “[t]he City doesn’t always have the discretion to reject proposals we don’t like,” and referring to the Project as “one of those situations” and further stating that it was a “foregone conclusion that the Safeway gas station would eventually be approved.”)

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 11

the IZO as to reject a permitted use like the Project would “undermine the stability and reliability of the permitted land uses” specified in the City’s Zoning Ordinance. (Staff Report, December 3, 2018, p. 14.) At the December 3, 2018 City Council hearing, Councilmember Dave King likewise admonished the audience comprised largely of Project opponents that “we have far less discretion than a lot of you think we have here.”

Project traffic, air quality, and associated operational issues are NOT design-related issues covered by the City’s SPAR ordinance. While the City is allowed under its SPAR review to consider the *design* of certain circulation features (e.g., ingress, egress, internal circulation, auto & bike parking, and pedestrian ways), it is NOT authorized to regulate non-design related matters. Pedestrian safety due to Project traffic and health risk are NOT design-related issues.¹⁰ Indeed, these topics are addressed in the Traffic and Air Quality sections of the MND, not the Aesthetics section.

Moreover, Petaluma’s SPAR ordinance is indistinguishable from the design review ordinance cited in *McCorkle*, wherein the court ruled that CEQA review did not extend to traffic, air quality, noise and other *operational* impacts. For instance, under the Petaluma Code: “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.” (IZO § 24.010.G.) St. Helena’s code similarly asks decision-makers to consider: “[W]hether access to the property and circulation systems are safe and convenient for pedestrians, cyclists and vehicles.” (Opinion, p. 11.) Further, the Petaluma Code consideration of the “[t]he siting of the structure on the property, as compared to the siting of other structures in the immediate neighborhood” is indistinguishable from the St. Helena Code provisions calling for consideration of “Compatibility of design with the immediate environment of the site” and “Relationship of the design to the site.” (IZO § 24.010.G; Opinion, p. 11.)

In another recent case, the court granted writ relief on behalf of a property owner where an agency exceeded its authority in requiring an EIR under CEQA. In *Bottini v. City of San Diego* (2018) 27 Cal.App.5th 281, the court of appeal determined that the city abused its discretion in requiring an EIR for a proposal to construct a single-family home on a vacant lot. The court determined that the city “abused its discretion” in requiring an EIR based on impacts to an alleged historic structure that was no longer on the property.

As with the design review approval at issue in *McCorkle*, the Project here should have been deemed statutorily and/or categorically exempt from CEQA. (See, Public Resources Code

¹⁰ (See May 9, 2018 email from Heather Hines to John Brown attached hereto as Exhibit C [in recapping the May 8, 2018 Planning Commission meeting Ms. Hines observes: “No comments on the actual SPAR itself. Room of people from the school and neighborhood with concerns about health risk and traffic.”].)

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 12

§§ 21080(b)(1) [ministerial], 21083.3 [consistency with general plan EIR]; CEQA Guidelines §§ 15301 [existing facilities], 15302 [replacement or reconstruction], 15303 [new construction or conversion of small structures, 15304 [minor alterations to land], and 15332 [in-fill development projects].) As *Bottini* indicates, it is an abuse of discretion for an agency to not rely on an exemption when it applies, as is the case here.

The only significant aesthetic impact identified in the MND related to light and glare associated with headlights from Project vehicles. The proposed “mitigation” for this “impact” was to install vertical landscaping to provide screening of glare from headlights towards S. McDowell and Maria Drive. Such screening is already depicted in the proposed Project landscaping plan (see Sheet L1) and thus is not required to be imposed to mitigate any impact, as Staff acknowledges. (See February 21, 2018 email from Olivia Ervin to Adam Petersen, attached hereto as Exhibit D, acknowledging that while final landscaping and air quality are provided as mitigation measures, “these sometimes show up as [conditions of approval].”) Even if this lone “impact” justified a MND, ***there is no substantial evidence of a fair argument that the Project may result in other significant aesthetic impacts***, such that the City Council could lawfully require an EIR here.¹¹

The Safeway Project, like the 8-unit project at issue in *McCorkle*, needs only design review approval from the City. In stark contrast, the 95-unit project at issue in *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129 cited in the Staff-recommended resolution upholding the Appeal, required approval of a general plan amendment, rezoning, and a subdivision map. (Niles Gateway Mixed-Use Project Final Environmental Impact Report, September 2018, excerpt of which is attached hereto as Exhibit E.) Based on the approvals needed and the wide level of discretion associated with them, the City of Fremont was authorized to consider and mitigate issues related to traffic and other non-aesthetic topics. As explained above, no such authority exists here.

In light of the very recent and controlling *McCorkle* decision, the City would be exposed to liability were it to persist in requiring an EIR where none is legally allowed or required. If the City requires an EIR, it would be advancing the same arguments that were soundly rejected by the court in *McCorkle*. Moreover, the City would be responsible for the costs of defending this untenable legal position. Conversely, if the City Council denies the Appeal and No Gas Here, the Appellants, or any other Project opponent decides to challenge the Council’s action, they would be advancing the same losing arguments advanced by the project opponents in *McCorkle*. And per condition 9 imposed by the Planning Commission on the Project, Safeway would be responsible for indemnifying the City and its residents for the cost of such litigation.

¹¹ The fact that Safeway has agreed to other mitigation that the City is not legally able to impose under CEQA, does not expand the scope of the City’s discretion and render those topics subject to CEQA. (See *Sierra Club, supra*, 11 Cal.App.5th at 31 [“We decline to hold that the issuance of a permit, otherwise ministerial, is rendered discretionary and therefore subject to further CEQA review because the applicant offers to mitigate potential impacts in ways that are not required.”].)

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 13

B. The Planning Commission’s adoption of the MND was not appealed to the City Council and is now final and no longer subject to challenge.

Appellants never contested the Planning Commission’s adoption of the MND, nor did they contend that an EIR was required in their Appeal form or letter. Their failure to do so is fatal.

On June 26, 2018, the Planning Commission adopted separate resolutions adopting the MND and approving the SPAR application for the Project. (*See* Planning Commission Resolution No. 2018-21A and Resolution No. 2018-21B, respectively.) On July 9, 2018, Appellants filed its Appeal of the Planning Commission’s decision “to approve a building permit for a Safeway gas station on the corner of Maria Dr. and S. McDowell Blvd.” (*See Exhibit F.*) The Appeal cites objections to the location, need, and public notice provided for the Project. (*Id.*) In the Appeal, Appellants did not raise any CEQA issue nor make any claim that the Planning Commission had erred by approving the MND. Instead, they asked that the Planning Commission’s approval of the Project be reversed.

The City’s Zoning Code states that “[i]f no appeal is filed within the time limits, the decision shall be final.” (IZO § 24.070.D.) No appeal of the Planning Commission’s adoption of the MND was filed within the requisite time limits. As such, it is now final and immune from further consideration or review. (*Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577 [by failing to appeal planning commission’s adoption of MND to board of supervisors, opponents failed to exhaust their administrative remedies and waived any right to further challenge the MND]; *accord, Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 187; *see also Park Area Neighbors v. Town of Fairfax* (1994) 29 Cal.App.4th 1442, 1452 [lack of legal representation does not excuse appellant’s duty to exhaust administrative remedies].) Because the Planning Commission’s adoption of the MND was not appealed to the City Council, that approval became final and the City Council has no authority to reconsider or revisit it, except to readopt it. (*Tahoe Vista Concerned Citizens, supra.*)

Appellants’ claim that the City Council has jurisdiction over the MND because its review on appeal is de novo was considered and rejected by the court in *Tahoe Vista Concerned Citizens*:

Because the Board of Supervisors heard the permit application anew, it was required to adopt all findings necessary to implement its approval of the project. However, *it could exercise de novo review solely on the matters raised by plaintiffs. Since plaintiffs did not challenge the Planning Commission’s approval of the negative declaration, the Board of Supervisors had no jurisdiction over the negative declaration except to readopt it.*

(81 Cal.App.4th at 593.) Appellants further claim that the *Tahoe Vista* case is distinguishable because the agency code at issue there limited the appeal to only those issues that were the subject

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 14

of the appeal. The very next sentence of the opinion, however, clarifies that the code language is intended to distinguish between a challenge to a permit generally as opposed to a challenge to a permit condition. (81 Cal.App.4th at 592.) The entire case stands for the principle that an appellant is NOT excused from challenging an agency's distinct action to approve a CEQA document, especially when such a right is afforded by local codes or policies, as is the case here.

Public Resources Code section 21151(c) requires that an agency provide for a right to appeal a MND to an agency's elected decision-making body. In accordance with the CEQA statute, Section 9.9.0 of the City's Environmental Review Guidelines provides:

Determinations made by the Planning Commission [on a negative declaration] . . . may be appealed to the City Council. Appeals must be filed in writing within fourteen (14) calendar days of the decision in accordance with appeal procedures as specified in the Zoning Ordinance. ***If the determination is appealed within this period, the body hearing the appeal shall consider the . . . Negative Declaration*** and any comments received to determine if the findings are supported by the evidence in the record. . . .

If the body hearing the appeal [of a negative declaration] finds there is substantial evidence to support a fair argument that a potential for significant impact exists, they may require that either additional mitigation measures be added as conditions of approval or that ***an*** Expanded Initial Study or ***EIR be prepared to address potential impacts which were the subject of the appeal*** and/or are otherwise deemed appropriate by the body hearing the appeal.

(See also Environmental Review Guidelines, Chart 2 [flow chart clearly shows 14 day appeal period on Planning Commission action on negative declaration and states "to appeal, written notice of appeal, must be filed with City Clerk."].)

The simple and inescapable fact is that the Appellants did not appeal the MND to the City Council. This stands to reason because in their Appeal letter Appellants ask the City Council to reverse the Planning Commission's approval of the Project. (See Exhibit F.) Nowhere do they ask that the City prepare an EIR and then reconsider the Project. (*Tahoe Vista Concerns Citizens, supra*, 81 Cal.App.4th at 891 ["it is the grounds as stated by [an appellant in their appeal], not the title given by [agency] staff, that define the scope and nature of the administrative appeal."].) Appellants' failure to appeal the MND within 14 days from the Planning Commission's action bars them from doing so now.¹²

¹² The fact that Mr. Soluri may have requested an EIR in his September 14, 2018 letter, three days prior to the City Council hearing and more than two months after the appeal period expired, is irrelevant.

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 15

In addition, since the time limits for challenging the Planning Commission’s adoption of the MND have expired, compliance with CEQA is conclusively presumed. (Public Resources Code §§ 21167, 21167.2; *Citizens for Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, 111 [challenge to MND was untimely since not filed within 30 days from filing of NOD].) By law, CEQA review cannot be re-opened unless circumstances requiring subsequent environmental review are present. (Public Resources Code § 21166; CEQA Guidelines § 15162.)¹³ In general, subsequent review is permitted only if substantial changes are proposed in a project or circumstances in which a project will be undertaken which will require major revisions of a previously adopted CEQA due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Whether subsequent review is required is governed by the substantial evidence standard and not the fair argument standard. (*Friends of College of San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5th 937, 944 [court applies substantial evidence standard to a subsequent review case involving a negative declaration].) There are no changes in the Project or circumstances under which will be undertaken since the Planning Commission’s adoption of the MND in June 2018. Since there is no substantial evidence of any such changes, CEQA precludes the City from lawfully ordering further environmental review here in the form of an EIR. (*Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1060; *Security Environmental Sys. v. South Coast Air Quality Management District* (1991) 229 Cal.App.3d 110, 132.)

C. Upholding the Appeal in the manner recommended by Staff is not requested by Appellants and is not authorized by the City Code.

Even assuming that Appellants appealed the Planning Commission’s adoption of the MND such that the City Council had jurisdiction over it, the City Council still cannot lawfully adopt the resolution recommended by Staff to uphold the Appeal and order preparation of an EIR.

In the July 8, 2018 letter accompanying the Appeal, the Appellants simply ask that the Planning Commission’s approval of the Project be reversed. (July 8, 2018 letter from JoAnn McEachin to Petaluma City Council: “We ask you to reverse the Planning Commission’s conditional approval, despite (or perhaps in defiance of) the threat of a lawsuit by Safeway.”]

¹³ (*See also Friends of Davis, supra*, 83 Cal.App.4th at 1017-1018 [in a case challenging a design review approval for a commercial project, court states “agencies are prohibited from requiring further environmental review unless the stated conditions are met,” reasoning that “the interests of finality are favored over the policy of favoring public comment . . . even if the initial review is discovered to have been inaccurate and misleading in the description of a significant effect or the severity of its consequences.”].)

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 16

On an appeal, the City Council may “[a]ffirm, affirm in part, or reverse the action, determination, or decision that is the subject of the appeal.” (IZO § 24.070.G.) The Code does not authorize the City Council to “stay” a decision of the Planning Commission pending further review. Nor is there an option to deny the Planning Commission approval in part, as wrongly stated by Staff in the notice for this matter.

The City Council may reverse the decision of the Planning Commission to adopt the MND and approve the SPAR application. In order to do so, it would have to find that the Project design does not meet the considerations specified in IZO § 24.010.G. This would be very difficult to do (at least in any credible fashion) given that the Staff and Planning Commission both uniformly found that the Project was consistent with all such considerations. (Staff Report, May 8, 2018, pp. 16-19; Planning Commission Resolution No. 2018-21B; Staff Report, December 3, 2018, p. 14 [“The City has not interpreted its discretion under SPAR so broadly as to permit rejecting outright uses specified as permitted in a zoning district based on SPAR considerations. Doing so would undermine the stability and reliability of the permitted land uses specified in the use tables in Chapter 4 of the IZO.”]; *see also* September 12, 2018 email from former Councilmember Chris Albertson to Alicia Wolff [“For the Council to reject this proposal, they need a legitimate reason, based on documented fact not opinions that the proposal is unsuited for this location. To say ‘no’ just because could invite law suits from the developer that would be hard to defend.”].)

In short, the Staff-recommended action on the Appeal was not requested by the Appellants and is not authorized by the City Code.

D. There is no substantial evidence of a fair argument of significant environmental impacts.

Even assuming that the City were not legally precluded from considering issues other than aesthetics (contrary to *McCorkle* and other cases) and had lawful jurisdiction over an appeal of the MND (despite the contrary ruling in *Tahoe Vista Concerned Citizens* and other cases), the Project opponent’s request for an EIR still must be rejected. We summarize below the lack of substantial evidence supporting a fair argument of potentially significant impacts to pedestrian safety and health risk. As such, the City *must* adopt the MND and is legally precluded from requiring an EIR. (Public Resources Code § 21080(c)(1); CEQA Guidelines §§ 15063(b)(2), 15064(f)(2), 15064(f)(3).)

An EIR can only legally be required if there is substantial evidence of a fair argument that the Project may result in a significant effect on the environment. (*Citizens Comm. to Save Our Village v. Claremont* (1995) 37 Cal.App.4th 1157, 1171; *League for Protection of Oakland’s Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904.) There is no such evidence here. Substantial evidence is defined as evidence of ponderable legal significance, reasonable in nature, credible, and of solid value. (*Lucas Valley Homeowners Assn. v. County of Marin* (1991)

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 17

233 Cal.App.3d 130, 142.) It includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. (Public Resources Code § 21080(e)(1).) It does *not* include argument, speculation, unsubstantiated opinion or narrative, generalized concerns and fears, and evidence that is clearly inaccurate or erroneous. (Public Resources Code § 21080(e)(2); *Lucas Valley Homeowners, supra*, 233 Cal.App.3d at 163; *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1352; *see also Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 906 [court observes that “dire predictions by non-experts regarding the consequences of a project do not constitute substantial evidence.”]).

Under CEQA, an agency can only require an EIR when there is “substantial evidence in the record that the project may have a significant effect on the environment.” (CEQA Guidelines § 15064(f)(1).) As such, like a judge in a court case, the City Council here MUST evaluate the evidence submitted by the opponents and determine whether it is credible enough to justify an EIR. (*Friends of “B” Street v City of Hayward* (1980) 106 Cal.App.3d 988, 1002 [court observes that “[c]onflicting assertions do not ipso facto give rise to substantial fair argument evidence.”]; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 755 [court upheld agency’s rejection of contrary expert testimony of traffic impacts finding that it did not qualify as substantial evidence].)¹⁴ The City Council cannot evade its mandatory legal duty simply by citing to the fact that information was submitted by a competing expert.

1. Pedestrian safety

In a single paragraph of the draft resolution purporting to uphold the Appeal, Staff claims that City residents, neighbors, teachers and others have provided written and oral comments “expressing concern regarding safety of the McDowell Boulevard and Maria Drive intersection due to traffic volumes and speeds, conflicts with pedestrians, and increased activity resulting from the [Project]. . .” The resolution refers to two commenters who “observed pedestrian/vehicle collisions and near-collisions in the Project area,” refers to another commenter who stated that “school-aged children walk home by themselves, and the crosswalk is already a danger,” cites a commenter “expressing concern about heavy traffic and foul balls getting hit next to a busy street” and another commenter “observing cars run stop signs while working at the snack shack at Murphy Field, and noting Maria Drive is heavily traveled and one of the main streets in the area.” Such comments do not constitute substantial evidence of impacts for numerous reasons.

¹⁴ (*See also Jensen, supra* [upholding MND for transitional housing project because claims of significant noise impacts were not supported by substantial evidence]; *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 786 [rejecting challenge to MND where challenging expert’s data lacked foundation and was based on clearly erroneous assumptions]; and *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 958 [upholding MND for distribution facility because there was no substantial evidence in the record that impacts to water quality, riparian habitat, and traffic conditions were not adequately mitigated].)

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 18

First, the comments refer exclusively to existing conditions and provide no evidence whatsoever that the Project may result in a significant effect on the environment. A “significant effect on the environment” means “a *substantial*, or *potentially substantial*, adverse *change* in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.” (CEQA Guidelines § 15382.) The S. McDowell Boulevard/Maria Drive intersection is signalized and contains sidewalks on all sides as well as a striped pedestrian crosswalk, pedestrian signals, and curb ramps. Section 3.16(f) of the MND notes that *the Project “does not make any substantial changes to pedestrian facilities and is not expected to pose a hazard to pedestrian safety.”* (MND, p. 57; *see also* Staff Report, pp. 17-19 and Attachment 8, pp. 11-13.) Nevertheless, the Project was conditioned to implement improvements to enhance the pedestrian facilities onsite, at the intersection of S. McDowell Boulevard/Maria Drive and along Maria Drive.¹⁵ As such, the MND appropriately concludes that “impacts associated with pedestrian safety will be less than significant.” (*Id.*) The MND’s conclusions in this regard were validated by City Staff, embraced by the City Planning Commission, and are fully supported by substantial evidence in the record, including multiple reports prepared by expert traffic consultants, including multi-day video taken of the intersection while school was in session and Little League playoffs were underway.

Second, the generalized claims raising dire predictions by non-experts are refuted by expert analysis based on empirical data. (*See, e.g.*, Traffic Impact Study Update (CHS Consulting Group, March 2018) [under existing plus project, background plus project, and cumulative plus project conditions, the intersection of Maria Drive and McDowell Boulevard will operate at level of service (“LOS”) B or better conditions]¹⁶ and Supplemental Pedestrian Safety Analysis, CHS Consulting Group, June 2018 [based on actual surveys showing a low level of pedestrian crossings at the Maria/McDowell intersection coupled with five years of statistics showing a low level of vehicle-pedestrian collisions at that intersection, the Project traffic consultant reasonably concluded that any potential impacts to pedestrian safety were less than significant and thus required no mitigation].) This is unlike the situation in *Protect Niles* where the project degraded traffic operations at a nearby intersection to LOS F (gridlock) conditions and the project traffic consultant recommended a specific traffic safety mitigation measure that the decision-makers

¹⁵ For instance, fuel delivery trucks will be barred from entering and exiting on Maria Drive; Project traffic will be prohibited from entering in the two westerly driveways on Maria Drive; damaged sidewalks, driveways, and curb ramps must be replaced adjacent to the Property; a new, accessible and directional pedestrian ramp must be installed at the northeast corner of S. McDowell Boulevard/Maria Drive; and a pedestrian crossing warning sign must be installed at the proposed driveway entrances.

¹⁶ Even this level of service, reflecting stable traffic flows with minor delays, may be overstated given that the Planning Commission conditioned the Project to prohibit Project traffic from entering the Project site from two of the three driveways on Maria Drive.

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 19

failed to impose on the project. Moreover, a generic claim that the Project will increase traffic and thereby impact pedestrian safety could be leveled against any project. And, as noted by the expert traffic consultant, the majority of Project traffic is already on the relevant street network.

Third, several of the comments relate to an entirely different intersection (*e.g.*, Maria Drive/Park Lane) located to the east of the Shopping Center. Obviously comments about a different intersection are not relevant to conditions at the S. McDowell Boulevard/Maria Drive intersection. (*Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877 [reliance on noise impacts for a different project in a different location did not constitute substantial evidence of a fair argument of significant noise impacts]; *Leonoff, supra* [evidence of traffic impacts at other intersections did not constitute substantial evidence of a fair argument of traffic impacts at project intersection]; and *Citizens for Responsible Development v. City of West Hollywood* (1995) 39 Cal.App.4th 490, 502 [letters from state historic preservation officer relating to different site were not relevant to project before agency].)

Fourth, comments referring to “near misses” are likewise subjective, speculative, and unsubstantiated. Maria Drive, a two-lane connector road, is not identified by any plan or study as “one of the main streets” in the area. Moreover, as the photos attached hereto as Exhibit G plainly show, a foul ball net and chain link fence separate the Little League field from Maria Drive. As such, claims of children running into the street to chase foul balls are gross distortions of reality and seemingly raised simply to incite fear.

Fifth, in response to the comment that there are school-aged children that walk home alone, it is worth noting that the school entrances and drop-off/pick-up points to McDowell Elementary School are accessed by the opposite side of the school property on McGregor Avenue, *i.e.*, furthest from the Project site. Children walking to the school from the east would cross at the dedicated crosswalks at Maria Drive/Park Lane and continue down Park Lane. (*Id.*) Children walking to the school from the west were observed using the southern leg of the crosswalk to cross South McDowell.

Finally, to the extent that there may have been previous issues at the S. McDowell Boulevard/Maria Drive intersection, City Staff investigated them and found that they had no merit. In June 2015, Maureen Rudder, then-Principal of McDowell Elementary wrote to the City Council complaining that signal modifications made by the City resulted in the intersection becoming less safe for pedestrians. (*See Exhibit H.*) She noted that after helping to safely cross large groups of students on a field trip, certain vehicles had little time to turn left onto southbound McDowell. (*Id.*) Then-City Engineer Curtis Bates responded to then-City Manager John Brown that the City “absolutely looked at pedestrian safety and crossing timing” when adding flashing yellow arrows to alert drivers making left turns onto Maria Drive to yield to opposing through traffic

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 20

(vehicles/pedestrians/bicycles).¹⁷ (*Id.*) Mr. Brown directed an employee to observe the operations and reported that “everything is operating as designed.” (*Id.*)

In connection with his review of the Project, Mr. Brown confirmed the “existing signal timing is adequate for pedestrians.” (*Id.*) Senior Civil Engineer Jeff Stutsman concurred noting that the changes were made based on a professional traffic report prepared by W-Trans given that “there were too few potential conflicts to justify protective operation or protected only operation.” (*Id.*)

In sum, the generalized comments regarding pedestrian safety are speculative, unsubstantiated, and/or directly contradicted by expert, factual analysis. As such, they do not constitute substantial evidence of a fair argument of significant environmental impacts and cannot lawfully be relied on as the basis to order preparation of an EIR.

2. Health risk

Citing correspondence submitted by Fox and Kapahi on November 30, 2018 and December 3, 2018 criticizing the Project HRA prepared by Illingworth & Rodkin and the acceptance of the HRA by BAAQMD, the resolution purporting to uphold the Appeal claims that there is a “disagreement among experts” such that an EIR must be prepared. As explained below, such claims were found to NOT be credible by BAAQMD, City Staff, and Illingworth & Rodkin. As such, they do not constitute substantial evidence of a potentially significant impact and cannot legally be relied upon to require an EIR.

BAAQMD has opined that the Fox/Kapahi materials are not substantial evidence. (*See* Staff Report, Attachment 14.)¹⁸ City Staff has stated that the Fox/Kapahi materials and related claims made by others do not constitute substantial evidence. (Staff Report, pp. 24, 25, 28; *see also* Staff Report, Attachment 6-8, pp. 3-11 and Staff, Report, Attachment 7, pp. 19-21.) And, Illingworth & Rodkin, an expert air quality consulting firm, has concluded that such materials are not substantial evidence.¹⁹ (Staff Report, Attachments 13, 22, and 25.)

¹⁷ The Project’s expert traffic engineer notes that the City’s modifications to the signal in this regard are in accordance with uniform traffic control device standards.

¹⁸ (*See, e.g., San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 625 [lead agency properly relied on comments from responsible agency in determining that significant impacts would not occur].)

¹⁹ Illingworth & Rodkin is respected and reputable firm. It was located in Petaluma until September 2018 and is now located in neighboring Cotati. Its consultants have performed air quality, noise, and other environmental reports for agencies and projects throughout the Bay Area and State, including many in Petaluma.

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 21

The Project's potential health risks have been the subject of at least three different HRAs prepared by Illingworth & Rodkin and extensively reviewed by City Staff. The HRAs were prepared in accordance with best industry standards and comport with all applicable regulatory guidance. The Project's health risk were even evaluated under two separate methodologies—ISCST3 and AERMOD. The Project's health risk was consistently found to be lower than established regulatory standards for all categories of sensitive receptors: infants, students, teachers, and residents.

On the day of the first scheduled City Council hearing on the Appeal, Fox/Kapahi submitted a health risk assessment claiming that the Project would result in significant health risks. In their October 10, 2018 report (Staff Report, Attachment 13), Illingworth & Rodkin note that Fox/Kapahi wrongly based their "analysis" on Santa Rosa wind data as opposed to Petaluma data even though analysis of health risk is heavily dependent on the use of correct meteorological information. Fox/Kapahi also overstate diesel emissions by an approximate factor of ten by overestimating the amount of diesel sales and the number of vehicles as well as by incorrectly averaging the emission rate for all vehicle types. Fox/Kapahi likewise overstate the amount of benzene emissions, citing higher emission factors from another air district, and then modeling even higher emissions than the cited values.

In a November 8, 2018 letter to the City, Damien Breen, Deputy Air Pollution Control Officer with BAAQMD concurred with Illingworth & Rodkin's responses, citing "several key concerns" with the Fox/Kapahi analysis. (See Staff Report, Attachment 14.) Conversely, Mr. Breen accepts the updated analysis performed by Illingworth & Rodkin using the AERMOD model and states that BAAQMD has no further comments on the Project's HRA.

City Staff acknowledges that "[t]he expert input received from BAAQMD supports the less than significant finding of the IS/MND regarding health risk impact from the proposed Safeway Fuel Center. The Safeway Fuel Center would result in less than significant impacts to health risk due to construction and operation of the proposed Safeway Fuel Center because emissions levels and exposure risk to adjacent sensitive receptors fall below levels of significance." (Staff Report, p. 25.)

In a November 30, 2018 supplemental "analysis," Fox/Kapahi used the same flawed modeling assessment originally provided, but then employed a hybrid meteorological data set, combining Petaluma wind data with Santa Rosa meteorological data. As explained in the December 2, 2018 response from James Reyff of Illingworth & Rodkin (Staff Report, Attachment 22), "[b]y applying an artificial, misleading, and erroneous hybrid meteorological data set to their previous analysis, Fox and Kapahi have compounded the numerous key concerns that we and BAAQMD have previously identified." Mr. Reyff went on to observe that Fox/Kapahi created a "Frankenstein meteorological data set that is not acceptable in practice and fails to provide an accurate assessment of the Project's health risk."

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 22

In a December 3, 2018 comment letter, Fox/Kapahi further criticized the Project HRA and BAAQMD's acceptance of it, citing generalized concerns about the health risk associated with gas stations. Illingworth & Rodkin responded on December 3, 2018 (Staff Report, Attachment 25) indicating that the Project HRA comports with accepted regulatory guidance and procedures. Specifically, Illingworth & Rodkin correctly note that the meteorological data used "is accepted by the [U.S.] EPA for regulatory modeling purposes." It also pointed out that use of the 30-year exposure duration "yields more conservative results" and is consistent with BAAQMD recommendations and guidance. It further noted that BAAQMD concurred in the benzene emissions factors used in the Project HRA whereas the emissions factors relied on by Fox/Kapahi are greatly overstated due to, among others, failure to account for California fueling station vapor recovery standards.

In short, the City Council cannot lawfully rely on Fox/Kapahi materials in ordering an EIR and must instead adopt the MND the Project.

E. If the City Council were to uphold the Appeal in whole or in part, it would deprive Safeway of its constitutionally protected rights to due process.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits a state from depriving a person of life, liberty, or property without due process of law. (*See also* Cal. Con., art. I, sec. 7.) The Due Process Clause has both procedural and substantive elements. And a violation of either subjects a public agency to liability for damages and attorneys' fees. (42 U.S.C. §§ 1983, 1988.) As set forth below, were the City to uphold the Appeal, in whole or in part, it would be liable for violating Safeway's procedural and due process rights.

1. Procedural Due Process

In accordance with principles of procedural due process, the applicant in a quasi-judicial proceeding is entitled to reasonable notice and opportunity to be heard. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612.) This right includes a fair hearing before unbiased and disinterested decision-makers. (*Nasha L.L.C. v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 483). A decision-maker who has preconceived views of the outcome of the proceeding without regard for the evidence is not an impartial and unbiased decision-maker. (*Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547; *Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90 ["Just as in a judicial proceeding, due process in an administrative hearing also demands an appearance of fairness and the absence of even a *probability* of outside influence on the adjudication."] (emphasis in the original).)

"An individual member ordinarily cannot vote on a matter in which that member is interested. If the member does, the action taken by the body of which he or she is a member is invalidated." (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1170, 1173 [court

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 23

overturns project denial based on involvement of decision-maker who expressed his opposition to the project prior to the public hearing[.]) Such a decision-maker must be disqualified from further participation in the matter. (*Mennig v. City Council* (1978) 86 Cal.App.3d 341, 351.) If a majority of members of a decision-making body are disqualified from acting, it is appropriate to allow the action of an inferior decision maker to stand as the final decision. (*Id.* at 351-352]; *accord, Sabey v. City of Pomona* (2013) 215 Cal.App.4th 489, 498.)

Based on certain documents received from the City only recently in response to Safeway’s May 24, 2018 and November 19, 2018 Public Records Act requests, it is plain that at least six members of the City Council—Mayor Teresa Barrett, Vice Mayor Kevin McDonnell, and Councilmembers Mike Healy, Kathy Miller, Gabe Kearney, and D’Lynda Fischer— are not impartial and unbiased when it comes to the Project. (The emails and other documents obtained to date indicating bias of these members are provided in Exhibit I, Exhibit J, Exhibit K, Exhibit L, Exhibit M, and Exhibit N, respectively.)

As such, these members must recuse themselves from any action to uphold the Appeal. Any bias exhibited by these members against the Project would not preclude them from denying the Appeal. Alternatively, these members as well as the one apparently unbiased member could recuse themselves, thereby resulting in an abstention on the Appeal, which would have the effect of allowing the Planning Commission decision to stand. (Petaluma City Council Rules, Policies, and Procedures, Section VI.D [“If there is no action by an affirmative vote, the result is [no] action. If the matter involves an appeal, and an affirmative vote does not occur, the result is that the decision appealed stands as decided by the decision-making person or body from which the appeal is taken.”].)

a. Mayor Teresa Barrett

Mayor Barrett has expressed her opposition to the Project since 2013 and has used her position on the BAAQMD board to lobby against it. (“Gas station ignites public controversy,” *Argus-Courier*, August 29, 2013 [Ms. Barrett is quoted as opposing the Project, noting “It’s really not what we’ve intended for our city.”].)

At the August 19, 2013 City Council hearing, then-Councilmember Barrett noted she serve as liaison to BAAQMD and had traded information with the “head person” there regarding the Project.

At the March 3, 2014 hearing to consider a moratorium, Ms. Barrett stated: “*I don’t like this project*. I don’t like that it’s right next to these sensitive receptors.” She also directed Staff to investigate whether the Project would qualify as a “drive-thru” so as to be disallowed under the City Code. (*See also* “Temporary ban on Petaluma gas station fails,” March 4, 2014, *Argus-Courier*.)

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 24

In a June 25, 2018 email to Linda Hartrich, an Appellant, Ms. Barrett, a BAAQMD board member, indicated she intended to “follow up” with BAAQMD regarding the Project’s throughput of gasoline because she “did not know how the threshold of 25.7 million gallons was determined,” and noted that it “seemed like an awfully high number to me.” Ms. Hartrich thanked her for her efforts.²⁰

During the June 26, 2018 Planning Commission, then-Councilmember Barrett emailed City Staff and then-Mayor Glass: “I am watching the planning commission meeting and I am stunned that *Safeway employees and consultants* are speaking as part of public comment. They *should be stopped from speaking once they are identified as Safeway shills* and allowed to speak when Safeway has a summation or reminded that they could have spoken before public comment period.”²¹ Mayor Barrett previously used profanity in referring to Safeway and emailed a Planning Commissioner that Safeway was “unbelievable aggressive” and in a “league of their own” in seeking Project approval from the Planning Commission.

Ms. Barrett was also in frequent email contact with at least one of the Appellants. On July 8, 2018, she emailed then-Mayor David Glass that Bernie Album was working with a group to appeal the Project and that she was forwarding emails from others “who ask what they can do.”²² On July 9, 2018, she emailed Mr. Album to thank him for his work on the Appeal. She also cautioned Mr. Album about creating a public paper trail of her correspondence with him, emailing him on July 7, 2018: “Bernie, better not to include me in these emails,” and in regard to the draft appeal letter writes: “I couldn’t open it, but it is probably best I not see it.” Although Ms. Barrett received a copy of the filed Appeal on July 12, 2018, she emailed Annette Bock on August 20, 2018 that she had not seen the Appeal.

In a July 25, 2018 email to Ms. Hartrich, including a Staff analysis confirming the recommended distances between a new school and certain uses do not apply to the Project, she wrote: “I’m afraid the standards are not as high as either you or I would want.” (See also July 8, 2018 email from David Glass to Ms. Hartrich [“The property zoning permits such a use, and it appears the regulations that are in place under the law for such use in proximity to schools do not meet the threshold to withhold approval of a project such as this. This project will comply with

²⁰ Ms. Barrett’s statements in this regard are in conflict with her comment during the March 3, 2014 City Council hearing regarding the proposed moratorium, wherein she confirms that she spoke to BAAQMD and was informed that the figure was derived from BAAQMD’s screening-level analysis and understood that it was well over the amount of gasoline that Safeway would sell.

²¹ Emailing decision-makers during a public meeting violates the intent if not the letter of the City Council Policy Governing the Use of Electronic Communications During Public Meetings. (City Council Resolution No. 2012-026.)

²² When Mr. Album previously expressed that he could not garner sufficient support for the Appeal and was “giving up,” Mayor Barrett replied that “this is NOT a win for Petaluma.”

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 25

all California laws regarding such issues as pollution.”].) She nonetheless voted in favor of the Resolution, which, like the Staff-recommended resolution, includes a provision claiming that “CARB recommended setbacks for gas stations may be inadequate.”

In an August 20, 2018 email to Annette Bock, Mayor Barrett wrote: “*I do not support the idea of putting this project in this place . . .*”

On September 1, 2018, Mayor Barrett wrote to Angelo Sacerdote to express her “concern[s]” with the Project, stating she was “very aware of the issues.”

On September 12, 2018, Mayor Barrett referred to the upcoming hearing on the Project as “one of a handful that I feel absolutely terrible about.”

In response to an October 5, 2018 email from Ellen Webster, a Board Member of the Petaluma City Schools District, urging her to vote yes on the Appeal and the EIR, Mayor Barrett wrote: “Keeping my fingers crossed until I see the staff report!” and signed off “Ever hopeful, Teresa Barrett.”

Project opponent Jason Davies emailed Mayor Barrett on October 8, 2018 to state that it “just pains me to see us going backwards like this when we already have existing [gas] stations and we need to be getting ourselves off our addiction to fossil fuels.” Ms. Barrett responded, “I’m totally on the same page and I’m cautiously hopeful.”

Finally, during her successful race for Mayor in 2018, *Ms. Barrett emailed her campaign manager that she was making her opposition to the Project known personally to constituents as she walked door-to-door*, but refused to provide a formal written response on Facebook out of fear she would have to recuse herself from voting on the Project. (October 21, 2018 email from Teresa Barrett to Chris Samson.)

b. Vice Mayor Kevin McDonnell

In his campaign for City Council, Vice Mayor Kevin McDonnell stated that he was opposed to the Safeway gas station Project. (“Ballot set in Petaluma election races,” August 23, 2018, Argus-Courier.) He also participated in a candidate forum on October 13, 2018 in which he expressed his opposition to the Project. He also posted his opposition to the Project on his campaign website, noting his ownership of an electric car and questioning whether gas stations were a “business model we want to encourage.”

In Facebook posts by No Gas Here and others, Mr. McDonnell is listed as being opposed to the Project. And, in response to a questionnaire from Bike Petaluma, then-City Council candidate McDonnell wrote: “When developments come through the Planning process, we must create incentives to move away from cars. They only create pollution and traffic.”

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 26

c. Councilmember Mike Healy

Before the Project application was even complete, Councilmember Healy registered his strong opposition to it. At the August 19, 2013 City Council hearing, in response to testimony from independent gas station owners, Mr. Healy questioned where there were legislative changes that could be made in advance of *the Project* coming through, claiming it *would set a “dangerous precedent,”* noted his understanding that the gas station owners had retained local counsel and that the issue was “not going away lightly.”

He authored an op-ed article against the Project. (“Bennett misses the point on moratorium,” a copy of which along with the original editorial entitled “City Council is fighting the wrong battle,” is attached hereto.) This alone would disqualify him from taking any action concerning the Project. (*Nasha L.L.C., supra*, 125 Cal.App.4th at 483-484 [article opposing project written by planning commission member gave rise to an unacceptable probability of actual bias and was sufficient to preclude the commissioner from serving as a “reasonably impartial, noninvolved reviewer.”].)²³

As noted previously, *Councilmember Healy was the driving force behind both the proposed moratorium against gas stations and the proposed fee increase on gas stations.* (See Minutes of January 27, 2014, February 24, 2014, March 3, 2014, and July 7, 2014 City Council meetings; see also “Temporary ban on Petaluma gas station fails,” March 4, 2014, Argus-Courier and May 2014 email exchange with Ross Jones.) He appears to have taken these actions at the behest of competing gas station owners and a local developer. (*Id.*; see also February 28, 2014 email exchange between Mike Healy and Arash Salkhi;²⁴ see also March 3, 2014 letter from James Dombrowski, a local anti-trust attorney that has sued Safeway on behalf of other gas station operators; March 4, 2014 Argus-Courier article, “Temporary ban on Petaluma gas station fails,” noting Healy proposed a moratorium on gas stations because of what he characterized as unfair

²³ (See also <https://patch.com/california/petaluma/to-recuse-or-not-recuse-that-is-the-question> [August 21, 2012 Petaluma Patch article “To Recuse or Not Recuse That Is the Question,” refers to a recusal by Planning Commissioner Bill Wolpert of participation in the hearing on the Deer Creek shopping center project based on his authorship of a letter to the City Council critical of that project].)

²⁴ In that email exchange, Mr. Salkhi wrongly informs Mr. Healy that Safeway applied to BAAQMD for a larger amount of gasoline throughput. As made clear by City Staff, that throughput was a value entered by BAAQMD based on their screening-level analysis. Moreover, Franklin Dickey of BAAQMD provided information on the Project to Mr. Salkhi via email whereas Safeway was informed that it had to submit a formal Public Records Act request to receive information on its own project. (See December 13, 2018 email from Fred Tanaka to Natalie Mattei.)

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 27

competition . . .”; and August 29, 2017 email from Mike Healy to Argus-Courier reporter Hanna Beausang providing an update on Dombrowski’s lawsuits against Safeway.].)

On January 27, 2014, Mr. Healy proposed an urgency ordinance that would bar the processing of any gas station application pending adoption of legislation to provide discretionary approval on that application and give Safeway an opportunity to convince us that it would be good thing for a community, noting that may be a “difficult thing for them to do.”

At the March 3, 2014 hearing on the *moratorium*, Mr. Healy cross-examined Safeway’s then-Real Estate Manager Mary Davi regarding estimated sale tax figures and its fuel pricing practices, referring to Safeway as “enormously aggressive” in regard to pricing. He also asked Staff detailed questions regarding the Project’s traffic impacts even though the traffic study was not then complete and the Project was not before the City Council. Without any evidence of impacts, he suggested reducing the number of fuel pumps in half. ***Healy concluded by stating that the Project is on “auto-pilot” and that he was not “particularly happy” about it.***

In an August 19, 2018 email not produced by Councilmember Healy in response to Safeway’s Public Records Act request, but attached to a January 15, 2019 letter from Janice Cader Thompson to the City, Mr. Healy wrote to Stephen Gale of the Sonoma County Democratic Party Central Committee (“SCDPCC”) regarding the opening of its headquarters elsewhere in the Washington Square Shopping Center. ***In that email, Mr. Healy expresses his dislike for Safeway, Fulcrum, and the Project:***

I don’t get the impression that the SCDPCC has any idea of the steaming pile of horse poop of a local political mess it has stepped into with the choice of this HQ. The building you will be using is scheduled to be torn down soon for a Safeway fueling center 100 feet from an elementary school serving a 90%+ Hispanic population. The parents, the school district & the neighborhood are all outraged. Yet Safeway & the landlord persist. I will not be attending the grand opening or having anything to do with the HQ while it is in operation. Many in Petaluma will regard this choice of HQ as a slap in the face.

As noted by Ms. Thompson, Mr. Healy wrongly believed that the building to be used for the SCDPCC headquarters was located on the Project site. Despite his mistaken belief, his bias against the Project, Safeway, and Fulcrum are evident.

d. Councilmember Kathy Miller

Councilmember Miller supported the proposed moratorium on gas stations proposed by Councilmember Healy. At that March 3, 2014 City Council hearing on the moratorium, she said this about the Project: ***“This is a project that when I first heard about it, my very first reaction to***

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 28

it was that's a terrible location for this fueling station. And there has been nothing that I've heard that's changed my mind.”

In a January 27, 2015 email, before the MND and associated studies were provided to her, Councilmember Miller wrote to Ernie Barrera of the Petaluma Argus-Courier that she was “*opposed to the gas station location* as I think it will have a terrible impact on traffic, safety and the environment.”

On June 24, 2018, Ms. Miller emailed Project opponent Linda Hartrich, “*I absolutely agree with you that it is a terrible location for a gas station. . . . I will do everything in my power to stop it.*” She forwarded this message to then-City Manager John Brown asking, “*Is there anything we can do to stop this project from going in at this location? It's going to be disastrous for the neighborhood.*” The next day she emailed Mr. Brown, “*I've made no secret of my desire to block this project at this location from the very beginning.*”

In a July 7, 2018 to a Project opponent, Councilmember Miller expressed her “concerns regarding the [Project] location.” By comparison, then-Mayor Glass responded to a similar email from the same Project opponent, noting “under the law as a decision maker, I am required to keep an open mind, review all evidence in the record, and only then am I able to make an informed decision on the matter.”

In an August 3, 2018 email declining attendance to a Petaluma Chamber of Commerce meeting to discuss the Project, Ms. Miller wrote: “For the record, *I think it's a terrible project* because of the location so the Safeway people probably don't want me there anyway.” Notwithstanding her email, she did attend the August 3, 2018 Chamber meeting and expressed her opposition to the Project.

In a September 17, 2018 email to Vice Mayor Healy, Councilmember Miller wrote: “With respect to the gas station tonight, should we push the hearing to allow staff to look at the contentions being raised about the need to do a full EIR. *If we're going to get sued either way, I'd rather vote no on the project.*”

In an October 9, 2018 email to City Manager John Brown, Councilmember Miller expressed her dismay with the staff recommendation that the City Council deny the Appeal and the delay in the preparation of the associated staff report, noting “Staff has had plenty of time to address this. I'm not sure what the reason for the delay is but I don't like it or appreciate it.”

At the December 3, 2018 City Council hearing, *Councilmember Miller admitted that she had concerns about the Project “since the beginning” and that if she had her “druthers” she would “deny it outright.”*

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 29

e. Councilmember Gabe Kearney

Councilmember Kearney supported the proposed moratorium on gas stations proposed by Councilmember Healy in early 2014.

In a July 9, 2018 email to Linda Hartrich, Mr. Kearney stated: “I am well aware of the location of the gas station and it’s inappropriateness. *I have been opposed to it since day one.*”

f. Councilmember D’Lynda Fischer

In Facebook posts by No Gas Here and others, Councilwoman Fischer is listed as being opposed to the Project. Appellants Adriann Saslow and Glenn Rubenstein claim that Ms. Fischer informed them directly that she was opposed to the Project. On her campaign website, she likewise states: “I oppose the future development of fossil fuel gas stations and will work to change our zoning code to reflect this position.”

g. Bias by Staff

The bias by the City Council has also been exhibited by Staff.²⁵

In an August 25, 2014 email regarding resubmittal of the SPAR application, then-City Manager John Brown asks the Safeway representative for sales tax revenues “adjusted for cannibalization.” Planning Manager Heather Hines sent a similar request to then-Real Estate Manager Mary Davi and notified Mr. Brown of her actions.

In a May 9, 2018 email exchange with Planner Tiffany Robbe, *Environmental Planner Olivia Ervin wrote that the Project was “tricky because [the City] does not have to consider use (it’s allowed by right).”* Ms. Robbe responded that “*Yes, that the use question is not really on the table does make it tricky!*”

In a May 18, 2018 email to Planner Lisa Davison, Ms. Ervin advocates that Ms. Davison explore potential significant impacts not identified in the MND prepared by Ms. Ervin and Planning Staff.

In a November 24, 2018 email to Ms. Ervin, Ms. Davison quotes from a summary prepared by a law firm of the *Protect Niles v. City of Fremont* decision, suggesting it could be helpful in justifying an EIR for the Project. This case was cited by City Staff in the Resolution purporting to uphold the Appeal. We explained how it was distinguishable in our December 1, 2018 letter to the City Council. While Ms. Barrett appears to have read our letter and voted in favor of the

²⁵ Documents cited in this paragraph are attached hereto as Exhibit O.

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 30

Resolution, she later emailed Ms. Thompson after the December 3rd hearing, disavowing any knowledge of the *Protect Niles* case.

Responding to the Project architect's correction of his reporting on the number of gas dispensers, Argus-Courier reporter Yousef Baig emails then-City Manager John Brown on July 2, 2018: "That's not why [the Project] struggled to get approval . . ."

In a September 18, 2018 email, Mr. Brown wrote to Mr. Breen of BAAQMD indicating he had called the day before to "discuss our strategy going into last night's meeting, and the revised recommendation for a meeting continuance." Although City officials and/or Project opponents had voiced their concerns with the Project to BAAQMD as early as August 2013 and then again in early August 2018, BAAQMD's letter questioning air quality was submitted at 2:57 p.m. on September 17, 2018. Given the late submittal, the hearing had to be continued causing both delay and additional expense for Safeway and Fulcrum. Ms. Barrett then wrote to Mr. Breen, Mr. Jack Broadbent, and Mr. Brian Bunger of BAAQMD at 3:47 p.m. on September 17, 2018 saying, "Thank you for the letter. I do not have any comments."

In the Staff Report, Staff claims that the "vast majority" of comment letters express opposition to the Project. (Staff Report, p. 12.) Staff does not cite to any quantitative analysis to support this statistic. Moreover, it is contradicted by the evidence in the record. Numerous supporters sent emails, letters and/or testified during the City's six plus year review of the Project. In a poll conducted in June 2018, the results of which were provided to the Planning Commission and are attached hereto as Exhibit P, a clear majority of respondents support the Project. Specifically, fifty-five percent indicated that they support the new Safeway gas station project. Only thirty percent of respondents indicated they were opposed to the Project and fifteen percent were undecided. In addition, more than 2,500 people have signed petitions in support of the Project.

2. Substantive Due Process

The touchstone of substantive due process is the protection of the individual against arbitrary government action; the due process clause was intended to prevent government officials from abusing their power or employing it as an instrument of oppression. (*Wolff v. McDonnell*, (1974) 418 U.S. 539, 558; *Collins v. City of Harker Heights* (1992) 503 U.S. 115, 126.) A violation of substantive due process rights occurs if a government agency's actions are (1) irrational or arbitrary *or* (2) not rationally related to a legitimate government interest. (*Village of Euclid v. Ambler Realty Co.* (1926) 272 U.S. 365; *Lingle v. Chevron* (2005) 544 U.S. 528.) The test is disjunctive. Thus, a property owner need only demonstrate facts to support one of the two bases in order to state a viable due process claim.

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 31

In *Arnel Development Co. v. City of Costa Mesa* (1981) 126 Cal.App.3d 330, 337, the court of appeal ruled that enactment of a zoning ordinance downzoning certain property was arbitrary and discriminatory where enacted without considering appropriate planning criteria and for sole and specific purpose of defeating a single development. (See also *Del Monte Dunes, Ltd. v. City of Monterey* (9th Cir. 1990) 920 F.2d 1496, 1508 [court finds local agency’s land use decision, motivated by “political pressure from neighbors” instead of legitimate regulatory concerns, supported a substantive due process claim] and *Herrington v. County of Sonoma* (9th Cir. 1987) 834 F.2d 1488 [denial of subdivision and subsequent downzoning of property violated property owner’s due process rights given evidence that county’s general plan/subdivision inconsistency determination was irrational and arbitrary and aimed at defeating particular development project].)

In *Sunset Drive Corp. v. City of Redlands* (1999) 73 Cal.App.4th 215, 225, the court found that a complaint filed by a project applicant, alleging the malicious and arbitrary failure of a lead agency to complete and certify an EIR on a project within a 1-year period specified in Public Resources Code section 21151.5(a) stated an action for damages for violation of the applicant’s constitutional due process and equal protection rights.

If the City were to uphold the Appeal, its actions would be arbitrary and irrational, and would constitute an abuse of power, subjecting it to liability also under the substantive process clause. Here, if the City Council were to uphold the Appeal based on documented personal animus towards the Project and/or political pressure from Appellants and others, it would be engaging in precisely the same conduct at issue in *Arnel*, *Del Monte Dunes*, and *Herrington*. In addition, the Project application was deemed complete in September 2014. The City was supposed to complete CEQA review by September 2015 at the latest. As made clear by the *Sunset Drive* case, the City is liable for damages for continuing to delay the Project and not completing CEQA review in a timely manner.

F. If the City Council were to uphold the Appeal in whole or in part, it would deprive Safeway of its constitutionally protected rights to equal protection.

The Fourteenth Amendment to the United States Constitution provides that no state shall deny to any person within its jurisdiction the equal protection of the laws. (See also Cal. Con., art. I, sec. 7.) The concept of equal protection has been defined to mean that no person or class of persons may be denied the same protection of law that is enjoyed by other persons or other classes in like circumstances. (*Hawn v. County of Ventura* (1977) 73 Cal.App.3d 1009, 1018.) A claimant must show that the state “has adopted a classification that affects two or more *similarly situated* groups in an unequal manner.” (*Walgreen Co. v. City & County of San Francisco* (2010) 185 Cal.App.4th 424, 434 [emphasis in the original].) An equal protection challenge to a regulation that does not involve a suspect class or fundamental right must nevertheless bear a reasonable relationship to a legitimate state interest. (*Young v. American Mini Theaters* (1976) 427 U.S. 50. “[A] deliberate, irrational discrimination, even if it is against one person (or other entity) rather

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 32

than a group, is actionable under the equal protection clause.” (*World Outreach Conference Center v. City of Chicago* (7th Cir. 2009) 591 F.3d 531, 538.)

In *Village of Willowbrook v. Olech* (2000) 528 U.S. 562, the U.S. Supreme Court ruled that a plaintiff stated a viable equal protection cause of action based on claims that a municipality required a 33 foot easement from her as a condition of connecting her property to the municipal water supply when it had only required a 15 foot easement from other similarly situated property owners. The Ninth Circuit has likewise upheld equal protection claims brought by property owners that were discriminated against or treated unfairly by local agencies as part of the land use approval process. (*See, e.g., Herrington, supra* [denial of proposed subdivision and subsequent downzoning violated property owner’s equal protection rights where there was evidence that county had approved sizable residential development projects on three other agricultural properties shortly after it rejected the owner’s proposal] and *Del Monte Dunes, Ltd., supra* [allegation that city arbitrarily and unreasonably limited use and development of property and set aside open space for public use, whereas owners of comparable properties were not subject to these conditions and restrictions states viable equal protection claim].)

No other gas station has been subjected to a 6 plus year entitlement process or been required to produce 16 plus technical studies to justify approval of a SPAR application. We have found no cases in Petaluma (or elsewhere for that matter) where a stand-alone gas station on commercially zoned land similar to the Project was required to prepare an EIR. We are also unaware of any published opinion where a court has upheld an agency’s requirement that an EIR be prepared for such a project.

In our September 6, 2018 letter to Heather Hines, we incorporated by reference into this record of proceedings, the City’s recent action on other gas station projects. For most of these projects, the City only required building permits and conducted no CEQA review whatsoever. (*See* City Permit Files Nos. BLDG-17-1089 [Chevron-1440 E. Washington]; BLDG-18-0641 [Chevron-4999 N. Petaluma Boulevard]; and BLDG-18-0215 [Valero-910 Baywood].)

For the two projects that were subjected to CEQA review, the City approved one of them based on a MND. (*See* PLSR-15-0013 [Unocal 76- 4998 N. Petaluma Blvd.].) No traffic or air quality studies were required. The MND stated that “gas stations are not typically large traffic generators given that the majority of traffic trips associated with the use of gas stations are the result of pass-by trips.”

The other gas station proposed by Project opponent Arash Salkhi was approved on July 10, 2018 based on the Class 1 (existing facilities) exemption. (*See* PLMA-18-0001 [Valero-532 E. Washington].) Mr. Salkhi’s project was found exempt even though it was located adjacent to residential uses and involved the relocation and expansion of underground tanks, a project

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 33

component that was shown on the site plan but not specifically disclosed by Staff in its report on the item.

In terms of other locations, in April 2018, the City of Fremont approved a new Chevron gas station, convenience store, and car wash in very close proximity to the housing site at issue in the *Protect Niles* case. That project was also located close to residential uses and congested roadways. Fremont nonetheless found the project to be exempt from CEQA because it was consistent with the development intensity analyzed in the EIR for Fremont's General Plan. (True and correct copies of the staff report and resolution approving that project are attached hereto as Exhibit Q.)

In January 2018, the Gridley City Council (Butte County) denied an appeal filed by competing gas station owners of design review approval of a proposed new ARCO gas station, convenience store, and car wash. The city found the project to be exempt from CEQA pursuant to the Class 32 (infill) exemption. (True and correct copies of the staff report and resolution approving that project are attached hereto as Exhibit R.)

In *Alliance of Concerned Citizens Organized for Responsible Development v. City of San Juan Bautista* (2018) 29 Cal.App.5th 424, the Sixth Appellate District upheld a MND for an ARCO fuel station, convenience store, and quick serve restaurant to be located on a heavily-traveled state highway. That project consisted of 12 fuel dispensing stations, a 2,980 square foot convenience store, and a 3,342 square foot fast food restaurant. The court rejected claims that an EIR was needed due to alleged unmitigated traffic and noise impacts.²⁶

In light of the foregoing, upholding the Appeal and subjecting Safeway to different or more burdensome requirements than imposed on similarly situated property owners would deprive Safeway of its constitutionally protected right to equal protection under the law.

G. If it upholds the Appeal, the City would have to compensate Safeway and the Owners for an unconstitutional taking of the Property.

The Takings Clause of the 5th Amendment to the United States Constitution, made applicable to the states through the 14th Amendment,²⁷ guarantees that private property shall not "be taken for public use, without just compensation." Article I, section 19 of the California Constitution also provides that "[p]rivate property may be taken or damaged for public use only when just compensation . . . has first been paid to . . . the owner." A land use regulation effects an impermissible taking of property if it deprives an owner of all economically beneficial or productive uses of his land (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003) or

²⁶ That project required a conditional use permit in addition to a design review permit.

²⁷ (*See Chicago B&Q R. Co. v. Chicago* (1897) 166 U.S. 226.)

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 34

conflicts with an owner's distinct investment-backed expectations (*Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104); causes the owner to suffer a permanent physical invasion of his property (*Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419); or imposes an exaction in violation of the "essential nexus" and "rough proportionality" standards respectively set forth in *Nollan v. California Coastal Commission* (1987) 483 U.S. 825 and *Dolan v. City of Tigard* (1994) 512 U.S. 374.

A land use regulation that deprives the owner of substantially all economically beneficial or productive use of his land constitutes a taking. (*Lucas v. South Carolina Coastal Council, supra* [property owner entitled to compensation for regulations precluding development of two beachfront lots, thereby depriving owner of all economic use of his property]; *see also First English Evangelical Lutheran Church of Glendale v. County of Los Angeles* (1987) 482 U.S. 304 [property owners are entitled to compensation for temporary taking of their land] and *Monks v. City of Rancho Palos Verdes Estates* (2008) 167 Cal.App.4th 263 [ordinance imposing a moratorium on construction in landslide area deprived landowner of all economically beneficial use and thus constituted a taking].) Courts have recognized that land use regulations that take all economically viable use of only a portion of private property can constitute a taking. (*See, e.g., Twain Harte Associates, Ltd. v. County of Tuolumne* (1990) 217 Cal.App.3d 71 and *Jefferson Street Ventures, LLC v. City of Indio* (2015) 236 Cal.App.4th 1175.)

A regulation may affect a taking even though it leaves the property owner *some* economically beneficial use of his property. (*Kavanau v. Santa Monica Rent Control Board* (1997) 16 Cal.4th 761, 774.) In order to determine whether a taking has occurred when the economic impact is *less* than total, a reviewing court looks to three factors in particular: (i) the economic impact of the regulation on the owner; (ii) the extent to which the regulation interferes with the property owner's distinct investment-backed expectations as to the use of its property; and (iii) the character of the governmental action.²⁸ (*Penn Central Transportation Co. v. New York City* (1978) 438 U.S. 104, 124.)

Based on understandings and assurances from City Staff that the Project was an allowed use, Fulcrum relocated tenants and allowed leases to expire in anticipation of the Project development. Safeway also incurred substantial expenditures in submitting an application and requisite technical studies for the Project. Based on pressure from certain vocal Project opponents, including competing gas station owners, it is clear that the City is now attempting to delay the Project through an EIR in the hopes of making it go away.²⁹ Such an "about face," subjects the

²⁸ This criterion requires a reviewing court to "consider the purpose and importance of the public interest reflected in the regulatory imposition." (*Loveladies Harbor, Inc. v. United States* (Fed. Cir. 2003) 28 F.3d 1171, 1176.)

²⁹ (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 6 [in referring to delay tactics by project opponents under CEQA, court observes that in CEQA cases "time is money" and delays

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 35

City to damages for a taking. (*Lockaway Storage v. County of Alameda* (2013) 216 Cal.App.4th 161 [court upholds award of damages and fees for a regulatory taking against a county based on its inconsistent statements regarding the permitted use of certain land].)

The Owners have not been able to make an economically viable use of the Property for 6 plus years. This is NOT a normal delay in the land use entitlement process and thus subjects the City for liability for at least a temporary taking of the Property. (*Ali v. City of Los Angeles* (1999) 77 Cal.App.4th 246, 254 [upheld award of damages against city for its arbitrary and unreasonable refusal to issue a demolition permit to a hotel owner, finding delay in the regulatory process due to city's position was "so unreasonable from a legal standpoint as to be arbitrary."].)

In sum, were the City Council to uphold the Appeal, it would subject the City to liability for a taking.

H. If the City were to uphold the Appeal, it would be liable for an unlawful interference with contractual relations.

Article I, section 10 of the U.S. Constitution provides that, "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." In order to determine whether an impairment of contract has occurred, courts determine "whether the change in state law has operated as a substantial impairment of a contractual relationship." (*Allied Structural Steel Co. v. Spannaus* (1978) 438 U.S. 234, 244.) This inquiry is usually divided into three components: (1) whether there is a contractual relationship; (2) whether a change in law impairs that contractual relationship; and (3) whether the impairment is substantial." (*General Motors Corp. v. Romein* (1992) 503 U.S. 181, 186.)

The Owners and Safeway have entered into a Lease Agreement of the Property for the Project. Thus, there plainly is a contractual relationship between Owners and Safeway. Moreover, were the City to uphold the Appeal, this would substantially impair that contractual relationship by precluding the use of the Property for which it is proposed to be leased. As noted by the United States Supreme Court in *Allied Structural Steel Co.*, *supra*, 438 U.S. at 245:

Contracts enable individuals to order their personal and business affairs according to their particular needs and interests. Once arranged, those rights and obligations are binding under the law, and the parties are entitled to rely on them.

When examining the substantial impairment, courts often look to the economic harm resulting from the impairment of a contract. (*See Allied Structural Steel Co. v. Spannaus*

and increased cost can make a project less commercially desirable, "perhaps to the point where a developer will abandon it or drastically scale it down."].)

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 36

(1978) 438 U.S. 234, 247.) Safeway would not be able to proceed with the Project until the EIR were completed and the Property would lose all value for Safeway’s intended use. Thus, the impairment in this case is substantial. (*See, e.g., Club Props. v. City of Sherwood*, 2007 U.S. Dist. LEXIS 95080 [property owner stated viable claim that moratorium which precluded the issuance of zoning permits constituted substantial impairment of contract].)

If the City were to uphold the Appeal and subject the Project to an unprecedented EIR and further delays, it would be liable to Safeway and the Owners for an impairment of contract claim. The City would also be exposed to related liability for negligent and/or intentional interference with contract or other economic relationship.

I. Based on the parties’ detrimental reliance on the Property’s land use regulations, the City would be estopped from upholding the Appeal.

Safeway and the Owners properly and foreseeably relied on the Property’s planning and zoning, as well as City Staff’s assurances that the Project was a principally permitted use and would be processed in a typical timeframe and in a normal fashion. To date, Safeway and the Owners have made substantial expenditures in reliance on the approved land use designations and planned infrastructure for the Shopping Center and its environs. These funds were used to enter into the lease of the Property to Safeway, prepare Project plans and environmental studies, and pay other direct and indirect expenses related to operation and maintenance of the Shopping Center.

As a result of the Owners’ and Safeway’s reliance on the City’s plans and policies, the City would be estopped from upholding the Appeal. (*See, e.g., Hock Investment Co. v. City and County of San Francisco* (1989) 215 Cal.App.3d 438, 448-449 [if property owner reasonably and detrimentally relies upon agency’s administrative rule, agency would be estopped from taking subsequent action in contravention of rule]. The court in *Kieffer v. Spencer* (1984) 153 Cal.App.3d 954, 964 observed that estoppel was proper when a city “chose to pursue a course of conduct (for reasons not entirely clear) not only detrimental to petitioners but to public trust in local government.” (*Accord, Woody’s Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1028 [when a local agency “chang[es] the rules in the middle of the game,” this “does not accord with [a] fundamentally fair process.”].) Were the City to uphold the Appeal, it would run afoul of these guiding principles. The City’s plans and assurances that Safeway and the Owners relied upon—even more than the simple administrative rule at issue in *Hock*—provide a substantial basis for estoppel against the City here.

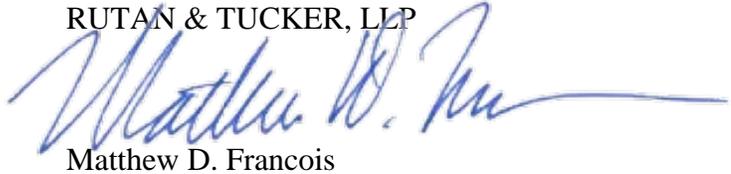
In closing, we respectfully urge you to deny the Appeal or abstain from acting on it. These are the only lawful actions that the City Council can take with respect to the Appeal. Any other action would expose the City to litigation and liability for damages and attorneys’ fees.

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
January 23, 2019
Page 37

Thank you for your consideration of Safeway's views on this matter. Representatives of Safeway, including the undersigned, will be in attendance at your January 28, 2019 hearing on the Appeal. In the meantime, please do not hesitate to contact me with any questions regarding this correspondence.

Very truly yours,

RUTAN & TUCKER, LLP



Matthew D. Francois

MDF:mtr

cc: Eric Danly, City Attorney, City of Petaluma
Scott Brodhun, Interim City Manager, City of Petaluma
Heather Hines, Planning Manager, City of Petaluma
Olivia Ervin, Principal Environmental Planner, City of Petaluma
Claire Cooper, City Clerk, City of Petaluma
Natalie Mattei, Senior Real Estate Manager, Safeway, Inc.
Mark Friedman, President, Fulcrum Property

EXHIBIT A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

McCORKLE EASTSIDE
NEIGHBORHOOD GROUP et al.,
Plaintiffs and Appellants,
v.
CITY OF ST. HELENA et al.,
Defendants and Respondents.

A153238
(Napa County
Super. Ct. No. 17CV000205)

Appellants McCorkle Eastside Neighborhood Group and St. Helena Residents for an Equitable General Plan opposed the development of an eight-unit multifamily residential building at 632 McCorkle Avenue. They filed a lawsuit challenging the actions of respondents the City of St. Helena (City) and the City Council of St. Helena (City Council) in approving a resolution granting demolition and design review permits to property owner and real party in interest Joe McGrath. When the trial court denied their petition for peremptory and administrative writ of mandate (Code Civ. Proc., §§ 1085, 1094.5), appellants filed this appeal. Appellants contend (1) the City violated the California Environmental Quality Act (CEQA; Govt. Code, § 21000 et seq.) because the City Council failed to consider aspects of the project other than design review; and (2) the City abused its discretion under CEQA by approving the demolition permit and design review without requiring an environmental impact report (EIR) based on its determination that the proposed project met the requirements for a Class 32 (infill)

categorical exemption under 14 California Administrative Code section 15332 (CEQA Guidelines). We affirm.

I. BACKGROUND

The planning and zoning law establishes the authority of most local governmental entities to regulate the use of land. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 518–519, fn. 18.) “Zoning laws regulate land uses in two basic ways. Some uses are permitted as a matter of right if the uses conform to the zoning ordinance. Other sensitive land uses require discretionary administrative approval pursuant to criteria in the zoning ordinance. ([Govt. Code,] § 65901.) They require a conditional use permit.” (*Neighborhood Action Group v. County of Calveras* (1984) 156 Cal.App.3d 1176, 1183.) A conditional use permit contemplates the review of individual applications using sound principles of zoning and planning and is discretionary by nature. (See *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1224.)

In 2015, the City began the process for amending the housing element of its general plan to conform with state policies by committing to eliminate the conditional use permit requirement for multi-family dwellings within High Density Residential (HR) districts. In 2016, the City amended its zoning ordinance to comply with this commitment. Section 17.44.020(C) of the St. Helena Municipal Code makes “[m]ultiple-family dwellings, apartments and dwelling groups consistent with the density requirements of this chapter” a permitted use within the HR district. Section 17.44.030 provides a list of uses requiring use permits, and multi-family dwellings are not on that list. Design review is still required for multi-family residential units within an HR district under section 17.44.040.

Real party in interest Joe McGrath purchased the 770-acre lot at 632 McCorkle Avenue, an area within the City’s HR district, intending to build multi-family dwellings on the property. The lot contained a dilapidated single-family home and its soil had been contaminated with lead by a prior occupant. McGrath committed to remediating this contamination with Napa County. He submitted an application for a demolition permit to demolish the existing structure as well as a design review plan for the proposed eight

units. The application was deemed complete by the City's Planning Commission staff in October 2016, who prepared a report concluding (1) the proposed project fell within the Class 32 infill exemption of CEQA Guidelines section 15332 and was thus exempt from CEQA; and (2) the project met the criteria for design review.

The project came before the full Planning Commission in a hearing held on December 6, 2016. It was opposed by several neighbors and by appellants, who argued the project should not be approved because: (1) the site of the proposed development was contaminated; (2) McCorkle Avenue contains no storm drains and routinely floods; (3) there is little public open space in the area and children are required to play in the street; (4) the space required for a firetruck turnaround was not adequate; (5) the proposed project was located in a historical district, and was not consistent with the design of four historical homes located across the street; and (6) the proposed project was next door to the pending multi-family Brenkle project, and the cumulative effects of those projects would be significant.¹ The City Attorney advised the Planning Commission that because the St. Helena Municipal Code now did not require issuance of a use permit for multi-family dwellings in HR districts, the Commission was required to approve the project so long as it met the design review criteria. Issues pertaining to use, such as parking, traffic, safety and soil remediation, were not to be considered. The City Attorney indicated he was confident that a Class 32 exemption applied to the project under CEQA Guidelines section 15332, but that in any event CEQA would not apply to a nondiscretionary project such as this.

The Planning Commission approved the demolition and design review permits by a 2-1 vote in a resolution dated December 6, 2016. It found the project was exempt from CEQA under CEQA Guidelines section 15332 and would not cause any significant environmental effects. One commissioner who voted in favor of the project noted on the

¹ Some of these arguments challenge the existing environment's effect on future users of the project. Analysis was not required under CEQA for this purpose. (*California Bldg. Industry Assn. v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, 386.)

record this was “a tough one,” but she had voted to approve “based on what the restrictions of our discussion and our—our jurisdiction are, specific to design review.”

Appellants appealed to the City Council.² A hearing was held on January 24, 2017. The City Attorney advised the City Council it was limited to “the design aspects of this project” and reiterated that a Class 32 exemption applied but if it did not, review was still limited due to there being no use permit required.

The City Council voted 3-2 to deny the appeal and approve the action of the Planning Commission. It issued a resolution making findings in support of its approval for design review. It additionally made findings in the resolution that the project was consistent with the general plan’s goals of permitting infill development, encouraging a mix of housing types and prices, addressing workforce housing, encouraging higher density where appropriate, and allowing the conversion of single-family homes to multi-family housing. The resolution addressed specifically the arguments that the project was not consistent with the general plan.

The resolution also found that a Class 32 infill exemption to CEQA applied and specifically found the proposed project would not “result in any significant effects relating to traffic, noise, air quality or water quality” within the meaning of CEQA Guidelines section 15332(d). The resolution stated the CEQA exemption was consistent with the City’s limited discretion to consider or address environmental impacts: “Multi-family residential land uses are permitted by right in the HR District. Thus, in the context of this design review approval, the Planning Commission’s authority/discretion is limited to (design related) concerns stemming from the only discretionary actions required for project approval. The City Council’s discretion on appeal is similarly limited. Section 17.164.010 of the Zoning Ordinance expressly restricts the Planning Commission’s and City Council’s discretion during design review to the general form, spatial relationships and appearances of the project’s proposed design, and Section 17.164.040C expressly

² Under sections 17.164.080 and 17.08.180(A) of the St. Helena Municipal Code, a land use application in the City of St. Helena is heard initially by the Planning Commission and is appealable to the City Council.

precludes the Planning Commission and City Council from disapproving a proposal for non-design related reasons. . . . [¶] Accordingly, the City’s discretion, and thus scope of its CEQA review, is limited to design issues such as scale, orientation, bulk, mass, materials, and colors, and it has no authority or ability to meaningfully address non-design related issues or impacts by imposing conditions of approval or mitigation measures. . . . The Council takes quasi-adjudicative notice of case law that has determined that, in situations where an agency’s discretion to deny or consider a particular activity is limited (such as the proposed residential land use at the project site) its approval decision is considered ministerial and CEQA does not apply or CEQA review is limited to the extent of the discretion.” The City Council found that even if the project was not exempt from CEQA under the Class 32 infill exemption, “and some level of CEQA review thus were required, the City would nevertheless be allowed to undertake only limited review based on design-related environmental issues, not the use-related issues asserted by the appellants’ argument. The Council finds that City staff has demonstrated that the project will not result in any significant impacts, whether design-related or otherwise, and the appellants have not provided any substantial evidence to the contrary.”

Appellants filed a petition for writ of mandate and first amended petition for writ of mandate against the City and City Council, alleging violations of CEQA and local zoning laws. The City and City Council answered and, after briefs were filed, a hearing was held. The trial court denied the petition.

II. DISCUSSION

A. *Standard of Review*

We review an agency’s determination that CEQA does not apply to a project for abuse of discretion. (Pub. Res. Code, §§ 21168 [quasi-adjudicative proceedings], 21168.5 [quasi-legislative decisions]; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1374–1375.) “Abuse of discretion is shown if (1) the agency has not proceeded in a manner required by law, or (2) the determination is not supported by substantial evidence.” (*Gentry*, at p. 1375.) On appeal, our task is the same as the trial court’s, and

we review the administrative record independently. (*Id.*, at pp. 1375–1376.) The legal determination of whether an approval is exempt from CEQA as a ministerial action is reviewed de novo. (*Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 303.) So is the interpretation of any local ordinance. (*Brookside Investments, Ltd. v. City of El Monte* (2016) 5 Cal.App.5th 540, 548, fn. 4.)

B. General Principles

“ ‘The basic purposes of CEQA are to: [¶] (1) Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities. [¶] (2) Identify ways that environmental damage can be avoided or significantly reduced. [¶] (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible. [¶] (4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.’ ([CEQA Guidelines], § 15002).” (*Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 285–286 (*Tomlinson*)). CEQA is designed to compel government to make decisions with environmental consequences in mind. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 393.)

“To achieve these goals, CEQA and the implementing regulations provide for a three-step process. In the first step, the public agency must determine whether the proposed development is a ‘project,’ that is, ‘an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment’ undertaken, supported, or approved by a public agency. ([Pub.Res.Code], § 21065.) [¶] The second step of the process is required if the proposed activity is a ‘project.’ The public agency must then decide whether it is exempt from compliance with CEQA under either a statutory exemption ([Pub.Res.Code], § 21080) or a categorical exemption set forth in the regulations ([Pub.Res.Code], § 21084, subd. (a); [CEQA Guidelines], § 15300). A categorically exempt project is not subject to CEQA, and no further environmental review is required. [Citations.] If the project is not

exempt, the agency must determine whether the project may have a significant effect on the environment. If the agency decides the project will not have such an effect, it must ‘adopt a negative declaration to that effect.’ ([Pub. Res. Code], § 21080, subd. (c); see [CEQA Guidelines], § 15070; [citation].) Otherwise, the agency must proceed to the third step, which entails preparation of an [EIR] before approval of the project. ([Pub.Res.Code], §§ 21100, subd. (a), 21151, subd. (a).)” (*Tomlinson, supra*, 54 Cal.4th at p. 286.)

CEQA applies only to “*discretionary* projects proposed to be carried out or approved by public agencies” (Pub. Res. Code § 21080, italics added.) A “discretionary project” is defined as one “which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.” (Guidelines, § 15357.) The “touchstone” for determining whether an agency is required to prepare an EIR is whether the agency could meaningfully address any environmental concerns that might be identified in the EIR: “ ‘As applied to private projects, the purpose of CEQA is to minimize the adverse effects of new construction on the environment. To serve this goal the act requires assessment of environmental consequences where government has the power through its regulatory powers to eliminate or mitigate one or more adverse environmental consequences a study could reveal. [¶] Thus the touchstone is whether the approval process involved allows the government to shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report. And when is government foreclosed from influencing the shape of the project? Only when a private party can legally compel approval without any changes in the design of its project which might alleviate adverse environmental consequences.’ ” (*San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 933 (*San Diego Navy*), citing *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 266–267 (*Friends of Westwood*), italics omitted.)

When a project involves both discretionary and non-discretionary actions, it will be deemed discretionary. (*Friends of Westwood, supra*, 191 Cal.App.3d at 270.) However, the discretionary component of the action must give the agency the authority to consider a project's environmental consequences to trigger CEQA. (*Sierra Club v. Napa County Bd. of Supervisors* (2012) 205 Cal.App.4th 162, 179 (*Sierra Club*); *San Diego Navy, supra*, 185 Cal.App.4th at p. 934.)

C. Non-Delegation

Appellants argue the City and City Council did not proceed in the manner required by law. Appellants cite authority stating that CEQA requires a decision by the *elected* City body—here, the City Council—and contend that no such decision was made in this case because the City Council did not consider issues unrelated to aesthetics when determining that CEQA did not apply. We disagree.

In support of their argument, appellants rely on *Vedanta Society of Southern California v. California Quartet, Ltd.* (2000) 84 Cal.App.4th 517, 534–535 and *Kleist v. City of Glendale* (1976) 56 Cal.App.3d 770, 779. Those decisions stand for the uncontroversial proposition that the elected decision makers of a local body have the ultimate responsibility for making a decision under CEQA and delegation is inconsistent with that rule. (*Ibid.*) Here, the unelected Planning Commission found the project exempt and appellants took an appeal to the full elected City Council. The City Council held a full hearing and issued findings on this appeal. There was no improper delegation of the City's authority under CEQA. (Cf. *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 402–403 [city council reviewed and considered EIR and did not improperly delegate that responsibility to planning department's deputy advisory agency].)

The City Council did approve the project without requiring an EIR or issuing a negative declaration, finding the Class 32 infill exemption applied and in any event it could not consider issues other than design review in light of the local ordinance. Appellants argue that because the City Council limited its review of environmental issues, the case is akin to *Vedanta*. We disagree. In *Vedanta*, the court reversed after it

found that a tie vote during an appeal to the board of supervisors, which left the decision of the planning commission in that case intact by default, did not amount to the required consideration by the board. (*Vedanta, supra*, 84 Cal.App.4th at p. 527.) But the City Council in this case *did* act—just not in the way that appellants had hoped. As we shall explain, the City Council properly limited the scope of its review as required by the ordinance. But it did not abdicate its duty to act, and did not delegate its ultimate duty to the Planning Commission in so doing.

Sections 17.08.060, 17.08.180(A) and 17.08.180(H) of the St. Helena Municipal Code did not require the City Council to consider the environmental consequences of a multi-family project in an HR district as appellants suggest. Collectively, those ordinances provide that an appeal of a decision by the Planning Commission may be taken to the full City Council, that the City Council’s review is *de novo*, and that the final decision-making body (here, the City Council) may modify a proposed discretionary project. They do not expand the City Council’s discretion beyond the language of the Municipal Code itself.

D. *Applicability of Class 32 Infill Exemption*

Appellants complain the City Council’s decision to deny the appeal was unsupported because it did not consider the whole of the project before approving it. Appellants contend that before the City Council could properly adopt a Class 32 infill exemption under CEQA Guidelines section 15332, it was required by the terms of that exemption to determine whether the proposed project would “ ‘result in any significant effects relating to traffic, noise, air quality or water quality.’ ” (CEQA Guidelines, § 15332(d).) They also contend the City Council should have considered the applicability of a blanket exception to this categorical exemption, as set forth in CEQA Guidelines section 15300.2, which provides, “[a] categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” (CEQA Guidelines § 15300.2(c); *Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 260.) Appellants argue the City Council took

the City Attorney's advice and failed to consider any environmental issues relating to this project.

Assuming the City Council did not consider traffic, noise or air and water quality for purposes of the Class 32 exemption despite its findings to the contrary, it nonetheless properly found that its discretion was limited to design review, given that no use permit was required for multi-family housing in HR districts. (See *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1010–1011 (*Friends of Davis*) [when use is consistent with local zoning and a use permit either is not required or has been obtained, issuance of building permit is usually ministerial act].) It also found, appropriately, that the issues addressed during design review did not require the separate invocation of CEQA.

“A city is not, pursuant to general law, required to have a design review ordinance. Accordingly, where, as here, a city chooses to impose such an additional level of review, it is for the city to determine the scope that such review will entail.” (*Friends of Davis, supra*, 83 Cal.App.4th at p. 1014.) “The Guidelines recognize that the application of CEQA to a local ordinance is dependent upon the scope and interpretation of the local ordinance, rather than vice versa. . . . The Guidelines note[d] that CEQA does not grant an agency new powers independent of the powers granted by other laws. (Guidelines, § 15040, subd. (a).) Rather, the exercise of an agency's authority under a particular law must be within the scope of the agency's authority provided by that law and must be consistent with express or implied limitations provided by other laws.” (*Id.* at pp. 1014–1015.)

In this case, the City Council found the design review ordinances prevented it from disapproving the project for non-design related matters. This was correct. Under section 17.164.020 of the St. Helena Municipal Code, “The purpose of design review is: [¶] A. To promote those qualities in the environment which bring value to the community; [¶] B. To foster the attractiveness and functional utility of the community as a place to live and work; [¶] C. To preserve the character and quality of our heritage by maintaining the integrity of those areas which have a discernible character or are of

special historic significance; [¶] D. To protect certain public investments in the area; [¶] E. To encourage, where appropriate, a mix of uses within permissible use zones; [¶] F. To raise the level of community expectations for the quality of its environment.” Under section 17.164.030, the Planning Commission (and City Council) should consider the following: “1. Consistency and compatibility with applicable elements of the general plan; [¶] 2. Compatibility of design with the immediate environment of the site; [¶] 3. Relationship of the design to the site; [¶] 4. Determination that the design is compatible in areas considered by the board as having a unified design or historical character; [¶] 5. Whether the design promotes harmonious transition in scale and character in areas between different designated land uses; [¶] 6. Compatibility with future construction both on and off the site; [¶] 7. Whether the architectural design of structures and their materials and colors are appropriate to the function of the project; [¶] 8. Whether the planning and siting of the various functions and buildings on the site create an internal sense of order and provide a desirable environment for occupants, visitors and the general community; [¶] 9. Whether the amount and arrangement of open space and landscaping are appropriate to the design and the function of the structures; [¶] 10. Whether access to the property and circulation systems are safe and convenient for pedestrians, cyclists and vehicles; [¶] 11. Whether natural features are appropriately preserved and integrated with the project; [¶] 12. Whether the materials, textures, colors and details of construction are an appropriate expression of its design concept and function and whether they are compatible with the adjacent and neighboring structures and functions; [¶] 13. Whether the landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors create a desirable and functional environment and whether the landscape concept depicts an appropriate unity with the various buildings on the site; [¶] 14. Whether sustainability and climate protection are promoted through the use of green building practices such as appropriate site/architectural design, use of green building materials, energy efficient systems and water efficient landscape materials.”

The City Council made extensive findings pertaining to these elements and found that the proposed project met all of them. It concluded that CEQA review was “limited to design issues such as scale, orientation, bulk, mass, materials and colors,” and the proposed project would not result in design-related CEQA impacts. These findings were supported by substantial evidence and must be upheld on appeal. (See *Breneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 175–176 [applying substantial evidence standard to decision on design review].)

Appellants’ complaints about the project include its appearance relative to the historical homes in the area. This does not mean review under CEQA was required. “[W]e do not believe that our Legislature in enacting CEQA. . . intended to require an EIR where the sole environmental impact is the aesthetic merit of a building in a highly developed area. [Citations.] To rule otherwise would mean that an EIR would be required for every urban building project that is not exempt under CEQA if enough people could be marshaled to complain about how it will look. While there may be situations where it is unclear whether an aesthetic impact like the one alleged here arises in a ‘particularly sensitive’ context ([CEQA] Guidelines, § 15300.2(c) [exemption shall not be granted “when there is a reasonable possibility the activity will have an unusual effect on the environment due to unusual circumstances”]) where it could be considered environmentally significant, this case does not test that boundary.” (*Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 592 (*Bowman*)).) While local laws do not preempt CEQA, “aesthetic issues like the one raised here are ordinarily the province of local design review, not CEQA.” (*Id.* at p. 593.) “Where a project must undergo design review under local law, that process itself can be found to mitigate purely aesthetic impacts to insignificance, even if some people are dissatisfied with the outcome. A contrary holding that mandated redundant analysis would only produce needless delay and expense.” (*Id.* at p. 594.) St. Helena is not as urbanized as Berkeley, the site of the

project in *Bowman*, but the principles of that case apply to the design review in this case, which cannot be used to impose environmental conditions.³

Appellants argue that because the City had discretion to conduct design review the entire project was discretionary and subject to CEQA. (See CEQA Guidelines § 15268(d).) They rely on authorities stating that where a project involves both discretionary and ministerial approvals, the entire project will be deemed discretionary. (E.g., *Friends of Westwood*, *supra*, 191 Cal.App.3d at p. 270; *Day*, *supra*, 51 Cal.App.3d at p. 823; *People v. Department of Housing and Community Dev.* (1975) 45 Cal.App.3d 185, 193–194.) But this rule applies only when the discretionary component of the project gives the agency the authority to mitigate environmental impacts. (See *Sierra Club* *supra*, 205 Cal.App.4th at p. 179; *San Diego Navy*, *supra*, 185 Cal.App.4th at p. 934.)

Because of the City’s lack of any discretion to address environmental effects, it is unnecessary to rely on the Class 32 exemption and equally unnecessary to spend much time on appellants’ contention that the proposed project did not qualify for an exemption because it was not consistent with the general plan. (CEQA Guidelines, § 15332(a).) We note the City Council found the proposed project consistent with the general plan and addressed appellants’ arguments to the contrary in great detail. In light of these findings, which are supported by the evidence, it did not abuse its discretion in finding the proposed project was consistent with the general plan. (See *Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 154–155 [review as to whether city erred in finding project consistent with general plan limited to abuse of discretion].)

It is also unnecessary to resolve whether the Class 32 infill exemption was inapplicable due to an exception because “there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.”

³ It is unnecessary to resolve respondents’ contention that appellants have forfeited their claim that the design review ordinances themselves contain language that renders CEQA applicable in this case. (See *North Coast Rivers Alliance v. Marin Water Dist. Bd.* (2013) 216 Cal.App.4th 614, 623–624.)

(CEQA Guidelines, § 15300.2(c).) Because CEQA was limited in scope to design review whether or not the Class 32 exemption applied, any exception to the exemption was irrelevant. In any event, the subdivision establishing the exception applies only when the challenger proves both an unusual circumstance and a significant environmental effect as a result of that circumstance. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105; *Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 819–820.) Nothing about the proposed project was “unusual” within the meaning of the CEQA Guidelines.⁴

⁴ We deny as unnecessary real party in interest’s request for judicial notice, filed July 27, 2018.

III. DISPOSITION

The judgment is affirmed. Ordinary costs on appeal are awarded to respondents.

NEEDHAM, J.

We concur.

SIMONS, ACTING P.J.

BRUINIERS, J. ⁵

(A153238)

⁵ Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Filed 1/10/19

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

McCORKLE EASTSIDE
NEIGHBORHOOD GROUP et al.,

Plaintiffs and Appellants,

v.

CITY OF ST. HELENA et al.,
Defendants and Respondents.

A153238

(Napa County
Super. Ct. No. 17CV000205)

ORDER GRANTING REQUESTS
FOR PUBLICATION; NO CHANGE
IN JUDGMENT

The California Building Industry Association, California Infill Builders Federation, Treasury Wine Estates, Americas LLC, and the California Chapter of the American Planning Association have each filed a request that our opinion filed on December 18, 2018, be certified for publication. It appears that our opinion meets the standards set forth in California Rules of Court, rule 8.1105(c). The requests are GRANTED. The opinion is ordered published in the Official Reports.

No change in judgment.

Date _____

_____ P.J.

Napa County Superior Court, No. 17CV000205, Michael L. Byrne; Mark S. Boessenecker, Judges.

Jeffer Mangels Butler & Mitchell, Mathew D. Hinks; Jackson Lewis P.C., David Bradshaw and Mintz Levin Cohn Ferris Glovsky and Popeo PC, Jonathan Welner for Plaintiffs and Appellants.

Burke, Williams & Sorensen, Thomas B. Brown, Stephen E. Velyvis for Defendants and Respondents.

Monchamp Meldrum, Amanda Monchamp and Joanna L. Meldrum for Real Party in Interest.

EXHIBIT B

Subject: Re: Let the process work it out, don't block it with your power
From: Michael Healy (mthealy@sbcglobal.net)
To: malcolm@johnsonnet.com;
Date: Friday, February 21, 2014 4:06 PM

That would be the goal.

From: Malcolm Johnson <malcolm@johnsonnet.com>
To: 'Michael Healy' <mthealy@sbcglobal.net>
Sent: Friday, February 21, 2014 4:01 PM
Subject: RE: Let the process work it out, don't block it with your power

I see. So they must be within their current zoning, environmental, etc right to put it in. Assuming the discretionary approval process isn't something that is required only for some projects, I understand that the city would want to at least weigh in on development. The problem with going down this road, then, is stopping at 45 days and not letting it slip out without bound.

Thanks,

Malcolm

From: Michael Healy [mailto:mthealy@sbcglobal.net]
Sent: Friday, February 21, 2014 2:50 PM
To: Malcolm Johnson
Subject: Re: Let the process work it out, don't block it with your power

Malcolm,

Thanks for your thoughts. The problem with your suggestion is that the "processes already in place" will lead to an automatic approval for this project without any discretionary approval required by the planning commission or the city council. Only by putting a temporary (45 day) moratorium in place can the city effectively deal with the various issues this proposal presents.

Regards,

Mike Healy

From: Malcolm Johnson <malcolm@johnsonnet.com>
To: mayordavidglass@gmail.com; councilmemberkearney@me.com; councilman.albertson@gmail.com; teresa4petaluma@comcast.net; mike4pet@aol.com; mthealy@sbcglobal.net; kathleencmilleroffice@gmail.com
Sent: Friday, February 21, 2014 2:01 PM
Subject: Let the process work it out, don't block it with your power

It's an abuse of power to block a specific project thereby not allowing the processes already in place to run their course.

There are pros and cons on either side of the matter of the Safeway gas station and I don't want to boar you with my opinion on the matter. Determining the best approach for the city requires planning and discussion. Until this gas station was proposed there was no discussion of how the city will

handle all future gas station applications so it's clear this project will have been singled out if you unilaterally ban it.

No one is a fan of dangerous gas emissions near schools, but that's why we have environmental studies. If we don't rely on the results for guidance, we are just guessing. There are always risks, and are probably more likely to occur at older stations.

I'm no fan of backed up traffic, but I can't see how having almost as many waiting spaces as there are pumps will create additional traffic. If you consider that concern another way, if we have that many people who elect to use the Safeway station over the other nearby stations, we did exactly the right thing by providing less expensive fuel to our citizens. Anyway, the problem with traffic in that area stems from the fact that McDowell's very close proximity to Hwy 101 doesn't allow for enough cars to move from McDowell toward the highway, creating a jam in all three contributing directions.

I'm no fan of putting the livelihoods for the nearby station owners at risk, but if the council takes the position of determining which businesses in town receive council support and which don't, it is abusing your power. I agree we should have a fuel plan, but hold something up because we didn't think of something earlier just seems reactive. Having ample fuel in the center of town seems like good planning to me. Let's have some electric bays with the ability to add more, too. Same for natural gas, another obvious and viable long term option.

Our city and county is blessed with politically active residents. Let the process work this out using the active bases, results of studies, and right minded discussion. Don't block something and cut all this off.

Malcolm

EXHIBIT C



Joe, Samantha



From: Heather Hines <hhines@m-group.us>
Sent: Wednesday, May 9, 2018 11:08 AM
To: Brown, John
Subject: RE: Public Engagement

Overall it was orderly and respectful.
No comments on the actual SPAR itself.
Room of people from the school and neighborhood with concerns about health risk and traffic.
Continued to allow more time for outreach and clarification of health risks.
A lot of concern about the notification process and getting people involved.

Marriott item to reactivate that SPAR went through on consent no problem.

Heather

From: Brown, John [mailto:JBROWN@ci.petaluma.ca.us]
Sent: Wednesday, May 9, 2018 11:03 AM
To: Heather Hines <hhines@m-group.us>
Subject: RE: Public Engagement

No objection.
How did Safeway go?

From: Heather Hines [mailto:hhines@m-group.us]
Sent: Wednesday, May 09, 2018 10:18 AM
To: Brown, John
Subject: Public Engagement
Importance: High

Goodmorning John,

There is a reoccurring concern expressed by Councilmembers, Planning Commissioners, and the members of the public about the sparse noticing and neighborhood outreach requirements as part of review of major projects in the city. This issue came up again last night as part of the Safeway Fuel Center project, but it is not unique to this project and does not seem to be an issues solely of one Councilmember or Commissioner.

I would like to bring forth a revised notification and outreach policy as a resolution for Council approval. This resolution could then be codified when we do an annual IZO update in early 2019.

More specifically, I would like to address on-site sign requirements for major projects and neighborhood meeting requirements for major projects in or adjacent to residential neighborhoods.

I have some good examples from other Sonoma County cities, so I don't think it would need to be overly complicated. Any objection?

I was thinking about this last night in response to the PC meeting, but it has been an ongoing concern that I think we would benefit from cleaning up. I received a follow up email from Gina Benedetti-Petnic on this issue this morning as well.

Heather



HEATHER HINES | PRINCIPAL

UP A NEW DESIGN ON URBAN PLANNING

PLANNING · DESIGN · ENVIRONMENTAL · HISTORIC · ENGAGEMENT · STAFFING

SANTA ROSA | CAMPBELL | NAPA | HAYWARD

499 HUMBOLDT STREET | SANTA ROSA | CA | 95404 | 707.540.0723 ext. 206

M-LAB: A THINK TANK FOR CITIES: **JOIN THE CONVERSATION!**

City of Petaluma records, including emails, are subject to the California Public Records Act. Unless exemptions apply, this email, any attachments and any replies are subject to disclosure on request, and neither the sender nor any recipients should have any expectation of privacy regarding the contents of such communications.

EXHIBIT D

7/17/2018

Mail - hhines@m-group.us

Re: Safeway Box Org and CEQA status

Olivia Ervin

Wed 2/21/2018 2:49 PM

To: Adam Petersen <APetersen@m-group.us>;

Cc: Heather Hines <hhines@m-group.us>; Sheldon Ah Sing <SAhsing@m-group.us>;

Excellent. Thank you for uploading. I do think we need to check in with the applicant on the status of the BAAQMD extension, but for our information, it is strictly needed for the CEQA document. I suggest you wait to reach out to applicant until it's clear if there're any other clarifying items or discussion points needed.

Olivia

From: Adam Petersen <APetersen@m-group.us>
Date: Wednesday, February 21, 2018 at 2:39 PM
To: Olivia Ervin <oervin@m-group.us>
Cc: Heather Hines <hhines@m-group.us>, Sheldon Ah Sing <SAhsing@m-group.us>
Subject: RE: Safeway Box Org and CEQA status

Hi Olivia,
Thanks for organizing the Box CEQA files.

I scanned the lead based paint and asbestos survey and have uploaded it to the Technical Studies CEQA Appendices folder on Box.

Do you need me to contact the applicant for an update on the BBAQMD authority to construct document?

I'll be sure to include the COAs you mentioned below.

Thanks,

Sincerely,

ADAM PETERSEN | SENIOR PLANNER
M-GROUP A NEW DESIGN ON URBAN PLANNING
POLICY · DESIGN · ENVIRONMENTAL · HISTORIC · ENGAGEMENT · STAFFING
CAMPBELL | SANTA ROSA | NAPA | HAYWARD
307 ORCHARD CITY DR. SUITE 100 | CAMPBELL | CA | 95008 | 408.340.5642 ext. 106 | c. 530.574.0857
M-LAB: A THINK TANK FOR CITIES: [JOIN THE CONVERSATION!](#)

From: Olivia Ervin
Sent: Wednesday, February 21, 2018 11:16 AM
To: Adam Petersen <APetersen@m-group.us>
Subject: Safeway Box Org and CEQA status

Hi Adam,

7/17/2018

Mail - hhines@m-group.us

I've organized Box CEQA files, see the CEQA Env Review folder which contains the latest version of the IS/MND and supporting info. The draft NOI is in that folder as well.

<https://m-group.box.com/s/ngz9m4ligjgm2k25j08bdnbb3xp3w0>

On the Appendices for the CEQA document, I do not have the limited asbestos and lead based paint survey electronically (a hardcopy must be in the file) and will need to be scanned and uploaded. I will do that next week when I am in Petaluma.

I also did a quick comparison to see what might be in the Petaluma S drive and not on box. I uploaded a few items AB 52, the 2014 TIA, and the latest submittal by the applicant.

Note that the latest submittal received from the applicant has been uploaded to the Safeway Folder (2017 1006 M Fancois Letter to Heather Hines . . . Pdf, feel free to rename). That is the source of the AQ/GHG and HRA updates. The Traffic data provided there is only raw output and we subsequently asked for and received separately the Traffic Memo explaining the results (The Traffic Memo is in the CEQA Folder, Appendix F and build on App E the 2014 TIA). The final few pages in that PDF is the applicant's proof of applying for the authority to construct extension with BQQAMD. We should get an update on the status of that.

The IS/MND is nearly complete with a few comments on outstanding info (limited to Traffic as discussed yesterday and confirmation from Public Works/fire marshall on adequate circulation and hydro). The MMRP is drafted and on box as well, it will be finalized once comments are back from legal on the MND.

The IS/MND does include mention of a few Conditions of Approval, which I've identified in Comments and are below:

- As a standard condition of project approval, the applicant shall pay all development impact fees.
- As a condition of project approval, the project will develop a Construction Phase Recycling Plan pursuant to policy 2-P-122 to address the disposal of materials from demolition and construction.
- (Final Landscaping and AQ are provided as Mitigation Measures, I know these sometimes show up a COA)

EXHIBIT E

CHAPTER 1

Introduction

1.1 Purpose of this Document

This Final Environmental Impact Report (Final EIR) document includes all agency and public comments received on the Draft Environmental Impact Report (Draft EIR, SCH #2018012041) for the Niles Gateway Mixed-Use Project (proposed project) pursuant to the requirements of the California Environmental Quality Act (CEQA). Written comments were received by the City of Fremont during the 45-day public comment period from May 25, 2018 through July 9, 2018. Late written comments were also received through July 13, 2018.

Section 15088(a) of the CEQA Guidelines states that:

“The lead agency shall evaluate comments on environmental issues received from persons who reviewed the Draft EIR and shall prepare a written response. The lead agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.” Accordingly, the City of Fremont has evaluated the comments received on the Draft EIR for the proposed project and prepared written responses to those comments.

The Final EIR is comprised of the following elements:

- Draft EIR and Appendices.
- List of persons, organizations, and public agencies commenting on the Draft EIR.
- Copies of all comments received.
- Written responses to those comments.
- Revisions to the Draft EIR initiated by City staff or resulting from comments received.

This Final EIR document has been prepared in accordance with CEQA, and will be used by the decision-makers during project hearings.

1.2 Organization of the Final EIR

The Final EIR is organized as follows:

Chapter 1 – Introduction: This chapter summarizes the project under consideration and describes the contents of the Final EIR.

Chapter 2 – Agencies and Persons Commenting on the Draft EIR: This chapter contains a list of all of the agencies, organizations, and individuals that submitted comments on the Draft EIR during the public review period.

Chapter 3 – Written Comments on the Draft EIR and Responses to Comments: This chapter contains the comment letters received on the Draft EIR, followed by responses to individual comments. Letters are grouped by agencies, organizations, and individuals, but are otherwise presented in the order in which they were received. Each comment letter is presented with brackets indicating how the letter has been divided into individual comments. Each comment is given a binomial with the letter number appearing first, followed by the comment number. For example, comments in Letter 1 are numbered 1-1, 1-2, 1-3, and so on. Immediately following the letter are responses, each with binomials that correspond to the bracketed comments.

Some comments that were submitted to the City do not pertain to CEQA environmental issues or do not address the adequacy of the analysis contained in the Draft EIR. When a comment does not directly pertain to environmental issues analyzed in the Draft EIR, does not ask a question about the adequacy of the analysis contained in the Draft EIR, expresses an opinion related to the merits of the project, or does not question an element of or conclusion of the Draft EIR, the response notes the comment and may provide additional information where appropriate. The intent is to recognize the comment. Many comments express opinions about the merits or specific aspects of the proposed project and these are included in the Final EIR for consideration by the decision-makers.

Chapter 4 – Revisions to the Draft EIR: This chapter summarizes refinements and text changes made to the Draft EIR in response to comments made on the Draft EIR and/or staff-initiated text changes. Changes to the text of the Draft EIR are shown by either a line through the text that has been deleted, or is underlined where new text has been inserted. The revisions contain clarification, amplification, and corrections that have been identified since publication of the Draft EIR. The text revisions do not result in a change in the analysis and conclusions presented in the Draft EIR.

Chapter 5 – Mitigation Monitoring and Reporting Program: This chapter contains the Mitigation Monitoring and Reporting Program (MMRP) to aid the City in its implementation and monitoring of measures adopted in the EIR, and to comply with the requirements of Public Resources Code Section 21081.6(a).

1.3 Summary of Proposed Project

The project site is located at 37899 Niles Boulevard in the northeastern portion of the City of Fremont. The parcel is generally triangular in shape and flat in topography. The frontage of the northeastern part of the site is on the west side of Niles Boulevard before it makes a 90-degree turn eastward towards Mission Boulevard. A dead-end 0.73-acre segment of Niles Boulevard continues southward from the 90-degree turn along the remainder of the site's eastern edge.

The project site contains remnants of the former Henkel/Schuckl Cannery and was used for a variety of industrial land use activities including a foundry, cannery, herbicide manufacturing, metal treatment, and chemical manufacturing between the early 1900s and 2002. All structures associated with the previous industrial uses were demolished in 2009 and remnants of the building foundations are all that remain. Debris piles containing soil, broken paving materials, and discarded items still remain throughout the site. Vehicular access to the site is currently from Niles Boulevard. Curb, gutter, and sidewalk are located along the northern portion of the project frontage with Niles Boulevard. The project site south of the 90-degree turn of Niles Boulevard is accessed from the roadway that continues south from Niles Boulevard and dead-ends at the Alameda Creek Trail. Vegetation on the site generally consists of ornamental trees and shrubs located around the perimeter and weedy vegetation within the center of the site.

The proposed project would include development of a vacant 6.07-acre parcel with two types of buildings consisting of 95 dwelling units and 7,333 square feet of non-residential uses. The 95 dwelling units would consist of 82 townhomes and 13 "Creative-Retail-Artist-Flex-Tenancy" (CRAFT) units. The 7,333 square feet of non-residential uses would consist of 5,883 square feet of retail/restaurant uses and 1,450 square feet of community center space. In total, 187,773 square feet of building floor area is proposed to be developed on the site. Northbound Niles Boulevard would be re-stripped to accommodate a new left turn pocket lane at a new project driveway, at the north end of the site on Niles Boulevard, which would connect to a private street (Street A) that would encircle the project site and connect with Niles Boulevard at the 90-degree turn. As part of the project, the City would vacate the portion of Niles Boulevard south of the 90-degree turn.

A total of 94 new surface parking spaces would be established, including 25 new diagonal parking spaces on Niles Boulevard along the frontage of the CRAFT building, 65 parallel parking spaces on the west and east side of the project site along Street A, and four off-street spaces in a parking lot in the townhome area. Each CRAFT unit and townhome would have enclosed parking spaces (one to two spaces in each unit's garage), providing 188 additional spaces. Collectively, 282 new parking spaces would be provided.

The project would require a General Plan Amendment to change the land use designation from Service Industrial (Special Study Area) to Town Center and Medium Density Residential and a Rezoning of the existing parcel from I-S (Service Industrial) with an Historical Overlay District (HOD) to Planned District P-2014-0338 (HOD). The proposed project would also require the following entitlements: a Vesting Tentative Tract Map, Private Street, General Conformity Finding for a General Street Vacation, Tree Removal Permit, and Preliminary Grading Plan.

1.4 Required Jurisdictional Approvals

City of Fremont

Project implementation would require a series of interrelated planning and regulatory approvals by the City of Fremont, as Lead Agency. Specifically, the City is considering taking the following approval actions:

- General Plan Amendment
- Preliminary and Precise Planned District Rezoning
- Vesting Tentative Tract Map
- Private Street
- General Plan Conformity Finding for a General Street Vacation
- Tree Removal Permit
- Preliminary Grading Plan

The project would also require Historical Architectural Review Board (HARB) and Planning Commission consideration and recommendation to the City Council for final approval.

The project would require review and recommendation by the Planning Commission to the City Council, followed by consideration and action by the City Council. The EIR is intended to provide the CEQA-required environmental documentation for use in considering these and any other City approvals required to implement the project.

Other Governmental Agency Approvals

As the Lead Agency and as appropriate under CEQA, the City also intends this EIR to serve as the CEQA-required environmental documentation for consideration of this project by other Responsible Agencies and Trustee Agencies which may have limited discretionary authority over development proposals associated with the project. Under the *CEQA Guidelines*, the term “Responsible Agency” includes all public agencies, other than the Lead Agency, which have discretionary approval power over aspects of the project for which the Lead Agency has prepared an EIR (Section 15381); and the term “Trustee Agency” means a state agency having jurisdiction by law over natural resources affected by the project which are held in trust by the people of California (Section 15386).

Responsible Agencies and Trustee Agency approvals for the project may include, but are not limited to, the following:

Local Agencies

- Alameda County Water District (ACWD)

- Alameda County Public Works Agency (ACPW)
- Union Sanitary District (USD)

Regional and State Agencies

- San Francisco Bay Regional Water Quality Control Board (RWQCB)

1.5 Public Participation and Review

The City of Fremont has complied with all noticing and public review requirements of CEQA. This compliance included notification of all responsible and trustee agencies and interested groups, organizations, and individuals that the Draft EIR was available for review. The following list of actions took place during the preparation, distribution, and review of the Draft EIR:

- On January 19, 2018, the City sent a Notice of Preparation (NOP) to the State Clearinghouse (SCH No. 2018012041), responsible and trustee government agencies, organizations, and individuals potentially interested in the project. The NOP initiated a 30-day period during which residents, stakeholders, and public agencies were invited to submit comments on the scope of topics that should be studied in the EIR. An Initial Study (Environmental Checklist) was prepared for the project to evaluate the potentially significant effects the project may have on the environment, and was available for review during the 30-day period. A scoping meeting was held on February 12, 2018, to provide additional opportunity for comment. The 30-day scoping period for the project remained open through February 22, 2018.
- On May 25, 2018, a Notice of Completion (NOC) was filed with the State Clearinghouse to announce the availability of the Draft EIR. Copies of the Draft EIR were distributed to the State Clearinghouse and interested agencies following the requirements of CEQA Guidelines Sections 15085 and 15206. Notices of the Draft EIR's availability were also distributed to interested agencies, organizations, and individuals using the same distribution process as outlined above. The Draft EIR was also published on the City's website and filed at the County Clerk's office. The 45-day public comment period began on May 25, 2018, and ended on July 9, 2018.

EXHIBIT F



GENERAL APPLICATION FORM

This form, together with corresponding application forms for specific permits, will become the permit document. There is no fee for this form.

Type of Application <input type="checkbox"/> Conditional Use Permit: Minor / Major <input type="checkbox"/> Fence <input type="checkbox"/> Home Occupation Permit <input type="checkbox"/> Preliminary Review by Staff <input type="checkbox"/> SPAR: Minor / Major <input type="checkbox"/> Tentative Map: ≤4 / ≥5 lots <input type="checkbox"/> Zoning Amendment: Minor Revision _____ <input checked="" type="checkbox"/> Other: <u>Appeal</u>	For City Use Only Permit No: <u>PLAP-18-0001</u> Project Name: <u>Safeway Appeal</u> Date Permit filed: <u>7/9/18</u> Date Permit issued: <u>7/9/18</u> Received by: <u>EE</u> Approved by (if applicable): _____
Property Information Address/Location: <u>335 So. McDowell Blvd</u> Assessor's Parcel No.: _____ Property Size: _____	Land Use Information (ask if unsure) Existing Use of Property: _____ General Plan Designation: _____ Zoning Designation: _____ Historic Designation: _____

Contact Information

Owner: _____
Firm (opt.): _____
Phone: _____
Email: _____
Address: _____

Agent: JoAnn McEachin
Firm (opt.): _____
Phone: 415-518-1950
Email: joannmceachin@gmail.com
Address: 1512 Sierra Drive
Petaluma, CA 94954

Authorization of Agent, Declaration of Accuracy, and Agreement for Inspection

(not required for Home Occupation Permit applications)

see attached letter

I, _____, am the owner / agent of the property for which the development or change is proposed. The above information and attached documents are true and accurate to the best of my knowledge. I have read and agree with all of the above.

Signature of Property Owner or Agent

Date

I, the owner, hereby do / do not authorize the agent to act on my behalf for this project, be notified of all application proceedings, and agree to allow employees or authorized agents of the City of Petaluma to enter upon the subject property, as necessary, to inspect the premises and process this application.

Signature of Property Owner

Date

RECEIVED

JUL 09 2018

CITY CLERK

JoAnn McEachin on behalf of:

Friends of McDowell Elementary School, Little League children, and East Petaluma residents
1512 Sierra Drive
Petaluma, CA 94954

July 8, 2018

Petaluma City Council,

We, the undersigned, petition to appeal the decision by the Planning Commission to approve a building permit for a Safeway gas station on the corner of Maria Dr. and S. McDowell Blvd. Our objections are based on the following:

This project is only for the benefit of Safeway, not the community. Petaluma already has several gas stations - THREE in the area of this proposed site, including the Chevron where Safeway customers can get up to 20 cents off per gallon - and research has shown that, contrary to what Safeway would like us to believe, Safeway's reduced gas pricing has not brought down the pricing of other gas stations nearby.

The proximity of the proposed gas station is too close to the day care and school, as well as the Little League ball park. Just because the regulations differ for building a gas station near a school (allowed) as opposed to building a school near a gas station (not allowed), it doesn't make the proximity issue any less of a health and safety concern.

Traffic will increase. This is common sense. The intersection at S. McDowell and E. Washington is already congested, and more traffic from cars zipping off and on to Hwy. 101 for cheaper gas will only exacerbate the problem.

Cars waiting to turn off of McDowell and in line in the parking lot (potentially blocking the sidewalk) will be idling and spewing emissions causing health concerns for all in the community.

Add into the mix the city transit buses, retail delivery vehicles of all kinds, long gas trucks, and school buses; the physical area is just not safe for vehicles trying to make turns into and out of a gas station there.

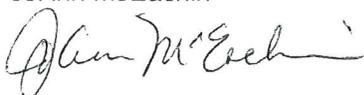
And, lastly, California is the nation's leader in the purchase of electric cars: "...in some months, buyers in California purchase more than half of all the electric cars sold in the U.S." (Eric C. Evarts, Green Car Reports) We emphasize this to reenforce that the community of Petaluma does not need another gas station now.

This Safeway gas station issue has been cleverly under-advertised to the public. Many residents don't even know this project is being put forth. It is a hotly contested issue and needs to be heard by the City Council with full public participation.

We ask you to reverse the Planning Commission's conditional approval, despite (or perhaps in defiance of) the threat of a lawsuit by Safeway. The decision should be decided in court, if necessary. Potential court costs should not deter you from protecting the health and safety of our community. That would be a bad precedent and would send the wrong message to every potential applicant for a project in Petaluma now and in the future.

Sincerely,

JoAnn McEachin



JoAnn McEachin
Horst Steinfels

JoAnn McEachin
Horst Steinfels
1512 Sierra Drive

Laura Steinfels
Oliver Steinfels

Laura Steinfels
Oliver Steinfels
510 Crinella Drive

Adriann Saslow
Alex Saslow

~~S. McDowell Blvd.~~
1328 McKenzie Ave.

Adriann Saslow
A.M. Saslow



Kim Pierce
Grouse Lane

Linda Hartwick
501 Cabrillo Court
Petaluma 94954

Chris Marsh

509 Park Lane
Petaluma 94954

Robert Doane

Colwood Dr
Petaluma 94954

Shirley N. Donovan
Shirley N. Donovan
1432 Quail Drive

Libby Pope
1420 Colwood Dr. Petaluma

Robert Conklin
1125 Gumwood Ln
Petaluma 94954

GLENN RUBENSTEIN
472 PARK PLACE DR

PETALUMA CA 94954

Richard Sachse
1617 Madeline Circle
Petaluma, CA 94954

Maria Perez
811 Whitney Way
Petaluma, CA 94954

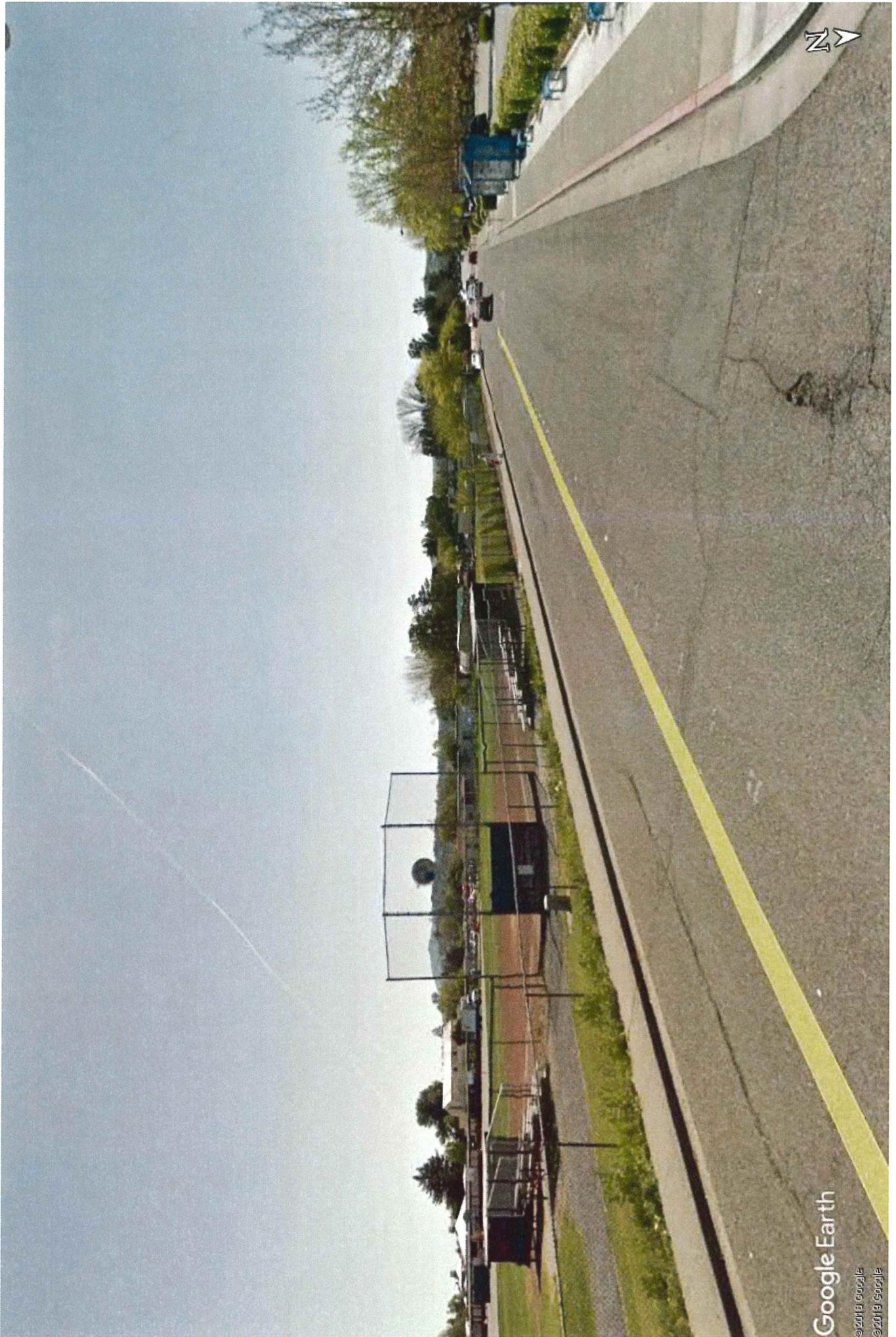
Bernard Album
Bernard Album
1666 CREEKVIEW CIR
Petaluma, CA 94954

EXHIBIT G

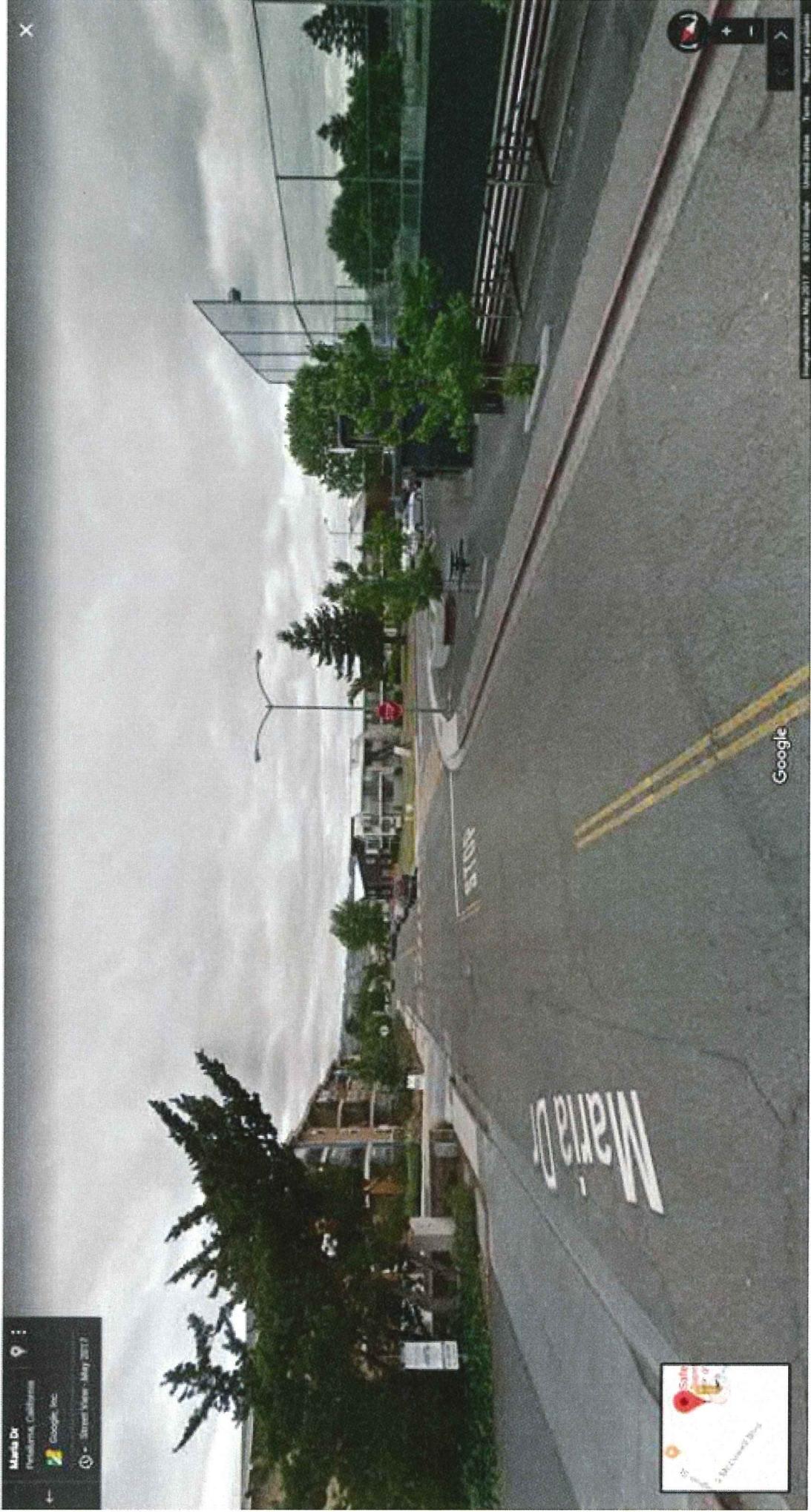


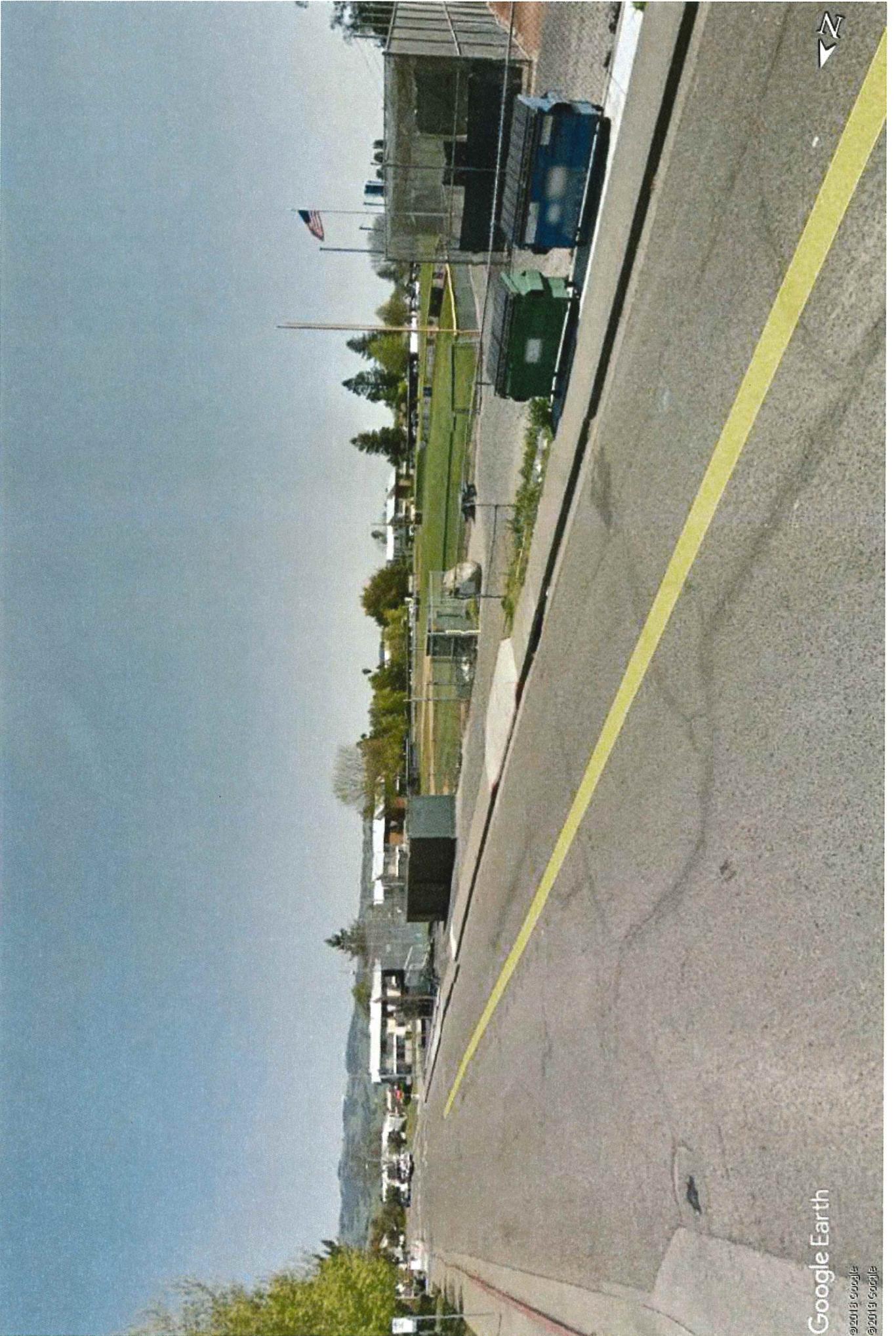
Google Earth

© 2018 Google
© 2019 Google



Looking east on Maria Drive.
Safeway Store driveway to left (north).
May 2017





Google Earth

© 2019 Google
© 2019 Google

EXHIBIT H



Dave King <davekingpcc@gmail.com>

Traffic Safety Concern

5 messages

Maureen Rudder <mrudder@petk12.org>

Thu, Jun 4, 2015 at 11:45 AM

To: councilman.albertson@gmail.com, Teresa Barrett <teresa4petaluma@comcast.net>, mayordavidglass@gmail.com, Michael Healy <mthealy@sbcglobal.net>, councilmemberkearney@me.com, davekingpcc@gmail.com, kathleencmillerooffice@gmail.com, police@ci.petaluma.ca.us

Cc: Steve Bolman <sbolman@petk12.org>, Matthew Harris <mharris@petk12.org>, Gary Callahan <gcallahan@petk12.org>

Dear Members of Petaluma City Council and PPD,

It has been brought to my attention by various McDowell families that crossing McDowell Blvd. at the Maria Dr. intersection has become very unsafe since the conditions were changed (no longer is there a green arrow for drivers making a left turn--just a flashing yellow arrow).

I have witnessed this for myself twice in the last week and I am very concerned that a McDowell student or family member may be injured in the future.

Last week I helped cross three groups of 3rd grade students who were headed to McKinley School on a walking field trip. Each group had a total of 20-25 people in it and none of the drivers waited for the pedestrians to cross before moving out into the intersection. All of the students and teachers made it across during the time that the light was green for pedestrians and before the countdown ran to zero. However, there were vehicles in the middle of the intersection, pointing towards the pedestrians, waiting to turn left. Since the pedestrians used all of the allotted time to cross, the light then turned red and the vehicles hurriedly and speedily turned left onto McDowell Blvd. almost causing accidents with the cars that were heading south on McDowell Blvd. which then had a green light.

This morning I crossed with three groups of 2nd grade students who were headed to the Petaluma Library on a walking field trip. Again each group had over 20 people in it. Today I brought a crossing guard style of STOP sign with me to draw the attention of the drivers to the group of pedestrians. I had the same experience as last week which was quite frightening. Today a driver going south on the McDowell Blvd. had to slam on the brakes to avoid hitting a truck that pulled out to make the left turn after the light had turned red.

As you know, the apartment complex behind Safeway that you approved for construction is not yet occupied. When people move into it in a few months there will be hundreds of more cars driving down Maria Dr. on a daily basis. Also, if the Safeway gas station is built that will add hundreds more drivers daily. This will only lead to greater safety issues at that intersection.

I have contacted the Petaluma Police Department's Traffic Safety Unit and hope to hear from them soon. However, I believe that the change in the way the lights work is the prime reason that the intersection has become less safe. I am not sure who would handle that issue, perhaps the Public Works Department?

I also want to voice my ongoing concerns about the possible addition of a large gas station at that corner and any more high density development in an area of the city which was originally built primarily as a residential neighborhood.

--

Maureen Rudder

Principal, McDowell Elementary
421 McDowell Blvd. South
Petaluma, CA 94954
707-778-4745
FAX 707-778-4789

Follow us on Facebook--McDowell Mustangs Petaluma

Notice to Recipient:

Information contained in this message may be privileged, confidential and protected from disclosure. If you are not an intended recipient, it is strictly prohibited to use, disseminate or copy this communication. If you have received this in error, please reply to the sender and then delete the message.

Thank you.

Brown, John <JBROWN@ci.petaluma.ca.us> Thu, Jun 4, 2015 at 2:47 PM
To: "Bates, Curtis" <CBATES@ci.petaluma.ca.us>
Cc: "Williams, Patrick" <pwilliams@ci.petaluma.ca.us>, "Chris Albertson (councilman.albertson@gmail.com)" <councilman.albertson@gmail.com>, Dave Glass <daveglass@comcast.net>, Dave King <davekingpcc@gmail.com>, Gabe Kearney <gkearney@me.com>, "kmillerhome@comcast.net" <kmillerhome@comcast.net>, Michael Healy <mthealy@sbcglobal.net>, Teresa Barrett <teresa4petaluma@comcast.net>

Thanks Curt.

JB

From: Bates, Curtis
Sent: Thursday, June 04, 2015 2:45 PM
To: Brown, John
Cc: St. John, Dan; Aggarwal, Gian
Subject: RE: Traffic Safety Concern

John,

Updated Response Maria at McDowell:

This is the protective permissive left turn arrow project. Construction was completed about 6 months ago. We changed this location from a left turn green ball to a flashing yellow left turn arrow. We absolutely looked at pedestrian safety and crossing timing. It sounds to me like this is a driver behavior issue and it's possible the group of kids exceeded the allotted pedestrian time because there were so many of them. We are not aware of any issues at this intersection. One of our traffic signal techs observed intersection operations this afternoon and confirmed everything is operating as designed. One thing that might help here is increasing the "all red" time or add additional green time to this phase to allow the left turn driver to get through the intersection. We will look into that and make any changes deemed necessary to help with this.

Curt

From: Brown, John
Sent: Thursday, June 04, 2015 1:35 PM
To: Bates, Curtis
Cc: St. John, Dan
Subject: FW: Traffic Safety Concern



Carothers, Kent

From: Bates, Curtis
Sent: Monday, June 18, 2018 10:49 AM
To: Hines, Heather
Cc: Carothers, Kent
Subject: Re: Safeway Staff Report

Follow Up Flag: Follow up
Flag Status: Flagged

The existing signal timing is adequate for pedestrians. We also reviewed and added pedestrian crossing signage at this signal a couple of years back. We previously reviewed this as part of requests from the prior school principal (Maureen Rudder).

We are not implementing a pedestrian only phase here, at least I don't think it's necessary at this time.

The COA's for Safeway should cover the other improvements we need.

Curt

Sent from my iPhone

On Jun 18, 2018, at 10:42 AM, Hines, Heather <HHINES@ci.petaluma.ca.us> wrote:

The City's Safe Routes to School Plan provides recommendations for pedestrian safety at the McDowell Boulevard/Maria Drive intersection. The suggestions include minor sidewalk repairs, widening the sidewalks, and including a pedestrian phase at the signal. Consistent with these recommendations, as a condition of approval, the proposed project would be required to achieve the following: 1) replace the existing sidewalks, driveways, and curb ramps that are broken or cracked; 2) install a new, accessible, and directional pedestrian ramp at the McDowell/Maria intersection; and 3) install a pedestrian crossing warning sign at the proposed driveway entrances.

Curt,

For clarification, is the recommendation for "a pedestrian phase at the signal" already completed with the intersection improvements that were previously made and the left turn signal?

Heather

Heather Hines, Planning Manager
M-Group Consulting Planner
Serving the City of Petaluma
11 English Street, Petaluma, CA 94952
Phone: (707) 778-4316
Hours: M-Th 8am-5pm, closed Fridays
<image001.jpg> <image004.png>



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Carothers, Kent

From: Stutsman, Jeff
Sent: Thursday, November 15, 2018 8:21 AM
To: Carothers, Kent
Cc: Beatty, Jason; St. John, Dan
Subject: RE: Comments on Safeway
Attachments: PPLT Signal Evaluation.Revised Final Report 7-15-14.pdf

Kent,

Attached is the signal evaluation report for the protected permissive left turn project. W-Trans looked at McDowell Blvd South and Maria Drive and recommended that the protected- permissive left turns be retained on McDowell Blvd South thru flashing yellow arrows in lieu of the doghouse style. The protected permissive left turns on Maria were replaced with permissive left turn only phasing as there were too few potential conflicts to justify protective operation or protected only operation. See attached signal evaluation report done by WTrans and refer to page 11.

Thanks,

*Jeff Stutsman, P.E.
Senior Civil Engineer*

Department of Public Works & Utilities | Office: 707.776.3673
City of Petaluma | Cell: 707.241.0201
202 N.McDowell Blvd. | E-mail: jstutsman@ci.petaluma.ca.us
Petaluma, CA 94954

PS: City of Petaluma Office is closed on Fridays

From: Carothers, Kent <kcarothers@ci.petaluma.ca.us>
Sent: Thursday, November 15, 2018 6:49 AM
To: Stutsman, Jeff <JStutsman@ci.petaluma.ca.us>
Cc: Beatty, Jason <jbeatty@ci.petaluma.ca.us>; St. John, Dan <DSTJOHN@ci.petaluma.ca.us>
Subject: FW: Comments on Safeway

Hi Jeff, Can you please review and help response to Olivia.

Thanks, Kent

From: Olivia Ervin <OErvin@m-group.us>
Sent: Wednesday, November 14, 2018 3:55 PM
To: Carothers, Kent <kcarothers@ci.petaluma.ca.us>
Subject: Comments on Safeway

---Warning: Use caution before clicking any attachments. THIS EMAIL IS FROM OUTSIDE OUR EMAIL SYSTEM.---
Hello Kent,

We are wrapping up the staff report for the upcoming Dec. 3 hearing for Safeway and I have identified something that I want to run by you. The item in question is that the City's Safe Routes to school plan (see page 63, bullet No. 3) recommends separating the pedestrian phase at the Maria Drive/S. McDowell intersection. Can you elaborate on why the signal protected/permitted was retained as noted therein? I recall this being a point of discussion at the PC hearing and I believe Curt provided the justification, but I'd like to get something in writing in the staff report. The phasing split is



not COA, so I understand there must be a technical reason that it was retained previously and is also now not being identified as a needed upgrade. Your input is much appreciated.

As a separate item can you also revisit the chain below, and address my question regarding understanding on the traffic splits. With exclusion of left in/out at the center driveway does this alter Dan's conclusions previously provided?

Thanks,
Olivia

Olivia Ervin | *principal environmental planner*

M-GROUP A NEW DESIGN ON URBAN PLANNING

POLICY · DESIGN · ENVIRONMENTAL · HISTORIC · ENGAGEMENT · STAFFING
NAPA | CAMPBELL | SANTA ROSA | HAYWARD
1303 JEFFERSON ST. SUITE 100 B | NAPA | CA | 94559 | 707.259.1790

From: Carothers, Kent [<mailto:kcarothers@ci.petaluma.ca.us>]
Sent: Monday, September 17, 2018 4:24 PM
To: Olivia Ervin
Subject: RE: Comments re: Sept. 17, 2018 City Council Meeting, Agenda Item 6.B. (Safeway Fuel Center Project)

Thank you Olivia

From: Olivia Ervin <OErvin@m-group.us>
Sent: Monday, September 17, 2018 4:20 PM
To: Carothers, Kent <kcarothers@ci.petaluma.ca.us>
Subject: Re: Comments re: Sept. 17, 2018 City Council Meeting, Agenda Item 6.B. (Safeway Fuel Center Project)

---Warning: Use caution before clicking any attachments. THIS EMAIL IS FROM OUTSIDE OUR EMAIL SYSTEM.---
Yes. I just sent an email confirming it will be continued. Please be sure that anyone else from Public Works who was planning to attend is aware.

Thanks!
Olivia

From: "Carothers, Kent" <kcarothers@ci.petaluma.ca.us>
Date: Monday, September 17, 2018 at 4:11 PM
To: Olivia Ervin <oerwin@m-group.us>
Subject: RE: Comments re: Sept. 17, 2018 City Council Meeting, Agenda Item 6.B. (Safeway Fuel Center Project)

Hi Olivia, Any chance this item is continued to next meeting?

Thanks, Kent

EXHIBIT I



To: Colin, Kevin; Hughes, Doug; Savano, Ken
Subject: FW: Safeway

Gentlemen, is Safeway running afoul of any weight/length restrictions, do they need/have they gotten a building permit for tenant improvements, are there any conditions from shopping center approvals they need to be complying with, and/or are there any conditions as to time of day work on tenant improvements?

Thanks

-----Original Message-----

From: Teresa Barrett [mailto:teresa4petaluma@comcast.net]
Sent: Wednesday, December 14, 2016 11:55 AM
To: Brown, John
Subject: Safeway

John,

FYI:

I just came from a business here in town where the owner read to me postings on the neighborhood website over by the old G and G market.

It seems Safeway is retrofitting the G and G market seven days a week 24 hours a day according to the postings. The other complaint is that the huge trucks are using streets that are not open to those kinds of trucks. I have no idea how valid this is, or what kind of permitting they have with the city but it is a big snit on the neighborhood website and a lot of negative things being said about the city on this.

Sent from my iPhone

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Begin forwarded message:

From: Teresa Barrett <teresa4petaluma@comcast.net>
Subject: Re: Safeway gas station on McDowell
Date: August 20, 2018 at 8:23:16 PM PDT
To: Nettie <bockak@yahoo.com>

No, it means I want to know what is to be decided on, ie, the staff report— before I respond, as this is coming to the council for a vote on the 17th.

I do not support the idea of putting this project in this place, but I am not sure that that is what I will be asked to vote on. I have watched the planning commission hearing, read a lot of the background documentation, but I have not seen the appeal or the staff report.

Sorry if I was unclear.

Teresa Barrett
Petaluma City Council
707.953.0846
Sent from my iPhone



On Aug 20, 2018, at 7:30 AM, Nettie <bockak@yahoo.com> wrote:

Hi-not sure what this means. Are you for the Safeway gas station project?

Sent from my iPhone

On Aug 18, 2018, at 11:41, Teresa Barrett <teresa4petaluma@comcast.net> wrote:

Thank you. I am waiting to get the staff report.

Teresa Barrett
Petaluma City Council
707.953.0846
Sent from my iPhone

On Aug 17, 2018, at 10:43 AM, A Bock <bockak@yahoo.com> wrote:

If it still matters at this point to hear from Petaluma residents about the planned Safeway gas station on McDowell I would like to say on the record I oppose it. As much as I like cheap gas it's not worth it given the proximity to a residential area near schools and a park. I'm also concerned about increased traffic congestion. Thank you,
Annette Bock Petaluma

Begin forwarded message:

From: Teresa Barrett <teresa4petaluma@gmail.com>
Subject: Safeway Appeal
Date: December 2, 2018 at 11:35:47 AM PST
To: Heather Hines <hhines@m-group.us>, Scott Brodhun <sbrodhun@ci.petaluma.ca.us>

Heather,

In the staff report under background first paragraph site improvements include an electric vehicle charging station. I did not see that in the conditions of approval for the planning commission approval of the project and I did not see that in the initial submittal.

Where and when was that added and where is it located on the site?

Teresa Barrett
Sent from my iPhone

Begin forwarded message:

From: Sue Merrill <smerrill@petk12.org>
Subject: Petaluma City Schools Comment Letter on the Safeway Fuel Center Project
Date: September 12, 2018 at 4:50:29 PM PDT
To: undisclosed-recipients;

Good afternoon,



I submit this factual information to you in opposition to the proposed Safeway gas station just one block south of this intersection - already the worst intersection in all of Petaluma - and the more than 500 vehicles per day Safeway has stipulated it expects to frequent its gas station.

I feel that there will be even more than 500 per day because once "cheap gas" becomes available, non-Petaluma-resident vehicles both north- and southbound on Hwy. 101 will make a point to stop and gas up. Safeway is counting on this fact. In addition, vehicles will travel from the West side of Petaluma along East Washington for the "cheap gas" as well. The congestion in that area is already bad and will only get worse.

My neighbors and I are concerned about how this extra congestion will further slow access to Petaluma's one and only hospital and emergency room. This then becomes more than a traffic nuisance; it becomes a health issue.

You have the power to stop this. Please vote NO to the Safeway gas station.

Sincerely,

Horst Steinfelds

Begin forwarded message:

From: Pamela Joyce <pamelajoyce@comcast.net>
Subject: Re: Safeway
Date: December 14, 2016 at 8:45:40 PM PST
To: Teresa Barrett <teresa4petaluma@comcast.net>

I love this! yes indeed! and this village is very lucky to have you in it!! thank you...

On Dec 14, 2016, at 8:37 PM, Teresa Barrett <teresa4petaluma@comcast.net> wrote:

Do not forward this but feel free to let folks know you told me and...!

It takes a fucking village!

Sent from my iPhone

Begin forwarded message:

From: "Brown, John" <JBROWN@ci.petaluma.ca.us>
Date: December 14, 2016 at 3:51:58 PM PST
To: Teresa Barrett <teresa4petaluma@comcast.net>
Subject: FW: Safeway

I think it's safe to say our folks are all over it. Thanks again for letting me know that there is a problem.

JB

-----Original Message-----

From: Garcia, Joe
Sent: Wednesday, December 14, 2016 3:37 PM
To: Hughes, Doug; Klein, Ronald



Cc: Brown, John; Colin, Kevin; Savano, Ken; Frye, Marty
Subject: RE: Safeway

Doug and Ron:

Attached are the PUD guideline for the Parkway Plaza. Of immediate concern to the matters below, the following conditions apply to this shopping center:

1. Hours of operation are generally limited to 7:00 am to 10:00 pm. Starbucks received approval to open at 6:00 am.
2. Delivery hours are limited to 8:30 am to 4:30 pm. No delivery trucks should be coming or going outside of those hours. Trucks may be parked overnight for loading and unloading, but should be located near the loading docks.
3. Delivery trucks may enter from SMP, Riesling or Casella, but must exit using the southern exit by Leghorns Park.

Per the Zoning Ordinance, construction activities are limited to 7:00 am to 10:00 pm during the week, and 9:00 am to 10:00 pm during the weekends and City-observed holidays. The activities included in these hours that are applicable are:

1. A hammer or any other device or implement used to repeatedly pound or strike an object.
2. An impact wrench, or other tool or equipment powered by compressed air.
3. Any tool or piece of equipment powered by an internal-combustion engine such as, but not limited to, chain saw, backpack blower, and lawn mower. Except as specifically included in this Ordinance, motor vehicles, powered by an internal combustion engine and subject to the State of California vehicle code, are excluded from this prohibition.
4. Any electrically or battery powered tool or piece of equipment used for cutting, drilling, or shaping wood, plastic, metal, or other materials or objects, such as but not limited to a saw, drill, lathe or router.
5. Any of the following: the operation and/or loading or unloading of heavy equipment (such as but not limited to bulldozer, road grader, back hoe), ground drilling and boring equipment, hydraulic crane and boom equipment, portable power generator or pump, pavement equipment (such as but not limited to pneumatic hammer, pavement breaker, tamper, compacting equipment), pile-driving equipment, vibrating roller, sand blaster, gunite machine, trencher, concrete truck, and hot kettle pump and the like.
6. Construction, demolition, excavation, erection, alteration or repair activity.

I have included a copy of the City's noise ordinance for reference.

If you need me to join you in talking with Safeway, please let me know.

Thank you.

Temporary ban on Petaluma gas stations fails

LORI A. CARTER

THE PRESS DEMOCRAT | March 4, 2014



[Follow this story](#)

The Petaluma City Council on Monday night rejected a proposed moratorium on gas stations that would have prohibited Safeway from building a fueling station in front of its North McDowell Boulevard store.

A temporary urgency ordinance – commonly called a moratorium – would have required the approval of six of seven council members.

As council members began discussing the issue, it soon became clear that Councilman Mike Healy, who sought the moratorium, wouldn't even get a majority on his side. In a straw vote, only Healy, Gabe Kearney and Kathy Miller supported a 45-day ban to buy the council time to craft tighter regulations on gas stations.

"We should just follow the process we already have in place," said Councilman Mike Harris, saying businesses should be able to rely on existing rules when they "make investments in our community."

Councilwoman Teresa Barrett was conflicted in her vote. She said she opposes the gas station project on whole, but doesn't support blanket bans.

"I don't like moratoriums in general," she said. "I could support some for legitimate, really serious reasons...This is sort of designer legislation: 'We don't like this project, so what can we do to make it go away?' That's just not right."

Issues like air quality, noise, light, traffic and safety near school zones can be handled through the normal planning and environmental review, Planning Manager Heather Hines said.

Safeway applied in July to build a gas station at the front of the Washington Square Shopping Center, where a gas station is permitted by existing zoning.

Initially, other gas station owners in town voiced opposition to the plan out of fear that Safeway would sell below-cost gasoline or offer deep discounts to grocery club shoppers. Later, nearby residents and others concerned about air quality and traffic congestion also voiced opposition.

Meanwhile, Safeway gathered support from its shoppers and motorists who welcome additional competition in Petaluma's gasoline market.

A lawfirm representing Safeway wrote a strongly worded 16-page letter arguing that a temporary ban on its existing application wouldn't pass legal muster.

Safeway, which has operated a grocery store in Petaluma since 1929, proposes a station with eight double-sided fuel pumps under a canopy, with a charging station for electric vehicles.

The company said it will generate about \$400,000 in new tax revenue for the city, although the basis for that estimate was unclear.

Healy proposed a moratorium on gas stations because of what he characterized as unfair competition Safeway would create for other gas station operators and other grocers. He wanted the council to temporarily ban all gas stations – although Safeway is the only application being processed – so the council could consider tighter regulations.

While the temporary ban failed, the project itself still must go through the planning process at the Planning Commission. Decisions there can be appealed to the council.

Several council members said they would be interested in fine-tuning the city's regulations on gas stations or on air quality rules in general.

Longer-term options could include prohibiting all new gas stations, requiring new stations to have a conditional use permit, limiting the number of pumps at new stations or expanding the definition of "gas station" to address specific project impacts.

You can reach Staff Writer Lori A. Carter at 762-7297 or lori.carter@pressdemocrat.com.

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To Petaluma City Council members,

I would like to address an issue that I have not heard comment on before: specifically, the delay of access to the only hospital and emergency room in Petaluma, which will only be exacerbated by the more than 500 vehicles per day that Safeway has (conservatively) stipulated it expects to attract to its S. McDowell and Maria Dr. location.

The E. Washington and S. McDowell intersection, just one block north of the proposed Safeway gas station site, is recognized now as THE most congested intersection in all of Petaluma. This already traffic-plagued intersection is a mere 4/10ths of a mile from Petaluma Valley Hospital and is an integral part of the primary route to that hospital.

Consider all the non-Petaluma vehicles that, when Safeway advertises its "cheap gas" is available at its new location, will get off of and back on to Hwy. 101 at E. Washington at all hours of the day to go to Safeway. We cannot delude ourselves that this isn't exactly what Safeway is hoping for, however gently and quietly they propose this beneficent "fuel center" for our community.

Safeway cleverly made an effort in the Health Risk Assessment it presented to the Planning Commission to point out that the added traffic at its proposed site would not detrimentally affect the Petaluma airport. Strategically, however, Safeway made no mention of how the added traffic would affect access to the hospital and its emergency room.

This a significant impact that City Council must recognize and address. I hereby formally request that City Council require a full Environmental Impact Report be done before any further decision be made about the viability of any gas station that Safeway wants to impose on Petaluma at this site.

Sincerely,

JoAnn McEachin
1512 Sierra Dr.
(415) 518-1950

Begin forwarded message:

From: Teresa Barrett <teresa4petaluma@comcast.net>
Subject: Fwd: Safeway Fuel Center
Date: June 25, 2018 at 8:01:14 PM PDT
To: rldt@aol.com

Linda,

I am not certain if the staff responded directly to you regarding the issue you asked about the proximity of gas stations and sensitive receptors like preschool children and schools.

I'm afraid the standards are not as high as either you or I would want.

I intend to follow this up with the BAAQMD, because I do not know how the threshold of 25.7 million gallons was determined and. That seems like an awfully high number to me.

I will circle back once I hear back from the Air District.

Teresa Barrett
Petaluma City Council
707.953.0846
teresa4petaluma@comcast.net

Begin forwarded message:



Karen O
Johnathan K
Rose K
Samantha P



Begin forwarded message:

From: kathleencoona@comcast.net
Subject: Please Vote YES on the Safeway Gas Station
Date: December 2, 2018 at 7:46:45 PM PST
To: teresa4petaluma@comcast.net

Message: We need this gas station, our family does not put any gas her in town. We go to Novato, Santa Rosa or Rohnert Park. Petaluma is losing out on a lot of gas tax revenue. This needs to move forward now.

Name: Kathleen Coon

Begin forwarded message:

From: "dave glass" <daveglass@comcast.net>
Subject: RE: How much was Safeway's bribe????
Date: July 4, 2018 at 2:15:58 PM PDT
To: <TheWriteGuy@comcast.net>, <cityclerk@ci.petaluma.ca.us>

At no time have I ever witnessed the offering of a bribe to any council member. I have never been offered, nor would I ever entertain one.

Thank you for the inquiry.

From: Bob Canning [<mailto:TheWriteGuy@comcast.net>]
Sent: Wednesday, July 04, 2018 1:52 PM
To: cityclerk@ci.petaluma.ca.us; daveglass@comcast.net
Subject: How much was Safeway's bribe????

Seems we have many in Petaluma who want to know. I certainly do!

<http://www.petaluma360.com/news/8479065-181/petaluma-approves-safeway-gas-station>

Bob Canning

Begin forwarded message:

From: JoAnn McEachin <joannmceachin@gmail.com>
Subject: Opposition to Petaluma Safeway gas station
Date: September 13, 2018 at 8:26:32 AM PDT
To: councilman.albertson@gmail.com, teresa4petaluma@comcast.net,
mayordavidglass@gmail.com, mthealy@sbcglobal.net, councilmemberkearney@me.com,
davekingpcc@gmail.com, kathleencmillerooffice@gmail.com, citycouncil@ci.petaluma.ca.us



(925) 226-5754 Office | (925) 413-4455 Mobile
natalie.mattei@safeway.com | [LinkedIn](#)



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 2018 0906 Letter to Heather Hines re Response to Request for Supplementa....pdf
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- Click to Download
 FM3 Petaluma Gas Station Public Opinion Survey - Summary Memo 2018-06-26.pdf
 220 KB
- Click to Download
 2018 0911 Letter to Heather Hines re Safeway Fuel Center Project.pdf
 5.5 MB

Begin forwarded message:

From: Linda Hartrich <rldt@aol.com>
Subject: Re: Safeway Fuel Center
Date: June 26, 2018 at 12:05:50 AM PDT
To: Teresa Barrett <teresa4petaluma@comcast.net>

Thank you Theresa. I live a mile away, but I have a friend with young kids who lives just across the street on McDowell/McKenzie.

I wish they could just buy out the Chevron station! If Safeway gas is built, that Chevron may go out of business anyway.

I appreciate your efforts, along with neighbors, teachers, kids & coaches.

Linda

Sent from my iPhone

On Jun 25, 2018, at 8:01 PM, Teresa Barrett <teresa4petaluma@comcast.net> wrote:

Linda,



I am not certain if the staff responded directly to you regarding the issue you asked about the proximity of gas stations and sensitive receptors like preschool children and schools.

I'm afraid the standards are not as high as either you or I would want.

I intend to follow this up with the BAAQMD, because I do not know how the threshold of 25.7 million gallons was determined and. That seems like an awfully high number to me.

I will circle back once I hear back from the Air District.

Teresa Barrett
Petaluma City Council
707.953.0846
teresa4petaluma@comcast.net

Begin forwarded message:

From: Hines, Heather
Sent: Monday, June 25, 2018 6:09 PM
To: Brown, John
Subject: Safeway Fuel Center

John,

You requested a response to the question of "what are the California regulations of how many feet away a gas station can be built in proximity to schools and homes". The answer is not quite as direct as the question is asked, but please see the following.

There is not a specific regulation that states a maximum distance that a gas station can be built next to sensitive receptors. The California Air Resource Board's (CARB) handbook, from 2005, provides nonbinding advisory recommendations to avoid siting new sensitive land uses within 300 feet of an existing gasoline dispensing facility. These guidelines are for the siting of new schools facilities, daycare centers, and other sensitive receptors (homes) not the other way around. This is because new sensitive land uses, such as schools, do not require air quality permits (they are not regulated, so general guidelines for locating new schools away from existing source emitters are provided). Whereas a new area source emitters, such as a new gas station, does require air quality permits which will evaluate the appropriateness of the proposed location and proximity to



planning commission approval of the project and I did not see that in the initial submittal.

Where and when was that added and where is it located on the site?

Teresa Barrett
Sent from my iPhone

Begin forwarded message:

From: Teresa Barrett <teresa4petaluma@gmail.com>
Subject: Fwd: Comments on Nextdoor re: Safeway gas
Date: June 26, 2018 at 5:45:10 PM PDT
To: Heidi Rhymes <heidibauer2000@gmail.com>

Teresa Barrett
teresa4petaluma@gmail.com
(707) 953-0846



Begin forwarded message:

From: Linda Hartrich <rltd@aol.com>
Subject: Comments on Nextdoor re: Safeway gas
Date: June 26, 2018 at 12:14:29 AM PDT
To: teresa4petaluma@comcast.net

Page 1



Here are some topics/talking points to consider in your speech and/or email;

- The increased traffic to an already congested area by people attracted to the area by "discount gas".
- The lure of discounted gas will likely pull people off HWY 101, increasing congestion at the Washington and McDowell Blvd. intersection.
- The potential dangers of the increased traffic to pedestrians, bicyclists, and children attending the schools and little league fields.
- The proximity of the gas station to the Eastside Transit Center, with upwards of 4 buses navigating the same roads as gas patrons every half hour on the hour.
- The proximity of the gas station to the nursery school, preschool, elementary school, and little league fields.
- The effects of the increased air pollution on the vulnerable lungs of the users of the aforementioned areas.



Sent from my iPhone



Begin forwarded message:

From: Teresa Barrett <teresa4petaluma@gmail.com>
Subject: Re: Safeway gas and 11 years from now...
Date: October 8, 2018 at 9:45:02 PM PDT
To: Jason Davies <jasond1@mac.com>

I'm totally on the same page and I'm cautiously hopeful.
Thanks for offering to GOTV—packet with instructions will be coming soon!

Teresa Barrett

On Oct 8, 2018, at 7:29 PM, Jason Davies <jasond1@mac.com> wrote:

I realize there may be little the city can do to avoid approval of the Safeway gas station without a costly legal challenge, but if a case were to be made, I'd say this is a good one:

<https://www.cnn.com/2018/10/07/world/climate-change-new-ipcc-report-wxc/index.html>

Just pains me to see us going backwards like this when we already have existing stations and we need to be getting ourselves off our addiction to fossil fuels.

All the best,

Jason

Begin forwarded message:

From: "Respicio, Maryknol" <mrespicio@rutan.com>
Subject: Safeway Fuel Center Project; 335 S. McDowell Boulevard, City of Petaluma
Date: October 5, 2018 at 5:58:01 PM PDT
To: "teresa4petaluma@comcast.net" <teresa4petaluma@comcast.net>

You are being provided access to documents by Rutan & Tucker, LLP. You can access the documents for the next 30 days by clicking on the link below. See below for a message from the sender, and for a list of all recipients of this email.

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* If the link above does not work, copy the following URL to a web browser:

<https://rutantucker.thruinc.net/Desktop/Distro/Open/04164MLY7E1>

Please see attached letter from Matthew Francois.

Thank you.

Maryknol Respicio

Assistant to Matthew D. Francois
Rutan & Tucker, LLP
Five Palo Alto Square, 3000 El Camino Real, Ste. 200



Message: The store offers cents off the price of gas when you purchase groceries. It would be nice to be able to utilize that savings right at the store. The only other Safeway gas stations are American Canyon, Santa Rosa (which does not have convenient access) or Novato. Doesn't seem logical to drive 15-25 miles in other to use the rewards earned.

Name: Jane

Begin forwarded message:

From: "Brown, John" <JBROWN@ci.petaluma.ca.us>
Subject: Automatic reply: Safeway employees and consultants speaking as part of public comment?!
Date: June 26, 2018 at 9:35:17 PM PDT
To: Council Member Teresa Barrett <teresa4petaluma@comcast.net>

I will be away from the office Tuesday June 26, 2018. If you need immediate assistance, please call Katie Crump, Executive Assistant, at 778-4345.

John C. Brown
City Manager
City of Petaluma

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Begin forwarded message:

From: A Bock <bockak@yahoo.com>
Subject: Safeway gas station on McDowell
Date: August 17, 2018 at 10:43:07 AM PDT
To: teresa4petaluma@comcast.net

If it still matters at this point to hear from Petaluma residents about the planned Safeway gas station on McDowell I would like to say on the record I oppose it. As much as I like cheap gas it's not worth it given the proximity to a residential area near schools and a park. I'm also concerned about increased traffic congestion.
Thank you, Annette Bock Petaluma

Begin forwarded message:

From: Richard Sachen Jr <richard@rsachen.net>
Subject: Re: Safeway Gas Permit
Date: July 7, 2018 at 5:45:40 PM PDT
To: Bernie Album <allbernie5@gmail.com>
Cc: JoAnn McEachin <joannmceachin@gmail.com>, Teresa Barret <teresabarrett@comcast.net>

Bernie,

Thank you for getting in touch with me. I am a Petaluma Resident and live near Meadow Elementary at 1617 Madeira Circle. I've had personal experience with what happens when a school is near a business



that leaks a hazardous material. The business ends up not having the funds for cleanup and the school ends up closing because neither does the school district.

I am also part of the Executive Committee of the Sonoma Group of the Sierra Club, and I would like to offer what assistance I can. The Sonoma Group cannot take the lead on an appeal, especially with the time frame involved, but we can help once an appeal has been made. The Sierra Club is generally against expansion of fossil fuel infrastructure and encourages the transition to EV and other zero emission technologies. With the CA legislature set to vote on a bill to require 100% clean energy in the near future (SB100), there is no long term viability of a gasoline refueling station.

Let me know when you are meeting as I would like to attend.

Richard Sachen
707-327-8298 (cell)

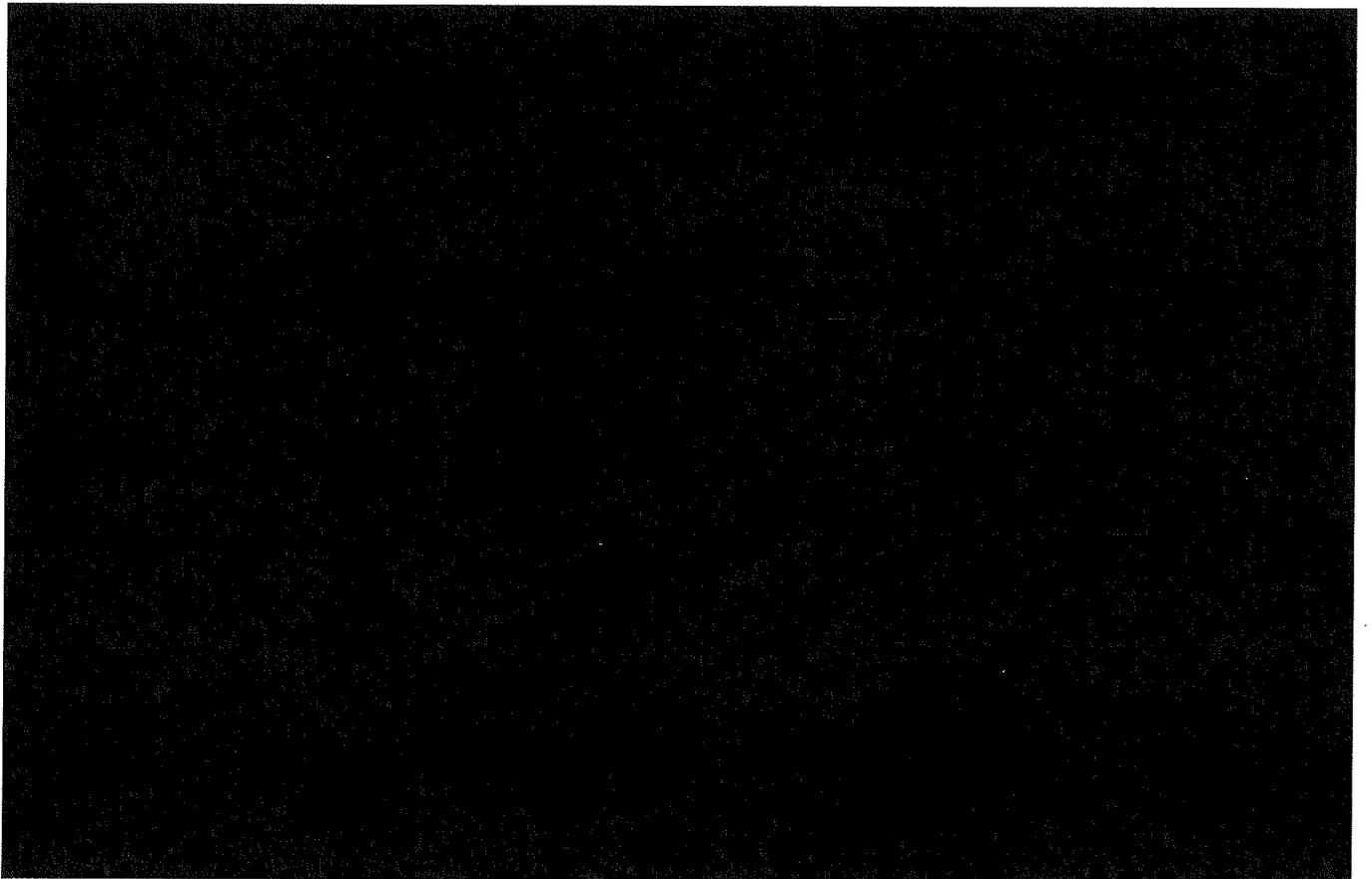
On Jul 7, 2018, at 4:44 PM, Bernie Album <allbernie5@gmail.com> wrote:

Richard,

A group of area residents that are anti-Safeway gas station permit approval will be meeting Sunday to submit a formal appeal. We are required to submit a signed letter and \$256 fee by Monday to City Hall Planning Office. Attached is my draft letter FYI. If you are interested in being involved let me know with your home resident address and I will send you more information.

Bernie Album

<Safeway APPEAL.pdf>





Palo Alto, CA 94306
(650) 320-1500 x7723
mrespicio@rutan.com
www.rutan.com

RUTAN



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Other message recipients:

From: mrespicio@rutan.com

To: dbreen@baaqmd.gov

Cc: Natalie.Mattei@albertsons.com, teresa4petaluma@comcast.net, szane@baaqmd.gov, dcampbell@baaqmd.gov, ydicarlo@baaqmd.gov, vlau@baaqmd.gov, koei@baaqmd.gov, dvintze@baaqmd.gov, byoung@baaqmd.gov, citymgr@ci.petaluma.ca.us, edanly@ci.petaluma.ca.us, mayordavidglass@gmail.com, hhines@m-group.us, oerwin@m-group.us, apetersen@m-group.us, mfrancois@rutan.com

Reply To All

Thru Tracking: T478-041-75215-78744

Begin forwarded message:

From: Teresa barrett <teresabarrett@comcast.net>

Subject: Re: Safeway Gas Station

Date: July 7, 2018 at 2:14:00 PM PDT

To: Bernie Album <allbernie5@gmail.com>

Sorry, Bernie—this is NOT a win for Petaluma!

Teresa Barrett
Sent from my iPhone

On Jul 7, 2018, at 9:45 AM, Bernie Album <allbernie5@gmail.com> wrote:

Teresa,
I manage to get 3 others on my Miwok Neighbors network to join with me and share paying the \$256 fee. I thought you would not be permitted to be involved in any way with an appeal. The letter listed all the reasons against you already heard. I decided not to continue my effort because I didn't get at least 9 others to join with me and because the more I think about it, I doubt we could get anyone who voted for approval to change. The fact of the matter is Safeway has more lawyers and funds to spend in endless litigation than Petaluma. Probably Mike Healy's reasoning (?) because he spoke against while



voting for. I am giving up. Maybe someone else will file an appeal on their own and we will find out.

Thank you for your replies.

Bernie

On Sat, Jul 7, 2018 at 8:02 AM, Teresa Barrett <teresabarrett@comcast.net> wrote:

Bernie,

I couldn't open it, but it is probably best I not see this. You might review the video of the meeting to get the names of those who spoke if you don't already have them.

Best

Teresa Barrett

On Jul 6, 2018, at 3:31 PM, Bernie Album <allbernie5@gmail.com> wrote:

Teresa,

Just to follow-up my request for info I want to inform you I did call and am in the process of trying to get together 9 others to cosign a letter requesting an appeal and to share the required \$256 fee 10 ways. I drafted a letter to get started and posted a request for others to join with me on our Miwok Neighbors network. So far only 2 have replied positively. I need 6 more to proceed. I don't know how involved you are permitted to be with my efforts, therefore, I just want to let you know what I am trying to do. Also, be advised I have not contacted any other Council member unless they are subscribed to my Miwok Neighbors Network.

Attached is the letter I drafted FYI and, if permitted, comment(s).

Bernie

(note:I may need to convert it to a pdf if you can't open)

On Thu, Jul 5, 2018 at 1:40 PM, Teresa Barrett

<teresabarrett@comcast.net> wrote:

I think a call to our planning department: (707) 778-4316 can give you all the details—call today they do not work in Fridays

Teresa Barrett

On Jul 5, 2018, at 9:49 AM, Bernie Album <allbernie5@gmail.com>

wrote:

Teresa,

There will be many voters to support an appeal. I suspect there will be a large turnout of residents to



Information contained in this message may be privileged, confidential and protected from disclosure. If you are not an intended recipient, it is strictly prohibited to use, disseminate or copy this communication. If you have received this in error, please reply to the sender and then delete the message.

Thank you.

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Click to Download

PCS Proposed Safeway Fuel Center Project ltr.pdf
327 KB

Click to Download

Meridian Consultants - Petaluma Safeway Review 09122018.pdf
579 KB

Begin forwarded message:

From: Teresa barrett <teresabarrett@comcast.net>
Subject: Re: Safeway Gas Permit
Date: July 7, 2018 at 9:52:09 PM PDT
To: Bernie Album <allbernie5@gmail.com>

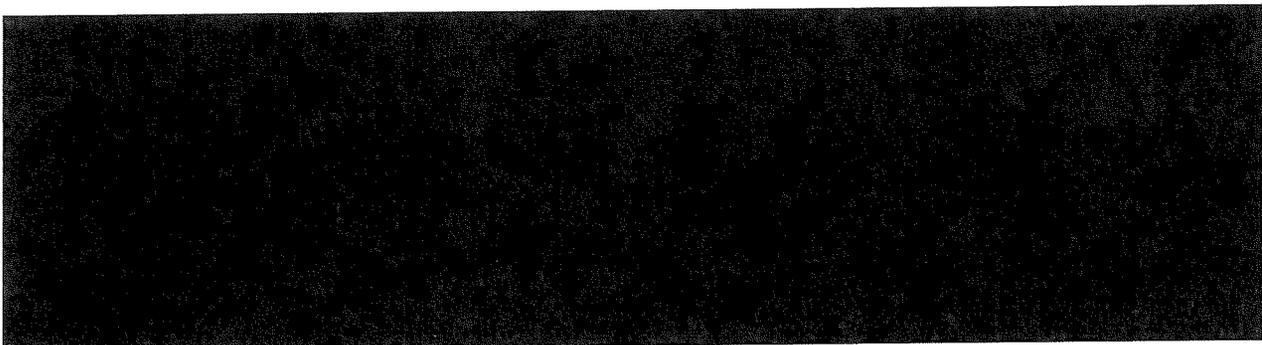
Bernie, better not to include me in these emails.

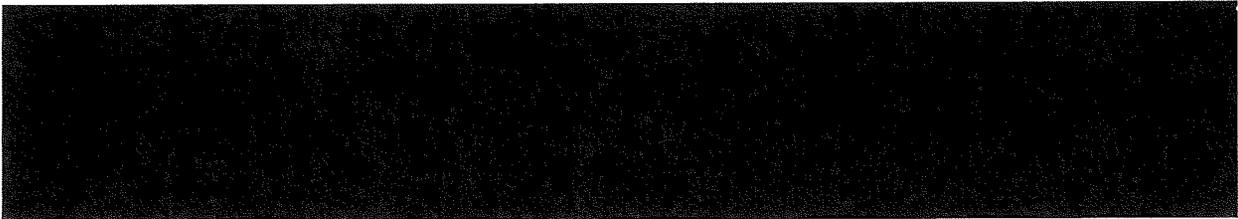
Teresa Barrett
Sent from my iPhone

On Jul 7, 2018, at 4:44 PM, Bernie Album <allbernie5@gmail.com> wrote:

Richard,
 A group of area residents that are anti-Safeway gas station permit approval will be meeting Sunday to submit a formal appeal. We are required to submit a signed letter and \$256 fee by Monday to City Hall Planning Office. Attached is my draft letter FYI. If you are interested in being involved let me know with your home resident address and I will send you more information.
 Bernie Album
 <Safeway APPEAL.pdf>

Begin forwarded message:





From: "Pascoe, Samantha" <SPASCOE@ci.petaluma.ca.us>
Subject: Rutan/Safeway Fuel Center Project Public Records Act Request (PRA2018-11-006)
Date: December 5, 2018 at 2:47:28 PM PST
To: David Glass <daveglass@comcast.net>, Council Member Teresa Barrett <teresa4petaluma@comcast.net>, Chris Albertson <councilman.albertson@gmail.com>, Gabe Kearney <councilmemberkearney@me.com>, Kathleen Miller <kathleencmillerooffice@gmail.com>, "dianaegomez@gmail.com" <dianaegomez@gmail.com>, Bill Wolpert <wolpert@sonic.net>, "mikeharriscampaign@gmail.com" <mikeharriscampaign@gmail.com>, "Brodhun, Scott" <SBRODHUN@ci.petaluma.ca.us>
Cc: "Danly, Eric" <edanly@ci.petaluma.ca.us>, "Hines, H" <HHines@m-group.us>

Good afternoon,

We've received a second Public Records Act request from Rutan.

Please note: Item 1 requests those listed in Exhibit B to produce records from the May 24th request (Exhibit A). Although most of you responded, please check your records again and let me know either way for the record.

An extension has been given to Rutan to enable us to search and collect any responsive records. Please send the records directly to me and if you do not have any responsive documents to any of the items listed, we will need to note that. Legal will be reviewing before releasing any records to Rutan.

Thank you for your assistance,
 Samantha

Samantha Pascoe, CMC
 Deputy City Clerk
 Main 707.778.4360 Direct 707.778.4575
www.cityofpetaluma.net
 Hours: Mon – Thurs 8am to 5pm, Closed Fridays

<p>Click to Download</p> <p style="text-align: center;">2018 1119 PRA Request to City of Petaluma.pdf</p> <p style="text-align: center;">449 KB</p>

Begin forwarded message:

From: Teresa Barrett <teresa4petaluma@comcast.net>
Subject: Re: Safeway gas station on McDowell
Date: August 18, 2018 at 11:41:49 AM PDT

New post on The Raucous Rooster



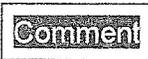
Safeway Gas Project's BAAQMD Permit 'No Longer Complies with Current Law' – Sierra Club

by [Christopher Fisher](#)

The Sonoma County chapter of the Sierra Club last week mailed a letter to the Petaluma City Council that suggested the Safeway gas station project on its [September 17 agenda](#) should, at a minimum, be delayed so that a formal Environmental Impact Report could be developed due to the possible invalidity of its 2013 Bay Area Air Quality Management District permit under current law. Visit [Oppose Petaluma Safeway Gas](#) for more information on this project.



[Christopher Fisher](#) | September 14, 2018 at 1:28 pm | Tags: [Sierra Club Sonoma Group](#) | URL: <https://wp.me/p45e6u-2NO>



[See all comments](#)

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Trouble clicking? Copy and paste this URL into your browser:

<http://theraucousrooster.com/2018/09/14/safeway-gas-projects-baaqmd-permit-no-longer-complies-with-current-law-sierra-club/>

Begin forwarded message:

From: Teresa Barrett <teresabarrett@comcast.net>
Subject: Re: Safeway Gas Station
Date: July 8, 2018 at 7:12:52 AM PDT
To: dave glass <daveglass@comcast.net>

Bernie Album is working with a group to appeal this. I have sent him emails of those who ask what they can do.

Teresa Barrett

On Jul 7, 2018, at 5:48 PM, dave glass <daveglass@comcast.net> wrote:

I am forwarding your questions to city staff for response.

The preliminary answer to your question is not going to be the answer you are most likely looking for.



The property zoning permits such a use, and it appears the restrictions that are in place under the law for such use in proximity to schools do not meet the threshold to withhold approval of a project such as this.

This project will comply with all California Laws regarding such issues as pollution. No laws will be broken regarding this matter either to deny approval or to allow for an approval.

Nothing in this correspondence should be interpreted as an opinion of support or lack of the same. As you mention California Law, under the law as a decision maker, I am required to keep an open mind, review all evidence in the record, and only then am I able to make an informed decision on the matter.

I realize this issue was in front of the Planning Commission recently and was approved on a divided vote. It may be coming to the city council on an appeal of that decision. Therefore, I will reserve all other comments on this matter until such time the appeal period has expired, or the appeal has been heard at the city council.

I am confident city staff will be in communication with you in the coming days.

Thank you.

David Glass

From: rldt@aol.com [<mailto:rldt@aol.com>]
Sent: Saturday, July 07, 2018 5:34 PM
To: mayordavidglass@gmail.com
Subject: Safeway Gas Station

We are writing to express our EXTREME DISMAY at the potential Safeway Gas Station coming in to Washington Square. I have nothing against the gas station -- only the TERRIBLE congested corner location!

This corner is DIRECTLY across from 4C's Preschool and playground, and McDowell Elementary School plus two other schools on the property.
This corner faces residential homes on S. McDowell and McKenzie Ave.
This corner is on a small two-way road, Maria Drive. And the very congested S. McDowell.
This corner is right next to a very busy bus stop.
This corner is very close to the busy Little League fields and McDowell Park playground.
Too much pollution. Too much noise pollution. Too many idling cars. Too many fumes.

SO MANY neighbors have spoken out AGAINST this location.

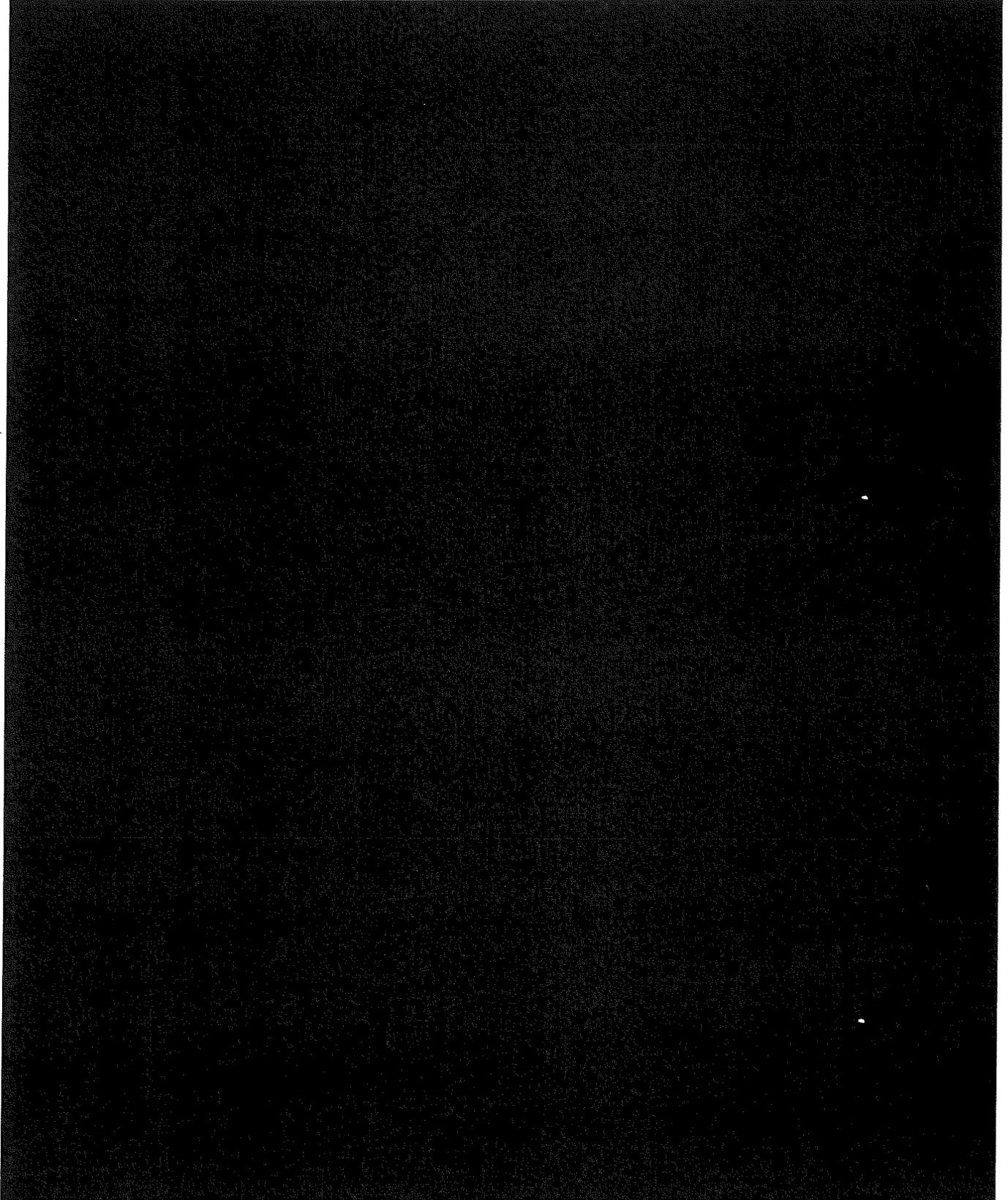
Our questions: Is there anywhere else to locate this within the center? Maybe move WestAmerica Bank?? Maybe buy out the already existing Chevron Station (the one that already gives a Safeway discount?)

2nd question: WHAT IS THE CALIFORNIA STATE REGULATION ON HOW FAR AWAY GAS PUMPS HAVE TO BE FROM SCHOOL AND RESIDENCES? Are you breaking a law here? The preschool is RIGHT ACROSS THE STREET!



We would appreciate answers to each of these questions as soon as possible. Thank you.
Robert and Linda Hartrich
RLDT@aol.com

Begin forwarded message:





I just came from a business here in town where the owner read to me postings on the neighborhood website over by the old G and G market.

It seems Safeway is retrofitting the G and G market seven days a week 24 hours a day according to the postings. The other complaint is that the huge trucks are using streets that are not open to those kinds of trucks. I have no idea how valid this is, or what kind of permitting they have with the city but it is a big snit on the neighborhood website and a lot of negative things being said about the city on this.

Sent from my iPhone

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Begin forwarded message:

From: Teresa Barrett <Teresabarrett@comcast.net>
Subject: Re: **SAFeway GAS STATION**
Date: July 13, 2018 at 6:39:11 AM PDT
To: Pamela Torliatt <ptorliatt@aol.com>

Yes, perhaps we can talk about this tonight.

Teresa Barrett
Teresabarrett@comcast.net

On Jul 12, 2018, at 10:19 PM, Pamela Torliatt <ptorliatt@aol.com> wrote:

<Safeway Gas station appeal letter, Petaluma.pdf>

Begin forwarded message:

From: jennyb <jennyb01@wLLw.net>
Subject: **No to Safeways gas station**
Date: November 29, 2018 at 6:21:32 PM PST
To: MayorDavidGlass@gmail.com, mthealy@sbcglobal.net, teresa4petaluma@comcast.net, councilmemberkearney@me.com, davekingpcc@gmail.com, kathleencmillerooffice@gmail.com

Dear Petaluma City Council

I urge you to deny Safeway's proposal to build a new 16-pump gas station in Washington Square, close to a child care center, an elementary school, and fields where children play.

Safeways/Albertsons states, "Albertsons Companies is committed to integrating sustainability into our everyday business decisions to enable our employees, customers and stakeholders to create better lives, vibrant neighborhoods and a healthier planet." <https://www.albertsonscorporation.com/our-values/sustainability.html>



To: A Bock <bockak@yahoo.com>

Thank you. I am waiting to get the staff report.

Teresa Barrett
Petaluma City Council
707.953.0846
Sent from my iPhone

On Aug 17, 2018, at 10:43 AM, A Bock <bockak@yahoo.com> wrote:

If it still matters at this point to hear from Petaluma residents about the planned Safeway gas station on McDowell I would like to say on the record I oppose it. As much as I like cheap gas it's not worth it given the proximity to a residential area near schools and a park. I'm also concerned about increased traffic congestion. Thank you, Annette Bock
Petaluma

Begin forwarded message:

From: PAMELA TORLIATT <ptorliatt@aol.com>
Subject: Re: Please Vote YES on the Safeway Gas Station
Date: November 27, 2018 at 11:34:12 AM PST
To: Teresa Barrett <teresa4petaluma@comcast.net>

No it is Scott Vouri

Sent from my iPhone

On Nov 26, 2018, at 10:47 PM, Teresa Barrett <teresa4petaluma@comcast.net> wrote:

Is this the same name as the guy who ran for city council?

Teresa Barrett
Petaluma City Council
707.953.0846
Sent from my iPhone

Begin forwarded message:

From: Svorhees@comcast.net
Date: November 26, 2018 at 8:56:29 PM PST
To: teresa4petaluma@comcast.net
Subject: Please Vote YES on the Safeway Gas Station

Message: Gas prices are to high in Petaluma, everybody I know goes to Costco in RP because of it. Let's keep that money local and get this Safeway Gas station approved now.

Name: Scott Vorhees



Begin forwarded message:

From: Teresa Barrett <teresabarrett@comcast.net>
Subject: Re: Safeway Gas Station
Date: July 7, 2018 at 8:02:38 AM PDT
To: Bernie Album <allbernie5@gmail.com>

Bernie,

I couldn't open it, but it is probably best I not see this. You might review the video of the meeting to get the names of those who spoke if you don't already have them.

Best

Teresa Barrett

On Jul 6, 2018, at 3:31 PM, Bernie Album <allbernie5@gmail.com> wrote:

*Teresa,
Just to follow-up my request for info I want to inform you I did call and am in the process of trying to get together 9 others to cosign a letter requesting an appeal and to share the required \$256 fee 10 ways. I drafted a letter to get started and posted a request for others to join with me on our Miwok Neighbors network. So far only 2 have replied positively. I need 6 more to proceed. I don't know how involved you are permitted to be with my efforts, therefore, I just want to let you know what I am trying to do. Also, be advised I have not contacted any other Council member unless they are subscribed to my Miwok Neighbors Network.
Attached is the letter I drafted FYI and, if permitted, comment(s).
Bernie
(note: I may need to convert it to a pdf if you can't open)*

On Thu, Jul 5, 2018 at 1:40 PM, Teresa Barrett <teresabarrett@comcast.net> wrote:
I think a call to our planning department: (707) 778-4316 can give you all the details—call today they do not work in Fridays

Teresa Barrett

On Jul 5, 2018, at 9:49 AM, Bernie Album <allbernie5@gmail.com> wrote:

Teresa,
There will be many voters to support an appeal. I suspect there will be a large turnout of residents to support an appeal at the next council meeting July 9. I will be among them. I attended the Planning Commission meeting June 26. All visitors spoke against, except Brian Moynahan of course. I thought I even heard Mike Healy speak against Railey and I left before they voted but I read in the Argus it passed 4-3, but I did not note that included how Mike Healy voted.
Who can initiate an appeal process?



Danly, Eric



From: David Glass <daveglass@comcast.net>
Sent: Thursday, December 20, 2018 3:37 PM
To: Danly, Eric
Subject: Fwd: RE: Safeway Gas Station

---Warning: Use caution before clicking any attachments. THIS EMAIL IS FROM OUTSIDE OUR EMAIL SYSTEM.---

----- Original Message -----

From: dave glass <daveglass@comcast.net>
To: 'Teresa Barrett' <teresabarrett@comcast.net>
Date: July 8, 2018 at 8:17 AM
Subject: RE: Safeway Gas Station

Thank you. Not surprise that there would be an appeal. Going to Art and Garden today.
Got to get somewhere out of myT Shirt.

From: Teresa Barrett [mailto:teresabarrett@comcast.net]
Sent: Sunday, July 08, 2018 7:13 AM
To: dave glass <daveglass@comcast.net>
Subject: Re: Safeway Gas Station

Bernie Album is working with a group to appeal this. I have sent him emails of those who ask what they can do.

Teresa Barrett

On Jul 7, 2018, at 5:48 PM, dave glass <daveglass@comcast.net> wrote:

I am forwarding your questions to city staff for response.

The preliminary answer to your question is not going to be the answer you are most likely looking for.

The property zoning permits such a use, and it appears the restrictions that are in place under the law for such use in proximity to schools do not meet the threshold to withhold approval of a project such as this.



Dear Friends, I am concerned "Niles Canyon Fair Argument" is going to change development in all cities in California. Will this be positive or negative?

<Document1.docx>

Begin forwarded message:

From: Nettie <bockak@yahoo.com>
Subject: Re: Safeway gas station on McDowell
Date: August 20, 2018 at 7:30:34 AM PDT
To: Teresa Barrett <teresa4petaluma@comcast.net>

Hi-not sure what this means. Are you for the Safeway gas station project?

Sent from my iPhone

On Aug 18, 2018, at 11:41, Teresa Barrett <teresa4petaluma@comcast.net> wrote:

Thank you. I am waiting to get the staff report.

Teresa Barrett
Petaluma City Council
707.953.0846
Sent from my iPhone

On Aug 17, 2018, at 10:43 AM, A Bock <bockak@yahoo.com> wrote:

If it still matters at this point to hear from Petaluma residents about the planned Safeway gas station on McDowell I would like to say on the record I oppose it. As much as I like cheap gas it's not worth it given the proximity to a residential area near schools and a park. I'm also concerned about increased traffic congestion. Thank you, Annette Bock Petaluma

Begin forwarded message:

From: "Hines, Heather" <HHINES@ci.petaluma.ca.us>
Subject: Automatic reply: Safeway employees and consultants speaking as part of public comment?!
Date: June 26, 2018 at 9:35:22 PM PDT
To: Council Member Teresa Barrett <teresa4petaluma@comcast.net>

I am out of the office until Monday, July 2nd. I will respond to your email upon my return. If you need to speak with someone in my absence please contact Brittany Bendix at bbendix@ci.petaluma.ca.us

Thank you.

Heather

Begin forwarded message:

From: Diana <dianaegomez@gmail.com>



Subject: Re: Safeway hearing
Date: June 26, 2018 at 11:54:11 PM PDT
To: Teresa Barrett <teresa4petaluma@comcast.net>

I know right? Your welcome it was very close and I don't think it really should've been that close given what we are presented but that's OK. And why are you up so late

Diana.

On Jun 26, 2018, at 11:46 PM, Teresa Barrett <teresa4petaluma@comcast.net> wrote:

Wow, Safeway was in a league of its own! Thank you for your comments and moving the project down the line.

Teresa Barrett
Petaluma City Council
707.953.0846
Sent from my iPhone

Begin forwarded message:

From: michaelangelak97@gmail.com
Subject: Please Vote YES on the Safeway Gas Station
Date: December 3, 2018 at 4:36:52 PM PST
To: teresa4petaluma@comcast.net

Message: What about the elementary school next door. All the construction and noise the gas fumes, there is a baseball field and playground. A Main bus station. No, No, No. Not a good place. Most parents of this town say No. Think of the children, our future, I've lived here 20 years, have grandchildren young in school. No to the greedy Safeway gas station
Name: Angela Koerber

Begin forwarded message:

From: "Brown, John" <JBROWN@ci.petaluma.ca.us>
Subject: 100 more people signed "Petaluma City Council: Support Petaluma Safeway Gas Station!"
Date: August 20, 2018 at 3:03:28 PM PDT
To: "Chris Albertson (councilman.albertson@gmail.com)" <councilman.albertson@gmail.com>, Dave Glass <daveglass@comcast.net>, "Dave King" <davekingpcc@gmail.com>, Gabe Kearney <gkearney@me.com>, "Kathy Miller (kathleencmilleroffice@gmail.com)" <kathleencmilleroffice@gmail.com>, Michael Healy <mthealy@sbcglobal.net>, Teresa Barrett <teresa4petaluma@comcast.net>
Cc: "Hines, Heather" <HHines@m-group.us>

All – you received the subject petition via email. A councilmember noted a post attributed to Heather Hines several down in the string " There's no such thing as too many gas stations!", and gave her a head's up that it was there. It goes without saying that Heather is far too professional to sign onto a petition addressing a planning entitlement that she is bringing to the City Council, but Heather wanted to emphasize for you that the post did not come from her. If you have any questions, please let me know.

Thanks,



To: Colin, Kevin; Hughes, Doug; Savano, Ken
Subject: FW: Safeway

Gentlemen, is Safeway running afoul of any weight/length restrictions, do they need/have they gotten a building permit for tenant improvements, are there any conditions from shopping center approvals they need to be complying with, and/or are there any conditions as to time of day work on tenant improvements?

Thanks

-----Original Message-----

From: Teresa Barrett [mailto:teresa4petaluma@comcast.net]
Sent: Wednesday, December 14, 2016 11:55 AM
To: Brown, John
Subject: Safeway

John,

FYI:

I just came from a business here in town where the owner read to me postings on the neighborhood website over by the old G and G market.

It seems Safeway is retrofitting the G and G market seven days a week 24 hours a day according to the postings. The other complaint is that the huge trucks are using streets that are not open to those kinds of trucks. I have no idea how valid this is, or what kind of permitting they have with the city but it is a big snit on the neighborhood website and a lot of negative things being said about the city on this.

Sent from my iPhone

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Begin forwarded message:

From: Teresa Barrett <teresa4petaluma@comcast.net>
Subject: Re: Safeway gas station on McDowell
Date: August 20, 2018 at 8:23:16 PM PDT
To: Nettie <bockak@yahoo.com>

No, it means I want to know what is to be decided on, ie, the staff report— before I respond, as this is coming to the council for a vote on the 17th.

I do not support the idea of putting this project in this place, but I am not sure that that is what I will be asked to vote on. I have watched the planning commission hearing, read a lot of the background documentation, but I have not seen the appeal or the staff report.

Sorry if I was unclear.

Teresa Barrett
Petaluma City Council
707.953.0846
Sent from my iPhone



On Aug 20, 2018, at 7:30 AM, Nettie <bockak@yahoo.com> wrote:

Hi-not sure what this means. Are you for the Safeway gas station project?

Sent from my iPhone

On Aug 18, 2018, at 11:41, Teresa Barrett <teresa4petaluma@comcast.net> wrote:

Thank you. I am waiting to get the staff report.

Teresa Barrett
Petaluma City Council
707.953.0846
Sent from my iPhone

On Aug 17, 2018, at 10:43 AM, A Bock <bockak@yahoo.com> wrote:

If it still matters at this point to hear from Petaluma residents about the planned Safeway gas station on McDowell I would like to say on the record I oppose it. As much as I like cheap gas it's not worth it given the proximity to a residential area near schools and a park. I'm also concerned about increased traffic congestion. Thank you,
Annette Bock Petaluma

Begin forwarded message:

From: Teresa Barrett <teresa4petaluma@gmail.com>
Subject: Safeway Appeal
Date: December 2, 2018 at 11:35:47 AM PST
To: Heather Hines <hhines@m-group.us>, Scott Brodhun <sbrodhun@ci.petaluma.ca.us>

Heather,

In the staff report under background first paragraph site improvements include an electric vehicle charging station. I did not see that in the conditions of approval for the planning commission approval of the project and I did not see that in the initial submittal.

Where and when was that added and where is it located on the site?

Teresa Barrett
Sent from my iPhone

Begin forwarded message:

From: Sue Merrill <smerrill@petk12.org>
Subject: Petaluma City Schools Comment Letter on the Safeway Fuel Center Project
Date: September 12, 2018 at 4:50:29 PM PDT
To: undisclosed-recipients;

Good afternoon,



200 Douglas Street
Petaluma, CA 94952
lhira@petk12.org
Telephone: 707.778.4621
Fax: 707.778.4822

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Thank you.

Begin forwarded message:

From: ablondie76@gmail.com
Subject: Please Vote YES on the Safeway Gas Station
Date: December 3, 2018 at 12:51:06 PM PST
To: teresa4petaluma@comcast.net

Message: The gas prices in petaluma are particularly High and it sure would help to have a safeway gas station.

Name: Nicole

Begin forwarded message:

From: Council Member Teresa Barrett <teresa4petaluma@comcast.net>
Subject: Re: Safeway Gas Station
Date: September 1, 2018 at 2:36:37 PM PDT
To: Angelo Sacerdote <angelo9000@gmail.com>

Thank you for your letter. I am concerned about this as well. I have to wait until I get the staff report before I can weigh in, but I am very aware of the issues.

I wish I could say more but, as this will be before me on the 17th, I cannot at this time.

Teresa Barrett

On Sep 1, 2018, at 9:18 AM, Angelo Sacerdote <angelo9000@gmail.com> wrote:

Dear Councilmember Barrett

I am writing to express my opposition to the planned Safeway Gas Station on South McDowell Blvd. I live just a few blocks away from there and already experience traffic congestion when I need to get to East Washington via South McDowell. There are two



other gas stations within a few blocks of this proposed one and no shortage of gas stations in multiple directions from this location. More importantly, this proposed site is directly across the street from a pre-school, an elementary school, a park, baseball field and homes.

A 16 pump gas station will release gas fumes, host idling vehicles and further slow down traffic, leading to more air pollution so close to very young children. I am really surprised that there is no law barring the construction of a gas station near a school.

There is also the increased risk of fire and explosion anywhere there is a large amount of fuel. We should be increasing our use of electric vehicles and public transportation, not building more gas stations.

Not my top concern, but this will also negatively affect the property values of homes in the area, especially directly across the street from it.

I have also noticed that there have been no public notices at the site announcing hearings or even signs that there will be a gas station there. I pass this location every day and there is no indication of a gas station being planned. I almost didn't find out until it was too late.

I can think of other fine uses for that corner, such as a small apartment building. Something that addresses the needs of this community.

On the East Side of Petaluma we have many gas stations and so many strip malls. I feel like this would not be so easily approved on our historic West Side.

I hope you will decide to join other local residents in opposing this gas station.

Thank you,

Angelo Sacerdote
522 Park Lane
Petaluma, CA 94954

Begin forwarded message:

From: "Crump, Katie" <KCRUMP@ci.petaluma.ca.us>
Subject: FW: Petaluma City Schools Comment Letters on the Safeway Fuel Center Project
Date: September 12, 2018 at 4:25:25 PM PDT
To: Chris Albertson <councilman.albertson@gmail.com>, Teresa Barrett <teresa4petaluma@comcast.net>, David Glass <daveglass@comcast.net>, "Mike Healy" <mthealy@sbcglobal.net>, "Gabe Kearney" (<gkearney@me.com>) <gkearney@me.com>, Dave King <davekingpcc@gmail.com>, Kathleen Miller <kathleenmilleroffice@gmail.com>
Cc: "Brown, John" <JBROWN@ci.petaluma.ca.us>

Ms. Thomas insisted that Council receive a copy today of the attached correspondence. I will have a hard copy of this, along with all the other late documents that are arriving, on the dais at your places on Monday.

Heather has been copied, and the Clerk's office will place on-line with the other late documents.



Please see attached letter from Matthew Francois.

Thank you.

Maryknol Respicio

Assistant to Matthew D. Francois
Rutan & Tucker, LLP
Five Palo Alto Square, 3000 El Camino Real, Ste. 200
Palo Alto, CA 94306
(650) 320-1500 x7723
mrespicio@rutan.com
www.rutan.com

RUTAN

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Click to Download
2018 0917 Letter to Mayor and City Council of Palo Alto re 9_17_18 Citypdf
2.4 MB

Begin forwarded message:

From: Amber Szoboszlai <ambo@ucdavis.edu>
Subject: Petaluma Safeway Gas Station
Date: September 12, 2018 at 5:25:10 PM PDT
To: councilman.albertson@gmail.com, teresa4petaluma@comcast.net,
mayordavidglass@gmail.com, mthealy@sbcglobal.net, councilmemberkearney@me.com,
davekingpcc@gmail.com, kathleenmilleroffice@gmail.com
Cc: Sam Tuttelman <stut@sonic.net>, Zahyra Garcia <zahyragarcia@gmail.com>, Annie Lee
<adobbskramer@gmail.com>

Dear Petaluma City Council Members,

Please find my letter about the proposed Safeway Gas Station in the attached file.

Regards,

Amber Szoboszlai

Click to Download
Szoboszlai_Petaluma_City_Council_2018.09.12.pdf
99 KB

Begin forwarded message:

From: Teresa Barrett <teresabarrett@comcast.net>
Subject: Re: Safeway Gas Station will be a BIG problem
Date: July 9, 2018 at 3:11:12 PM PDT



To: Bernie Album <allbernie5@gmail.com>

Thanks for your work on this, Bernie.

Teresa Barrett

On Jul 9, 2018, at 2:48 PM, Bernie Album <allbernie5@gmail.com> wrote:

Teresa,

That is my understanding. Hope it is okay for you to refer any who contact you to me. Richard Sachen, whmo you referred to me is a member of the Sierra Club Executive Board and joined us. Any more like him send them to me. Appreciate your position and respect your appropriate limitations.

Bernie

On Sun, Jul 8, 2018 at 5:03 PM, Teresa barrett <teresabarrett@comcast.net> wrote:

Bernie,

I don't think it is appropriate for me to work with people who are appealing something I will gave to decide.

I'm happy to put you together but I can't do more.

Teresa Barrett

Sent from my iPhone

On Jul 8, 2018, at 3:57 PM, Bernie Album <allbernie5@gmail.com> wrote:

Teresa,

(Teesa) Yikes! I am doing too much today. sorry,

Linda is a very active member of the group I am working with to appeal Council's approval of the permit. We did it today, signed a letter and collected the full required fee. It will be submitted Monday on time with all requirement to reach Council. She sent you the questions to get you engaged in a dialog I am guessing. Your option.

More will be coming after the Appeal is on the agenda, the later the better so school administration will be back and many others returned from vacation.

Bernie

On Sat, Jul 7, 2018 at 9:54 PM, Teresa Barrett

<teresa4petaluma@comcast.net> wrote:

Teresa Barrett

Petaluma City Council

707.953.0846

Sent from my iPhone

Begin forwarded message:



RLDT@aol.com



Begin forwarded message:

From: Teresa Barrett <teresa4petaluma@comcast.net>
Subject: Re: Petaluma City Schools Comment Letters on the Safeway Fuel Center Project
Date: September 12, 2018 at 7:07:14 PM PDT
To: Katie Crump <KCRUMP@ci.petaluma.ca.us>

It is one of a handful that I feel absolutely terrible about.

Teresa Barrett
Petaluma City Council
707.953.0846
teresa4petaluma@comcast.net

On Sep 12, 2018, at 6:54 PM, Crump, Katie <KCRUMP@ci.petaluma.ca.us> wrote:

Oh good Lord. Ms Thomas was so insistent and wanted Danly to distribute. Told her no, unless there was attorney-client privilege, it comes to the CM's office, I log them, and we distribute. So instead she duplicates everything! I sure don't envy your meeting next week!

Sent from my iPhone

On Sep 12, 2018, at 5:25 PM, Council Member Teresa Barrett
<teresa4petaluma@comcast.net<<mailto:teresa4petaluma@comcast.net>>> wrote:

Thank you, Katie, the school Secretary also sent them to us—hmmmm!

Teresa Barrett

On Sep 12, 2018, at 4:25 PM, Crump, Katie
<KCRUMP@ci.petaluma.ca.us<<mailto:KCRUMP@ci.petaluma.ca.us>>> wrote:

Ms. Thomas insisted that Council receive a copy today of the attached correspondence. I will have a hard copy of this, along with all the other late documents that are arriving, on the dais at your places on Monday.

Heather has been copied, and the Clerk's office will place on-line with the other late documents.

Thanks
Katie

From: Chris Thomas [<mailto:cthomas@petk12.org>]
Sent: Wednesday, September 12, 2018 4:15 PM



To: citymgr
Cc: Gary Callahan; Sheri Chlebowski; Stan Barankiewicz; Danly, Eric
Subject: Petaluma City Schools Comment Letters on the Safeway Fuel Center Project

To Whom it May Concern,

Please find a letter from Petaluma City Schools and a Comment/Review letter from Meridian Consultants for the Public Hearing on the Agenda for the Petaluma City Council Meeting on the 17th on the Proposal Safeway Fuel Center Project.

Please feel free to contact me with any questions.

Best regards,

Chris Thomas
Chief Business Official
Petaluma City Schools
707-778-4621

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<PCS Proposed Safeway Fuel Center Project ltr.pdf>

<Meridian Consultants - Petaluma Safeway Review 09122018.pdf>

Begin forwarded message:

From: Teresa barrett <teresabarrett@comcast.net>
Subject: Re: Safeway/Albertson/ Niles Canyon Fair Agrument
Date: December 15, 2018 at 5:42:31 PM PST
To: Janice Cader-Thompson <janice.cader@gmail.com>

I don't know what the Niles Canyon Fair Argument is. Let's deal with it in 2019!

Teresa Barrett
Sent from my iPhone

On Dec 13, 2018, at 12:56 PM, Cader-Thompson Janice <janicecader@gmail.com> wrote:



SOLURI MESERVE

510 8th Street
Sacramento, CA 95814
(916) 455-7300 (office), (916) 599-0474 (mobile)
(916) 244-7300 (fax), patrick@semlawyers.com

From: Carol Horton [<mailto:carol@semlawyers.com>]
Sent: Monday, September 17, 2018 11:17 AM
To: hhines@m-group.us
Cc: oervin@m-group.us; mayordavidglass@gmail.com; mthealy@sbcglobal.net;
councilman.albertson@gmail.com; teresa4petaluma@comcast.net; councilmemberkearney@me.com;
davekingpcc@gmail.com; kathleencmilleroffice@gmail.com; ccooper@ci.petaluma.ca.us;
attorney@ci.petaluma.ca.us; 'Patrick Soluri'; 'Mae Empleo'; Nick@semlawyers.com
Subject: Comments re: Sept. 17, 2018 City Council Meeting, Agenda Item 6.B. (Safeway Fuel Center Project)

Dear Ms. Hines:

Attached please find the final Fox Report referenced in Mr. Soluri's letter dated September 14, 2018. Please note that the Fox Report includes numerous hyperlinks to various guidance materials and technical reports. CEQA requires that we transmit these documents and not merely rely on hyperlinks. Therefore, we will separately transmit PDF versions of all cited reports only to you and the City Clerk.

Thank you for your attention to this matter. Should you have questions, please do not hesitate to contact our office.

Sincerely,

Carol Horton
Soluri Meserve, A Law Corporation
510 8th Street
Sacramento, CA 95814

☎ tel: 916.455.7300 ▪ 📠 fax: 916.244.7300 ▪ ✉ email: carol@semlawyers.com

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Click to Download 18.12.03 Fox Kapahi Response.pdf 11.1 MB
--

Begin forwarded message:

From: Cader-Thompson Janice <janicecader@gmail.com>
Subject: Safeway/PHS
Date: October 2, 2018 at 4:24:10 PM PDT
To: Barrett Teresa <teresabarrett@comcast.net>, Glass Dave <daveglass@comcast.net>, Cader Thompson Janice <janicecader@gmail.com>
Cc: Cader-Thompson Janice <janicecader@gmail.com>

Does the City buy gas from the PHS maintenance yard? Do they do maintenance on city vehicles? This area is a toxic mess and they easily received a permit to purchase more gas, 500,000 gallons more?



Something smells of inside dealing. The school opposes Safeway and has many toxic sites close to schools. Let's talk. Janice

Click to Download
993_lin_nov.pdf
1.2 MB

Click to Download
423822_FID111267.pdf
2.7 MB

Begin forwarded message:

From: Teresa barrett <teresabarrett@comcast.net>
Subject: Safeway gas station
Date: June 26, 2018 at 11:44:41 PM PDT
To: Dave Glass <daveglass@comcast.net>

Healy casts the deciding vote to allow Safeway Gas Station!

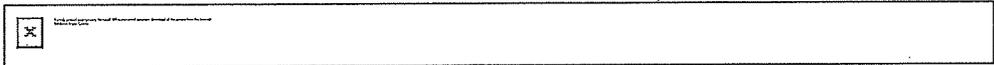
Safeway was unbelievably aggressive. Diana Gomez (who ended up voting for it) and Scott Alonso (who voted against it) were both very good.

Teresa Barrett
Sent from my iPhone

Begin forwarded message:

From: "The Petaluma Argus-Courier" <newsletter@email.petaluma360.com>
Subject: Paperwork continues to delay decision on Petaluma's Safeway gas station
Date: October 26, 2018 at 10:32:26 AM PDT
To: teresa4petaluma@comcast.net
Reply-To: The Petaluma Argus-Courier<newsletter@email.petaluma360.com>

TODAY'S HEADLINES FOR October 26, 2018

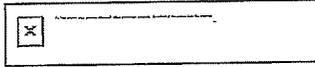


Paperwork continues to delay decision on Petaluma's Safeway gas station



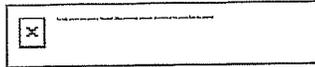


A mountain of documents delivered late in the process has forced city officials to delay multiple hearings on the controversial project. [READ MORE](#)



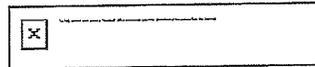
Potential Petaluma SMART station site cleaned up

The developer plans to move forward with 112 housing units while litigation advances that could derail Petaluma's second station. [READ MORE](#)



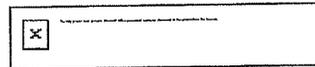
Petaluma hosts Egg Bowl rivalry game

Egg Bowl could have playoff implications for Casa Grande and Petaluma. [READ MORE](#)



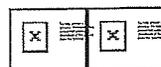
This weekend: Rocky Horror, 'The Shining' and more pre-Halloween fun

Your Weekend: October 25-October 28, a calendar of movies, music and event for the next four fun-filled days [READ MORE](#)



Discount brews and bites: Where to have happy hour on the east side

The first in a four-part series that explores happy hour options across the city [READ MORE](#)





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<http://www.petaluma360.com>

Begin forwarded message:

From: "Chris Samson" <2samsons@comcast.net>
Subject: RE: Question from Peter Parks about your position on the proposed Safeway gas station
Date: October 21, 2018 at 8:09:16 PM PDT
To: "'Teresa Barrett'" <teresa4petaluma@gmail.com>

Thanks. I responded to him with your statement.

Chris

From: Teresa Barrett [<mailto:teresa4petaluma@gmail.com>]
Sent: Sunday, October 21, 2018 7:48 PM
To: Chris Samson
Subject: Re: Question from Peter Parks about your position on the proposed Safeway gas station

Chris,

My standard response is below. Thank you for responding for me. I have responded to people at their doors, but I can make it very clear that this is not an official position and if it were on the Internet I am sure I would have to recuse myself from any vote. But I don't really want to put that on the Internet.

This is an issue that that will come before the City Council so I cannot take a yes or no position on it until I have all the documents and evidence before me. If you would like to speak to me about it you can call me at 707-953-0846 and we can talk about it.



Teresa Barrett

On Oct 21, 2018, at 7:40 PM, Chris Samson <2samsons@comcast.net> wrote:

Teresa:

Peter Parks sent you a message on Facebook today asking where you stand on the Safeway gas station. I don't recall this question being asked at either of the candidates forums. How would you like me to respond??

Chris

From: Facebook [<mailto:notification@facebookmail.com>]
Sent: Sunday, October 21, 2018 4:12 PM
To: Chris Samson
Subject: [Teresa Barrett for Petaluma Mayor 2018] New message from Peter Parks



Facebook

Peter Parks is waiting for a response from Teresa Barrett for Petaluma N 2018

Responding quickly to your message from Peter Parks will help increase their trust and confidence in your Page.



Where do you stand on the Safeway gas station, are you for or against it?

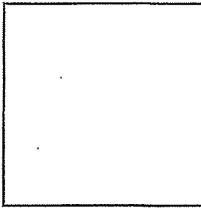
[View Conversation](#)

New! Reply by Email

If you reply to this email, Peter Parks will receive your response in Messenger.

This message was sent to 2samsons@comcast.net. If you don't want to receive these emails from Facebook in the future, please unsubscribe.

Facebook, Inc., Attention: Community Support, 1 Facebook Way, Menlo Park, CA 94025



Begin forwarded message:

From: Bgspt2001@gmail.com
Subject: Please Vote YES on the Safeway Gas Station
Date: November 27, 2018 at 7:16:48 PM PST
To: teresa4petaluma@comcast.net

Message: Hi I wanted to share my thoughts with you , I love the safeway gas station I always go to the one in novato when I leave town . Why would anyone want to pay high prices for gas? It's only gas to get from point A to point b and if we could have a local gas station to pay lower prices and at the end of the day it gives us few extra bucks in our wallet . Who wouldn't want that ??? Thank you !!!!

Name: Bridgette Daddario

Begin forwarded message:

From: Kristin Klaas <kristin_klaas@yahoo.com>
Subject: Safeway Gas Stations - NOT Right for Petaluma
Date: September 28, 2018 at 12:24:30 PM PDT
To: "teresa4petaluma@comcast.net" <teresa4petaluma@comcast.net>

Dear Councilwoman Teresa Barrett,

Please consider my input on this matter. I believe that Safeway opening a gas station on Maria and McDowell is NOT the right thing for our community. The gasoline emissions would be TOO CLOSE to children at daycare and school, as well as people in their homes. As well, the gas station would create WAY TOO MUCH traffic for our Petaluma infrastructure.

Please DO NOT support the opening of the gas station.

Thank you for your consideration!

Regards,

Kristin Klaas
Citizen of Petaluma
372 Song Bird Way
Petaluma, CA 949594
(650) 302-1408

Begin forwarded message:

From: Daisy Pistey-Lyhne <daisy@conservationaction.org>
Subject: Letter on Item 6.B tonight - Denial of Appeal of Safeway Gas Station
Date: September 17, 2018 at 6:15:37 PM PDT
To: Petaluma City Council <cityclerk@ci.petaluma.ca.us>



The proximity to the school was one of the impacts that has been analyzed in the development application process. This is a matter that would go before the planning commission before the potential of coming to the city council.

I will ask city staff to get back to you and answer your direct question concerning the limitations of building in proximity to schools and homes.

From: rldt@aol.com [<mailto:rldt@aol.com>]
Sent: Sunday, June 24, 2018 10:04 AM
To: mayordavidglass@gmail.com
Subject: RE: Safeway Gas Station

Good morning. I am writing to express my concerns about a potential Safeway Gas Station on the corner of S. McDowell/Maria Drive. This is a crowded, busy corner, already in traffic gridlock with all the new apartment buildings on Maria. This location is DIRECTLY across from 4Cs Preschool and playground, McDowell Elementary School, numerous homes on McDowell and McKenzie, the Little League field, a busy bus stop and McDowell Park. Many children cross the street here.

The wind blows toward the schools. I have searched "Childhood Leukemia Rates for Children living or going to school near gas stations". It is alarming! Not to mention asthma or chemical or respiratory issues.

Is there anywhere else they can locate this gas station?
Can they possibly buy out the existing Chevron station?

Safeway is a business. What people don't realize is they raise their grocery prices to subsidize the lower gas prices. Or they count on people buying high-priced junk food in the convenience store.

I have not been able to find the answer to this question: "What are the California regulations of how many feet away a gas station can be built in proximity to schools and homes?" I would appreciate an answer to this.

I vote for the health of our Petaluma children. I value our children and grandchildren over saving a few bucks at the pump.

PLEASE don't let this gas station cause illnesses, cause more gridlock, cause trauma to the neighbors, and ruin that corner.
It would be a BIG MISTAKE.

Thanks. I would appreciate a reply.

Sincerely,
Linda Hartrich
RLDT@aol.com

Begin forwarded message:

From: Teresa Barrett <teresa4petaluma@comcast.net>
Subject: Re: Proposed Safeway Fuel Center Project - Site Plan and Architectural Plan Review Appeal
Date: October 5, 2018 at 5:42:22 PM PDT
To: Ellen Webster <ellen.webster@gmail.com>

Keeping my fingers crossed until I see the staff report!

Ever hopeful,

Teresa Barrett



Petaluma City Council
707.953.0846
teresa4petaluma@comcast.net



On Oct 5, 2018, at 12:31 PM, Ellen Webster <ellen.webster@gmail.com> wrote:

I have seen this, and I agree there needs to be a full EIR. Personally, I am against the gas station; we don't need another one in town. I think you would be hard pressed to find supporters in the neighborhood most affected. My grandson plays ball at those fields, and I just don't think this is an appropriate location for yet another gas station. I hope you vote yes on the appeal, and the EIR.

On Friday, October 5, 2018, Teresa Barrett <teresa4petaluma@comcast.net> wrote:
Ellen, I assume you are aware of this, but in case you aren't, I am sending it to you.

Teresa Barrett
Petaluma City Council
707.953.0846
Sent from my iPhone

Begin forwarded message:

From: Lori Hirasa <lhirasa@petk12.org>
Date: October 4, 2018 at 1:09:57 PM PDT
To: mayordavidglass@gmail.com, Mike Healy <mthealy@sbcglobal.net>, councilman.albertson@gmail.com, teresa4petaluma@comcast.net, councilmemberkearney@me.com, davekingpcc@gmail.com, kathleencmilleroffice@gmail.com
Cc: Gary Callahan <gcallahan@petk12.org>, Sheri Chlebowski <schlebowski@petk12.org>, edanly@ci.petaluma.ca.us, jbrown@ci.petaluma.ca.us, "Hines, Heather" <hhines@ci.petaluma.ca.us>, Chris Thomas <cthomas@petk12.org>
Subject: Proposed Safeway Fuel Center Project - Site Plan and Architectural Plan Review Appeal

Good afternoon.

Please see the attached letter sent on behalf of Chris Thomas, Chief Business Official.

Thank you,
Lori

Lori Hirasa
Executive Assistant
Business Services
Petaluma City Schools



To: citymgr
Cc: Gary Callahan; Sheri Chlebowski; Stan Barankiewicz; Danly, Eric
Subject: Petaluma City Schools Comment Letters on the Safeway Fuel Center Project

To Whom it May Concern,

Please find a letter from Petaluma City Schools and a Comment/Review letter from Meridian Consultants for the Public Hearing on the Agenda for the Petaluma City Council Meeting on the 17th on the Proposal Safeway Fuel Center Project.

Please feel free to contact me with any questions.

Best regards,

Chris Thomas
Chief Business Official
Petaluma City Schools
707-778-4621

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<PCS Proposed Safeway Fuel Center Project ltr.pdf>
<Meridian Consultants - Petaluma Safeway Review 09122018.pdf>

Begin forwarded message:

From: Teresa barrett <teresabarrett@comcast.net>
Subject: Re: Safeway/Albertson/ Niles Canyon Fair Agrument
Date: December 15, 2018 at 5:42:31 PM PST
To: Janice Cader-Thompson <janice.cader@gmail.com>

I don't know what the Niles Canyon Fair Argument is. Let's deal with it in 2019!

Teresa Barrett
Sent from my iPhone

On Dec 13, 2018, at 12:56 PM, Cader-Thompson Janice <janicecader@gmail.com> wrote:



Eric



From: David Glass <daveglass@comcast.net>
Sent: Thursday, December 20, 2018 4:17 PM
To: Danly, Eric
Subject: Fwd: RE: Safeway employees and consultants speaking as part of public comment?!

---Warning: Use caution before clicking any attachments. THIS EMAIL IS FROM OUTSIDE OUR EMAIL SYSTEM.---

> ----- Original Message -----

> From: dave glass <daveglass@comcast.net>
> To: 'Council Member Teresa Barrett' <teresa4petaluma@comcast.net>
> Date: June 26, 2018 at 10:21 PM
> Subject: RE: Safeway employees and consultants speaking as part of public comment?!

>
> It is a tough nut. I saw Eric's response. League has seminar's for new
> Mayors. After you are elected I highly recommend you attend it. It
> is a four day seminar on the Brown Act, public comment, the rights of
> the public and the like.

>
> When I speak during Eric's evaluation about the many times he has
> helped me, it is usually prior to a tricky meeting and how to best
> handle the public's right to speak. It is a bummer. Due to nuances
> that are not always self-evident is why I ask Eric during meetings to
> do certain things, usually to be preempted by Esquire Kearney.

>
> -----Original Message-----
> From: Council Member Teresa Barrett
> [mailto:teresa4petaluma@comcast.net]
> Sent: Tuesday, June 26, 2018 9:35 PM
> To: John Brown <JBROWN@ci.petaluma.ca.us>; Heather Hines
> <hhines@ci.petaluma.ca.us>; Eric W. Danly <edanly@ci.petaluma.ca.us>
> Cc: Dave Glass <daveglass@comcast.net>
> Subject: Safeway employees and consultants speaking as part of public
> comment?!

>
> I am watching the planning commission meeting and I am stunned that
> Safeway employees and consultants are speaking as part of public comment.
> They should be stopped from speaking once they are identified as
> Safeway skills and allowed to speak when Safeway has a summation or
> reminded that they could have spoken before public comment period.

>
> Teresa Barrett

EXHIBIT J

Ballot set in Petaluma election races

MATT BROWN

ARGUS-COURIER STAFF | August 23, 2018



Ten candidates will be on the November ballot seeking seats on Petaluma's highest elected board, including three for the separately elected mayor's seat and seven running for three open city council seats.

The crowded field includes longtime incumbent leaders, political newcomers and activists spurred to run for local office by the current political climate.

The race for mayor features three-term incumbent councilwoman Teresa Barrett, former councilman Mike Harris, who narrowly lost the mayoral race in 2014, and political newcomer Brian Powell, who can trace his roots in Petaluma back a century.

The city council candidates are Scott Alonso, Robert Conklin, D'Lynda Fischer, Dave King, Kevin McDonnell, Dennis Pocekay and Michael Regan.

Race for mayor

The Petaluma mayoral race was thrown wide open in February when longtime mayor David Glass, 70, announced he would not seek reelection. A self-described progressive, Glass was first elected mayor in 2002.

Though elected separately from the rest of the city council, the mayor of Petaluma has little additional power aside from running meetings and making public appearances.

Barrett, 70, Glass's political ally, was first elected to the city council in 2006. Her top campaign issues are traffic congestion relief, housing affordability, street repairs, improving parks and fiscal responsibility. She has said she is in favor of building the Rainier crosstown connector, though she has questioned how to pay for the project.

She is in favor of increasing affordable housing fees charged to developers of residential projects in the city, and would like to increase the city's hotel tax. She has been opposed to an increase in the sales tax. Barrett is endorsed by Rep. Jared Huffman and Rep. Mike Thompson.

Harris, 47, a conservative politician who campaigned for John McCain in 2008, served three terms on the city council from 2002 until 2014, when he lost to Glass by 84 votes. An executive for a local financial services company, he has served on several city boards and volunteer organizations including the Friends of SRJC's Petaluma campus, the Petaluma Area Chamber of Commerce, Petaluma Educational Foundation and Petaluma Historical Library and Museum.

His key issues include the economic revitalization of the city, incrementally earmarking revenue for city infrastructure and making Petaluma a tourist destination. A former Sonoma County Transportation Authority representative, he is in favor of pushing to complete the Highway 101 widening project and the Rainier crosstown connector.

Powell, 38, the newcomer in the race, is the grandson of Philip Joerger, a former Petaluma councilman and county supervisor. A self-described scientist who does volunteer work helping chronically sick people, he has never held elected office. He said his key issue is stopping what he sees as rampant growth in Petaluma.

A father of a 10-year-old son, he coaches youth sports in Petaluma and has visions of opening a teen center in the city. He said he is in favor of keeping the Sonoma-Marin Fairgrounds land for the fair. He is against a proposed Safeway gas station on McDowell

Development and he wants to see some new neighborhoods in the city.

City council race

King, 61, is the only incumbent running for one of three open seats after Chris Albertson decided to retire from the council and Barrett chose to run for mayor. A Petaluma attorney, King was first elected to the council in 2014. His top issues are housing affordability, road repairs and economic development. He has voted to advance the Rainier and Caulfield crosstown connector projects, and he helped draft an ordinance that bars Petaluma police from cooperating with federal immigration officials.

Alonso, 32, is the youngest candidate in the race. A planning commissioner, his key issue is creating more affordable housing, and he has supported requiring developers to include affordable units with their projects. He is in favor of building the Rainier connector and raising revenue to support road repairs, and he has proposed passing an ordinance to ban flavored tobacco products. Alonso works in media relations for the Contra Costa County District Attorney's Office.

Conklin, 39, a life-long Petaluma resident, works as a fleet service worker for the city of San Francisco. He grew up on the west side, played football for Petaluma High School, then bought a house on the east side of the city. His main issues are repairing streets, constructing new routes across the city to alleviate traffic, protecting the environment and attracting jobs to Petaluma.

Fischer, 58, moved to Petaluma four years ago. A former operations manager with Daily Acts, her background is in urban planning. Her key issues include more affordable housing, solutions to relieve traffic congestion, and allocating the resources necessary for city staff to provide adequate services.

McDonnell, 61, works as a project management consultant for North Bay cities. The chair of the city's Recreation, Music, and Park Commission, he co-founded a citizen's educational forum which promotes citizen engagement in pending Petaluma developments. He supports infill developments and traffic relief, including road diets in some places. He is against the proposed Safeway gas station and he wants a proposed public art project on Water Street reworked.

Pocckay, 68, has lived in Petaluma 27 years, and is a retired doctor. He is active in progressive causes in Petaluma, and currently volunteers with the North Bay Rapid Response Network, which helps immigrants facing deportation, and the North Bay Organizing Project, he works on social justice issues including establishing just cause eviction for tenants. He is in favor of more affordable housing, raising the minimum wage to \$15 per hour, and he is against the Safeway gas station.

Regan, 38, chairs the city's Transit Advisory Committee, and he is president of the Petaluma Educational Foundation. He started The Regan Team Home Loan Group with his wife in 2010. His main issues are public safety, housing for young families, seniors, and working people, addressing transportation issues including the Rainier crosstown connector and looking at the long-term future of the Sonoma-Marin Fairgrounds.

(Contact Matt Brown at matt.brown@arguscourier.com.)



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Home > Issues > Safeway Gas Station

Safeway Gas Station

The Safeway Gas Station needs more studies. The city needs to demand the developer to provide answers to the impacts of the proposal. They need to prove that traffic won't get worse and generate accidents involving our children!

More than that, where do the customers come from? As the only "super" station in town, this station will reduce purchases at other stations all which shifts car trips into this area. We complain about traffic on East Washington Blvd, wait until many more cars decide to head to the intersection of So. McDowell Blvd and Maria Drive.

Lastly, is this even a business model we want to encourage? We need to reduce our gas dependency, not subsidize it. Global warming is turning California into year round fire risk and we're putting value in cheap gas? We need to make it easier to walk in town, not construct new risks to those who walk or bike. I know it's not for everyone but getting my Leaf electric car 5 years ago was one of the best transportation moves I've made. I'll help anyone do the math on why it's a great decision!

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Kevin Endorsed by the Argus Courier

Kevin Joins the Race!

Kevin Starts "Know Before You Grow"

New Fields for Petaluma

Petaluma finally gets funding for new parks

Committee to Elect Kevin McDonnell

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UNITARIAN UNIVERSALISTS OF PETALUMA

Petaluma will vote on THREE city council members on November 6, 2018!

There are 7 candidates running, each with a different vision for Petaluma:

- Dave King - Robert Conklin
- Dr. Dennis Pocekay - Kevin McDonnell
- D'Lynda Fischer - Scott Alonso
- Michael Regan* (*unable to attend)

Please join us to hear what each of the candidates stands for & how they plan on moving Petaluma forward.



Oppose the Petaluma Safeway Gas Station



Sunday at 11:14 AM · 🌐

Election Day is coming up, and many people have asked us where Petaluma City Council candidates stand on the Safeway Gas Station.

In June, Scott Alonso voted against it on the Planning Commission and took Safeway to task for their poor job of public notification.

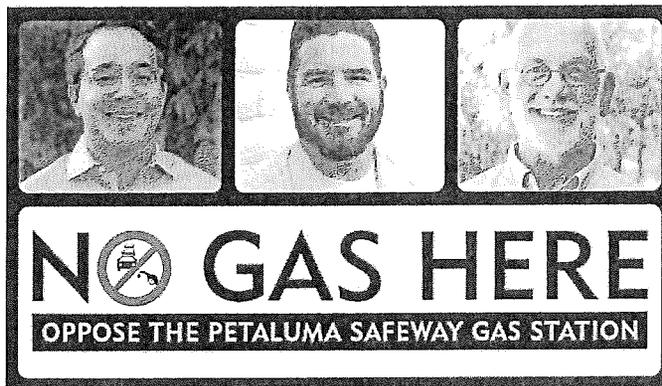
In July, Robert Conklin joined us and co-signed our appeal asking the City to vote against the project, and has since contributed money and time.

In August, Dr. Dennis Pocekay wrote a letter to our City Council, expressing his concern.

To that end, these 3 candidates have been the most helpful to our cause and we encourage you to learn more about them before voting on November 6th!

Kevin McDonnell and D'Lynda Fischer have also stated their opposition.

We will not know where sitting council-member Dave King stands until he votes at the City Council meeting on December 3rd.



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Kristen Welch

Do you have information on how each City Council candidate stands regarding the gas station?

6w Like Reply



Glenn Rubenstein

Robert Conklin is against it and signed the appeal.

Scott Alonso is also against it and voted against it on the Planning Commission.

Dennis Pocekay wrote a letter against it to our City Council.

Kevin McDonnell, D'Lynda Fischer and Michael Regan have also said they against it for various reasons.

Bike Petaluma

Bike Petaluma strives to create a community where people of all ages and abilities can enjoy bicycling.

Kevin McDonnell

Name	Kevin McDonnell
Candidate for:	City Council
1. Do you ride a bicycle in Petaluma for recreation or transportation? Why or why not? What has been your experience?	Yes I ride a bicycle. I ride several Centuries a year including Backroads, the Giro, Wine Country and America's Most Beautiful (Tahoe). I ride my bike for transportation as well. I used to referee a lot of soccer and the bike was the fastest way to get from field to field. I am a comfortable urban biker. That said, I totally get why people would be terrified to do what I do. And with our roads and drivers, I wouldn't recommend it except to the brave. I have some stories!!!
2. What role does bicycling and walking play in your vision for the future development of Petaluma? If elected what strategies/ tools/resources would you utilize to realize this vision?	The past of Petaluma (and California) is car based. Housing was driven by car needs. Road design was driven by car needs. The future must be multi modal (yes I'm a civil engineer and use words like that). All new housing has to be walk-able and bike-able. We won't build anymore housing on the edge of town. We will build downtown. When developments come through the Planning process, we must create incentives to move away from cars. They only create pollution and traffic. The change must be to de-couple parking spaces from apartment rents, reduce the total parking provided, provide SMART fares to bike users, create central concourses in designs so that cars don't clog where bike and walkers can be. I founded "Know Before You Grow", a citizens forum series on the coming development because I think the city Planning process is not adequately communicating with the public. Our mission is get the public educated and engaged early. One of our four key values is "mobility for all." At our first forum, we brought in Bjorn Gripenburg to speak to bike mobility. We continue to advocate these values. I have met with developers to advocate for these ideas.
3. What are Petaluma's biggest transportation challenges? What policies or projects would you promote to address these challenges?	Petaluma's biggest transportation challenge is funding. Because transportation has been underfunded for years, every road is overcrowded and new paths do not get built. Current state gas tax is starting to improve the funding. Repeal of this is on the State ballot in November. It would be disastrous to Petaluma if SB1 gets repealed. Good paving surfaces make biking possible. Flat tires and wrist injuries from bad roads get people off their bikes. (overcrossing). We also need to put a good surface on the Lynch Creek Trail. I can't wait for the SMART bike path project from Payran to Southpoint Blvd/McDowell. SMART owes Petaluma more than it has delivered. Another pet project of mine is to extend street sweeping to focus on busy biking routes. Too often road debris makes bike lanes dangerous, so bikers move to straddle the white line. This angers cars. If the lanes were swept, both cars and bikers would be happier.
4. Petaluma streets are increasingly congested and worn if elected, how would you propose to improve infrastructure in the City?	I have a two step plan to improve infrastructure. First continue as I've stated above. Second, the city needs added funding or there are no projects. Some money can come from grants but a tax is the only real money to fix things. However, I do not believe that the a city led tax can pass at this time. Look around, who really trusts city hall? My plan is to gather the most interested public parties, those with the loudest complaints and provide the facts and ask for solutions. If these working groups are constructive, they will provide the leadership needed to create a dedicated tax for roads. This has been done in many cities. It needs to happen in Petaluma.

EXHIBIT K

OTHER VIEWS

Heading back to square one

In George Orwell's political fable "Animal Farm," the animals, led by the pigs, overthrow the oppressive humans, but by the end of the story, the pigs had become so taken in by their newfound power that they became undistinguishable from the humans.

Something like that is happening right here in Petaluma. Councilmember Mike Healy, who achieved political prominence working hard to block some of the progressives more cockeyed efforts to stall progress in our town, now has come up with a doozy in his own right. He wants to prevent Safeway from selling low-priced gasoline with a moratorium on new fueling stations.

There are several reasons given for this opposition, but under careful examination, most appear to be classic smokescreen, and the only reason that really makes sense is to protect local gas station owners from price-based competition.

In other words, Healy has sided with a handful of station owners and/or managers against the right of the public to buy gasoline at a better price.

This proposal is dreadfully wrong for a number of reasons.

First, protectionism, using the power of government to advance or protect the interests of one business or a group of businesses is the sort of thing you expect in New Jersey or Louisiana, but certainly not in Petaluma.

Next, one of the purposes of planning law in California is to objectify the process and minimize the subjectivity of decision making in the name of fairness and protecting the public interest. In this case, all of our existing plans and policies, approved under the eagle eye of public scrutiny, say that Safeway has a right to open a gas station and to charge whatever it wants for gas. By the same token, nothing is stopping Chevron or Shell or the others from dropping their prices sharply, but why should they? With Petaluma gas prices ranking with the highest in the county, why mess with a good thing?

Now to the smokescreen arguments against Safeway. Traffic, all that stuff. There is no evidence to support these concerns precisely because there has

been no public review of the proposal at any level, and there have been no studies, because a gas station in the shopping center is a permitted use. Shopping centers are allowed to have big stores, and big gas stations, by their zoning. This is what shopping centers do. Most arguments against Safeway are excuses, not fact. Healy wasn't

worried about traffic at the Target center, but now he is overly righteous about traffic at Washington Square shopping center.

Next, the proposal to get around permitted use by declaring a moratorium on gas stations is simply a lawyerly trick, worthy of comparison to several of the legal stratagems employed by

the "progressives" in the past to derail proposals such as the Factory Outlets, Target center and the Friedman's center. The purpose of the moratorium is not to take time out to garner information. Healy has been forthright in his published comments about his determination to use the moratorium to keep Safeway from selling low-priced gas.

Safeway apparently did an exit poll of customers to gauge support, and got about 1,000 signatures. This in itself doesn't mean much, but what was revealing about this was that a map of Petaluma showing origin of these signatures showed that support for Safeway was overwhelmingly based on the east side.

It is interesting to note that the power base not just for Healy but for the council majority as well is the east side of town, where 60 percent of the population lives, and drives cars to work. It is a fair assumption that these same voters are currently filling their gas tanks in Novato, Rohnert Park or Santa Rosa, all cities that have discount gasoline available for their residents.

So, if this silly moratorium idea is adopted, it will be the stereotypical "little guy" who is the loser, and local gas stations who are the winners.

Lately, the City of Petaluma has been trumpeting the notion that we have overcome our odious reputation as a "bad place to do business." The moratorium idea threatens to put us back to square one.



DON BENNETT

OTHER VIEWS

Bennett misses the point on moratorium

BY MIKE HEALY

I write in response to last week's column by my good friend, Don Bennett, regarding whether Petaluma should adopt a temporary moratorium on new gas stations so that we can consider changes to our zoning ordinance pertaining to gas stations.

Don has himself a tub-thumping good time denouncing the entire concept as raw protectionism, an attack on free market economics and, for good measure, an assault on the pocketbooks of Petaluma residents, particularly east side residents.

With all due respect, Don, you're missing my point. My bachelor's degree is in economics. I fully understand, as the great economist Joseph Schumpeter posited, that "creative destruction" is an integral part of a free market economy. And I have no interest in trying to protect the next buggy whip manufacturing sector, or anyone else, from the winds of progress and competition.

At the same time, America has long recognized that there ought to be rules to ensure fair competition. Teddy Roosevelt busted

the Standard Oil monopoly. Gov. Hiram Johnson pushed back against Southern Pacific Railroad's stranglehold on California. And for more than 70 years California law has banned predatory pricing, specifically both selling products below cost and the use of "loss leaders" (Business & Professions Code sections 17030, 17043 and 17044).



Healy

With good reason. The city's interest in these issues is more than academic. They fall under the heading of "urban blight." In Dixon and other communities, Safeway fueling centers, based on the same model proposed for Petaluma, have caused multiple gas stations to fail. Dead gas stations are particularly problematic to re-purpose for other productive uses.

And, of course, gas stations are not even Safeway's actual target. They're aiming at other grocery stores. Dead grocery stores, and the centers they anchor, are even

America has long recognized that there need to be some rules to ensure fair competition.

more of a blighting challenge. The empty shell of the old Safeway remains a hundred yards away from the new one, two years later.

What I have suggested, after a temporary moratorium is in place, is legislation clarifying and confirming that the term "gas station," as used in Petaluma's zoning ordinance, does not include a fueling station under common ownership with another retail business where gasoline is sold to customers below cost as a loss-leader incentive for patronizing the affiliated retail business. Thus, such uses would not be allowed. That pretty much tracks the state law provisions mentioned above that for some reason are not being enforced.

I am mindful that some citizens feel they must

buy gas in Santa Rosa to get a competitive price. My own non-scientific survey indicates that prices at several of the "major" brand stations, such as Chevron and Shell, are within a penny between Petaluma and Santa Rosa, though several other Petaluma major brand stations are a dime more expensive. But it's at the "off" brands — Arco and Valero — where things get particularly interesting. In Santa Rosa they tend to be around 30 cents cheaper than the majors. But not in Petaluma. One Petaluma Valero is 30 cents more than its Santa Rosa counterpart. Another is nearly 40 cents more.

For whatever reason, price competition is not as vigorous in Petaluma. "Locality discrimination" in pricing is also prohibited under California law (section 17040). My willingness to delve into this issue is very much dependent on that problem rectifying itself, and quickly. So we'll see if anyone is listening.

(Mike Healy is a member of the Petaluma City Council who suggested the moratorium on gas stations in Petaluma).

MEMORANDUM

To: John Brown
From: Mike Healy
Date: February 26, 2014
Re.: Development Impact Fees

I wanted to give staff a heads up on an issue I intend to raise on Monday, just for purposes of possible direction. As you know, Ross Jones is arguing that traffic impact fees for his proposed downtown hotel seem high compared to the previous gas station use, for which he would receive credit. Just looking at it, it appears to me more that the gas station fees are too low, as opposed to the hotel fees being too high.

Significantly, our existing fee structure departs from strict adherence to dollars per square foot in specific instances where square feet of building area is not the best metric for capturing traffic impacts. Coincidentally, hotels are one example of that, where traffic impact fees are assessed on a dollars per room basis. See attached Table 3-7 from the 2012 Fehr & Peers report, which assesses several such metrics on a dwelling unit equivalent ("DUE") basis.

The argument that building square footage is not a compelling metric seems overwhelming with respect to gas stations. Staff is asserting that the old B Street Chevron, were it to be built today, would pay traffic impact fees based on the square feet of the office / store (not the garage), which was 1,350 square feet, leading to a total traffic impact mitigation fee of \$23,654.70. See attached.

Dan Lutz, owner of the Chevron franchise on East Washington near Safeway, tells me that he gets between 1,200 and 1,500 vehicles per day at his station. The Lutz Chevron has 8 pumps and thus 16 fueling positions. (In the jargon, a "pump" has two nozzles and thus represents two fueling positions.) So, total vehicle visits are between 75 and 94 per fueling position per day.

Looking again at Table 3-7, the process is to determine the peak hour trip generation rate for the new metric, convert that into DUEs, and then multiply by the DUE value. I do not have the ITE treatise referenced in footnote 1, but assume for sake of discussion that a gas station generates 8 trips in the peak hour per fueling station, or 16 per pump. That would equate to 15.8 DUEs per pump. Since the old B Street Chevron had 4 pumps, that would mean 63.2 DUEs, multiplied by \$18,978 per DUE, for a total traffic impact mitigation fee, currently, of \$1.2 million.

So the discussion I intend to raise with the Council is considering giving direction to staff to return with a metric based on the number of pumps or fueling positions for applying traffic mitigation impact fees to gas stations, as opposed to the current inadequate reliance on the square footage of any structures that may be on the site.

I write to explain the City of Petaluma's modification last year of our traffic mitigation impact fee program and how that relates to the Safeway's proposed fueling center.

Petaluma's traffic mitigation impact fees ensure that new development pays its fair share of the traffic improvements the community needs and expects as the city continues to, slowly, grow.

For the most part, the impact fee new commercial development pays is based on the square footage of the project. That may not perfectly capture the traffic generation of a new project, but close enough.

But in a few circumstances, a different metric would more accurately gauge traffic generation. Thus, for many years, new hotels have paid an impact fee based on the number of guest rooms rather than square footage.

Early last year it came to the city council's attention that calculating a new gas station's traffic impact fee based on the square footage of the associated mini-mart or cashier kiosk made no sense because those bear no relation to actual traffic generation.

Interestingly, this issue arose not because of Safeway or any other proposed gas station, but rather because of the efforts to build a boutique hotel on a downtown site previously occupied by a Chevron station at Petaluma Blvd. and B Street. The hotel would have to pay traffic impact fees, but it would get a credit against those fees of what the fees would have been for the previous use at the same location. Thus, the higher the gas station impact fee, the bigger the credit and the less the hotel would have to pay.

Similarly, Safeway will get credit against its impact fees for the buildings that will be torn down to make way for its fueling center.

So, early last year the city council asked city staff to explore whether basing traffic impact fees for gas stations on the number of pumps would more accurately reflect traffic generation than the square footage of the mini-mart or cashier kiosk. Staff came back with a proposal to base impact fees on the number of pumps, and that is what the council adopted.

At this point, any assertion that Safeway should pay impact fees under the old structure is really just saying that Safeway shouldn't pay its fair share based on actual traffic generation.

Another point. The new fees are based an average trip generation per pump for average gas stations. Anyone who has seen the Safeway fueling centers in Santa Rosa or Novato has witnessed that those generate far more traffic per pump than an average gas station. The city is not charging Safeway for that.

One caveat to the above is that Safeway has raised some technical questions with respect to the accuracy of the city's effort to calculate impact fees on a per pump basis. The city is looking into that and will make adjustments if appropriate.

Subject: Re: Let the process work it out, don't block it with your power
From: Michael Healy (mthealy@sbcglobal.net)
To: malcolm@johnsonnet.com;
Date: Friday, February 21, 2014 4:06 PM

That would be the goal.

From: Malcolm Johnson <malcolm@johnsonnet.com>
To: 'Michael Healy' <mthealy@sbcglobal.net>
Sent: Friday, February 21, 2014 4:01 PM
Subject: RE: Let the process work it out, don't block it with your power

I see. So they must be within their current zoning, environmental, etc right to put it in. Assuming the discretionary approval process isn't something that is required only for some projects, I understand that the city would want to at least weigh in on development. The problem with going down this road, then, is stopping at 45 days and not letting it slip out without bound.

Thanks,

Malcolm

From: Michael Healy [mailto:mthealy@sbcglobal.net]
Sent: Friday, February 21, 2014 2:50 PM
To: Malcolm Johnson
Subject: Re: Let the process work it out, don't block it with your power

Malcolm,

Thanks for your thoughts. The problem with your suggestion is that the "processes already in place" will lead to an automatic approval for this project without any discretionary approval required by the planning commission or the city council. Only by putting a temporary (45 day) moratorium in place can the city effectively deal with the various issues this proposal presents.

Regards,

Mike Healy

From: Malcolm Johnson <malcolm@johnsonnet.com>
To: mayordavidglass@gmail.com; councilmemberkearney@me.com; councilman.albertson@gmail.com; teresa4petaluma@comcast.net; mike4pet@aol.com; mthealy@sbcglobal.net; kathleencmilleroffice@gmail.com
Sent: Friday, February 21, 2014 2:01 PM
Subject: Let the process work it out, don't block it with your power

It's an abuse of power to block a specific project thereby not allowing the processes already in place to run their course.

There are pros and cons on either side of the matter of the Safeway gas station and I don't want to boar you with my opinion on the matter. Determining the best approach for the city requires planning and discussion. Until this gas station was proposed there was no discussion of how the city will

handle all future gas station applications so it's clear this project will have been singled out if you unilaterally ban it.

No one is a fan of dangerous gas emissions near schools, but that's why we have environmental studies. If we don't rely on the results for guidance, we are just guessing. There are always risks, and are probably more likely to occur at older stations.

I'm no fan of backed up traffic, but I can't see how having almost as many waiting spaces as there are pumps will create additional traffic. If you consider that concern another way, if we have that many people who elect to use the Safeway station over the other nearby stations, we did exactly the right thing by providing less expensive fuel to our citizens. Anyway, the problem with traffic in that area stems from the fact that McDowell's very close proximity to Hwy 101 doesn't allow for enough cars to move from McDowell toward the highway, creating a jam in all three contributing directions.

I'm no fan of putting the livelihoods for the nearby station owners at risk, but if the council takes the position of determining which businesses in town receive council support and which don't, it is abusing your power. I agree we should have a fuel plan, but hold something up because we didn't think of something earlier just seems reactive. Having ample fuel in the center of town seems like good planning to me. Let's have some electric bays with the ability to add more, too. Same for natural gas, another obvious and viable long term option.

Our city and county is blessed with politically active residents. Let the process work this out using the active bases, results of studies, and right minded discussion. Don't block something and cut all this off.

Malcolm

Law Offices of
JAMES M. DOMBROSKI
ATTORNEY AT LAW
LICENSED IN CALIFORNIA AND HAWAII
P.O. BOX 751027
PETALUMA, CALIFORNIA 94975-1027
TELEPHONE (707) 762-7807
FAX (707) 769-0419
Email Address: jdomski@aol.com

March 3, 2014

Via Email

Mike Healy
Petaluma City Council

Re: Safeway Fuel Station

Dear Mike:

I will be unable to attend the Council meeting on March 3, 2014, for the purpose of addressing the impact issues of the proposed Safeway fuel station in Petaluma.

From my perspective, it is important to address the statement made in the editorial section of the Argus Courier on February 27, 2014, that referred to my involvement in the trial against Safeway and the impact of Safeway's fuel pricing practices on competitors. The editorial stated: "In reality, there are no 'dead' gas stations in Dixon and no proof showing that any fuel retailer was put out of business by Safeway." (Emphasis added.)

The source for the quoted statement is suspect. The quoted statement is not supported by the trial record. The trial record clearly demonstrates that the statement is false and misleading. First, it is unclear what is meant by "dead stations". In fact, there were numerous stations in Dixon that were unable to compete in Dixon and sold because of Safeway's fuel pricing. Second, a real estate broker specializing in the sale of gasoline stations in Northern California testified that it was difficult to sell a gas station for its fair market value if it was located near a Safeway fuel center. Third, a former Vallejo gas station owner testified that prior to Safeway adding the fuel center in Vallejo, his monthly volume sales was 150,000 gallons per month and his grocery market sales was \$60,000 per month. However, after Safeway opened its Vallejo fuel center, his volume dropped to 30,000 gallons per month for fuel sales and \$13,000 per month for his grocery market sales. He testified that the impact of Safeway's below-cost pricing practices was that it forced him out of business and that he literally gave his gas station away (trial transcript pages 410-417).

Please feel free to share my letter with other members of the Council.

Very truly yours,

JAMES M. DOMBROSKI

JMD:sd

Subject: Re: Chevron Question
From: Michael Healy (mthealy@sbcglobal.net)
To: rossjones@hotmail.com;
Date: Thursday, May 8, 2014 3:32 PM

Ross,

Now I'm hearing from staff that they've comfortable with a methodology that would raise your credit for gas station traffic impact fees to around the \$850K range. Probably to council in July.

Mike

On Thursday, February 27, 2014 12:10 PM, Michael Healy <mthealy@sbcglobal.net> wrote:
Now would be better.

From: Ross Jones <rossjones@hotmail.com>
To: Michael Healy <mthealy@sbcglobal.net>
Sent: Thursday, February 27, 2014 12:03 PM
Subject: Re: Chevron Question

Mike, I can swing by anytime after 2:30, or right now before my 1PM meeting.

Thx

Ross

Sent from my iPhone

On Feb 27, 2014, at 11:34 AM, "Michael Healy" <mthealy@sbcglobal.net> wrote:

If you'd like to swing by my office, I'll give you a copy of what I will hand out on Monday.
Mike

From: Ross Jones <rossjones@hotmail.com>
To: "mthealy@sbcglobal.net" <mthealy@sbcglobal.net>
Sent: Monday, February 24, 2014 5:17 PM
Subject: RE: Chevron Question

My Hero! That would be swell.

I met with David Glass this morning and I have a better understanding of the up hill battle of this topic, from his perspective.

Nothing worthwhile is easy.

Ross

Date: Mon, 24 Feb 2014 16:58:48 -0800
From: mthealy@sbcglobal.net
Subject: Re: Chevron Question
To: rossjones@hotmail.com

My alternative approach would calculate traffic impact fees for the old gas station use at \$1.5 million, give or take a few hundred grand....

From: Ross Jones <rossjones@hotmail.com>
To: "mthealy@sbcglobal.net" <mthealy@sbcglobal.net>
Sent: Monday, February 24, 2014 4:10 PM
Subject: RE: Chevron Question

Mike,

That's right. 4 pumps, which represent 8 fueling positions.

Ross

Date: Mon, 24 Feb 2014 16:05:49 -0800
From: mthealy@sbcglobal.net
Subject: Chevron Question
To: rossjones@hotmail.com

Ross,

I know we talked about this, but I didn't write it down. The old Chevron station had 4 "pumps," each with 2 nozzles, for a total capacity of 8 cars at a time; is that right?

Thanks,

Mike

Ervin, Olivia

From: Hines, Heather
Sent: Tuesday, November 18, 2014 1:28 PM
To: Ervin, Olivia
Subject: FW: Safeway Fuel Center #3011 - S. McDowell Blvd & Maria Drive, Petaluma, CA 94954

From: Michael Healy [mailto:mthealy@sbcglobal.net]
Sent: Saturday, March 01, 2014 11:02 AM
To: Brown, John
Cc: Hines, Heather
Subject: Fw: Safeway Fuel Center #3011 - S. McDowell Blvd & Maria Drive, Petaluma, CA 94954

John,

I'm guessing this will be difficult to square with the traffic study.

Mike

----- Forwarded Message -----

From: Arash Salkhi <asalkhi@hotmail.com>
To: Michael Healy <mthealy@sbcglobal.net>
Sent: Saturday, March 1, 2014 10:07 AM
Subject: RE: Safeway Fuel Center #3011 - S. McDowell Blvd & Maria Drive, Petaluma, CA 94954

Yes. That is what they asked on their Bay Area Air Quality application.

Thanks,

Arash

Date: Fri, 28 Feb 2014 16:46:13 -0800
From: mthealy@sbcglobal.net
Subject: Re: Safeway Fuel Center #3011 - S. McDowell Blvd & Maria Drive, Petaluma, CA 94954
To: asalkhi@hotmail.com

Thanks. Does that mean that 25.71 mg/y is what Safeway asked for?
Mike

From: Arash Salkhi <asalkhi@hotmail.com>
To: Michael Healy <mthealy@sbcglobal.net>
Sent: Friday, February 28, 2014 4:38 PM
Subject: FW: Safeway Fuel Center #3011 - S. McDowell Blvd & Maria Drive, Petaluma, CA 94954

Mike - Below is the link that provides the information from BAAQMD.

Thanks for all your help,

Arash

From: Franklin Dickey [<mailto:fdickey@baaqmd.gov>]

Sent: Friday, February 28, 2014 8:36 AM

To: asalkhi@hotmail.com

Subject: Safeway Fuel Center #3011 - S. McDowell Blvd & Maria Drive, Petaluma, CA 94954

Good morning Arash, here is the information you requested in regards to the Safeway Fuel Center #3011 located at S. McDowell Blvd & Maria Drive, Petaluma, CA 94954. Frank

http://www.baaqmd.gov/~media/Files/Engineering/Public%20Notices/2013/405215/G200026_nsr_405215_eval_082213.ashx?la=en

Frank Dickey

Case Settlement Specialist

Bay Area Air Quality Management District - Legal Unit

939 Ellis Street San Francisco, CA 94109

Office: 415-749-4663 Fax: 415-749-5103

fdickey@baaqmd.gov | www.baaqmd.gov



Dave King <davekingpcc@gmail.com>

The Petaluman (proposed boutique hotel at Blvd and B) - Question about FEIA standard

3 messages

davealden53@comcast.net <davealden53@comcast.net>
To: Dave King <davekingpcc@gmail.com>

Wed, Mar 25, 2015 at 11:30 AM

Dave, I hope you're settling into your City Council role. Sorry I couldn't attend the Monday evening meeting. I was interested in the SCWA and CalPers updates, but had to change plans to support my wife on a household issue that was troubling her.

If I can impose on your good will, I need to pick your brain about the FEIA process. If I correctly understood the Council comments at the goal-setting session, there was no sentiment to retain the current FEIA process. The Mayor specifically noted that the only useful data he'd found in prior FEIA reports was the table on projected TOT receipts.

However, when the City Manager queried the Planning Manager about how many FEIAs were to be done during 2015, Hines responded that only one was likely. At which response, the implicit decision seemed to be that it wasn't worth the effort to repeal the FEIA resolution if only a single project was to be saved from the time and expense.

It's a decision I can objectively understand, but it feels less good when I'm part of the team for that one project.

I assume you're familiar with The Petaluman, the proposed boutique hotel at the Boulevard and B Street. But if you need a further information, I'll be happy to arrange a meeting between you and Ross Jones, the developer/architect.

For purposes of the current conversation, we've been working on entitlement issues for over two years. The two biggest challenges have been parking, with the City unable to provide space in the Keller Street garage even though the hotel is within the parking district and therefore entitled to parking in the garage, and the soil contamination cleanup, with Chevron having mishandled the process thereby delaying remediation by two or more years.

Jones has a number of potential investors lined up for the project, but all have been unwilling to write checks until the parking and environment situations are resolved. Both resolutions seem now to be in sight, but the lack of capital has constrained the project, including Jones' inability to fund the FEIA, an inability that seems likely to delay the project. It's a problem with which Jones and I have been grappling.

By chance, I bumped in the Mayor last week at the office of the dentist we share. In the course of discussing various City matters, we touched upon The Petaluman and the FEIA. Glass repeated his willingness to waive the FEIA for the hotel project. (In exchange, I promised to provided him with a copy of the hotel financial analysis, prepared to industry standards, that does a better job of estimating TOT receipts than the FEIA would.) However, Glass said that the challenge would getting the City Manager to put the matter on a Council agenda.

And that gets to the crux of my question. We have a City standard that all seem to agree provides little or no benefit to the City. Yet complying with the standard will cost the Applicant more than \$20,000, which he would struggle to raise, and may delay the project, which virtually all agree would benefit the community, by several months. But the path to waive the standard for this project or to repeal the entire resolution requires the assistance of the City Manager who has generally taken a hands-off approach.

At this point, we intend to approach the City Manager in about a week, after the Planning Manager has returned from vacation, but any alternative political thoughts would be appreciated.

Sorry for the length, but it's a multi-faceted subject. If I've perchance left something out, please let me know. And any thoughts you can provide would be appreciated. - Dave

Dave King <davekingpcc@gmail.com>
To: davealden53@comcast.net

Wed, Mar 25, 2015 at 2:05 PM

Dave,

5/31/2018

Gmail - The Petaluman (proposed boutique hotel at Blvd and B) - Question about FEIA standard

I have an email into John Brown to have a short meeting. I added the FEIA issue to the list. My recall is that the council was a little fuzzy about the benefits of FEIA, but made no decision on whether to get rid of it or to even agendaize it.

I'll start with John and go from there,

Dave

[Quoted text hidden]

davealden53@comcast.net <davealden53@comcast.net>
To: "King, Dave" <davekingpcc@gmail.com>

Wed, Mar 25, 2015 at 2:20 PM

Dave, thanks for the followup. You and I have similar recollections, although we may color them slightly differently. In my memory, no one spoke up in favor of keeping the FEIA, at least as currently written. My sense was that there might be a growing consensus to do away with it, but Hines' comment that only one project would do an FEIA in 2015 deflated the balloon and the discussion quickly moved onto the next agenda item.

By the way, Jones and I are acutely aware of the favor that the Council and staff did for the hotel by revising the impact fees for gas stations. It was the correct decision, but doing it with alacrity despite the likely wrath of Safeway was greatly appreciated. Given that history, we were loathe to raise the topic of the FEIA, but it is a stumbling block to the project which we think will benefit the community.

I'll await a report on your meeting with Brown. Thanks again. - Dave

From: "Dave King" <davekingpcc@gmail.com>

To: davealden53@comcast.net

Sent: Wednesday, March 25, 2015 2:05:23 PM

Subject: Re: The Petaluman (proposed boutique hotel at Blvd and B) - Question about FEIA standard

[Quoted text hidden]

Subject: Re: Safeway Gas Station
From: Michael Healy (mthealy@sbcglobal.net)
To: mrudder28@gmail.com;
Date: Wednesday, May 2, 2018 3:08 PM

Yes, I reached out to them.
Mike

On Wednesday, May 2, 2018 3:05 PM, Maureen Rudder <mrudder28@gmail.com> wrote:

Hi Mike,
Thanks for the "heads up" regarding this. Do you think the preschools have been notified?
I'm not sure who is currently running 4Cs and Northbay Children's Center.
I hope to go to the meeting next Tuesday.
Maureen

On May 2, 2018, at 2:16 PM, Michael Healy <mthealy@sbcglobal.net> wrote:

On Wednesday, May 2, 2018 11:10 AM, Michael Healy <mthealy@sbcglobal.net> wrote:

Lauri,

Just a heads up, the Petaluma Planning Commission will be considering approvals for the Safeway gas station next Tuesday at 7:00 at city hall. The Agenda, with links to the staff reports, is here:

http://petaluma.granicus.com/GeneratedAgendaViewer.php?view_id=31&event_id=43126

Regards,
Mike Healy
Petaluma City Council

Subject: Re: Hi Mike -- "top five" for fall?
From: Michael Healy (mthealy@sbcglobal.net)
To: Eric.Gneckow@arguscourier.com;
Date: Saturday, August 29, 2015 2:58 PM

Now it looks like we won't be home until late Monday, so let me give you some thoughts on subjects.

1. Yes, I expect John to name the new permanent fire chief soon. that is his decision, not the council's.
 2. There are several apartment projects, & apartment heavy mixed use projects, in the pipeline, scattered around town. Those will start showing up at planning commission hearings soon.
 3. I've said before that water conservation is more of a marathon than a sprint, although this year has felt more like a sprint. On the marathon side, some longer term issues continue to chug forward. Over the next year or 2, purple pipe will get extended up the eastside (SRJC, Kenilworth, Sonoma Mountain & Corona Creek elementary) and into the industrial parks (Kaiser), converting landscape irrigation to recycled water. To accommodate that, we will be expanding Ellis Creek' ability to create tertiary treated wastewater.
 4. The Lafferty mediation talks continue.
 5. A sales tax will likely be an issue for 2016, rather than this fall.
 6. We should hear within the next 3 months if the Cal. Supreme Court will take the DoF case.
 7. Yes, but that's probably an entire article. Our residents & businesses have done a great job conserving water. An interesting question to me, on a go forward basis, is how much of the new conservation is permanent, vs. how much consumption will spring back once the drought ends. My guess is that a lot of it is permanent. This is a particularly interesting issue because the City is in the early stages of our next 5 year Urban Water Management Plan Cycle - you'll be hearing about that soon.
 8. The City has retained a consultant to examine some highly technical Safeway complaints about the methodology of calculating traffic impact fees on gas station pumps. You'll be hearing about "pass-by rates." If there are changes that need to be made, we'll make them.
- Mike

On Friday, August 28, 2015 11:18 AM, "Gneckow, Eric" <Eric.Gneckow@arguscourier.com> wrote:

Hi Mike,

I hope you've had a nice week.

We're working on a "fall preview" for the upcoming issue, with the idea of giving readers a heads-up on the kind of interesting developments coming down the pike here in Petaluma before the council resumes regular meetings next month.

Hines, Heather

From: Hines, Heather
Sent: Monday, May 07, 2018 2:33 PM
To: 'Natalie Mattei'; mfrancois@rutan.com
Subject: RE: EXTERNAL: FW: Concern regarding Proposed Gas Station near McDowell School

Natalie,

Public notice was sent to the school district as the property owner of record of the neighboring site. All legal noticing requirements were met.

However, as you saw the district has indicated they didn't get noticing.

I would imagine that this will be a concern expressed by the Commission at tomorrow night's hearing and that there may be a hesitation to make a decision without allowing additional time for the school and district to respond to the proposed project.

Heather

Heather Hines, Planning Manager
M-Group Consulting Planner
Serving the City of Petaluma
11 English Street, Petaluma, CA 94952
Phone: (707) 778-4316
Hours: M-Th 8am-5pm, closed Fridays



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From: Natalie Mattei [mailto:Natalie.Mattei@albertsons.com]
Sent: Monday, May 07, 2018 12:01 PM
To: Hines, Heather <HHINES@ci.petaluma.ca.us>; mfrancois@rutan.com
Subject: RE: EXTERNAL: FW: Concern regarding Proposed Gas Station near McDowell School

Heather,

Can you please confirm the City sent a public notice as required? Thank you.

Natalie Mattei
Senior Real Estate Manager
Albertsons Companies
11555 Dublin Canyon Road
Pleasanton, CA 94588
(925) 226-5754 Office | (925) 413-4455 Mobile
natalie.mattei@safeway.com | [LinkedIn](#)



www.albertsonscorporationsrealestate.com

From: Hines, Heather [<mailto:HHINES@ci.petaluma.ca.us>]
Sent: Monday, May 07, 2018 10:13 AM
To: Natalie Mattei <Natalie.Mattei@albertsons.com>; mfrancois@rutan.com
Subject: EXTERNAL: FW: Concern regarding Proposed Gas Station near McDowell School

Public Comment

From: Cooper, Claire
Sent: Monday, May 07, 2018 7:25 AM
To: Brown, John <JBROWN@ci.petaluma.ca.us>; Crump, Katie <KCRUMP@ci.petaluma.ca.us>; Hines, Heather <HHINES@ci.petaluma.ca.us>
Subject: FW: Concern regarding Proposed Gas Station near McDowell School

From: Chris Thomas [<mailto:cthomas@petk12.org>]
Sent: Friday, May 04, 2018 5:31 PM
To: Mike Healy <mthealy@sbcglobal.net>
Cc: Gary Callahan <gcallahan@petk12.org>; Lauri Anderson <landerson@petk12.org>; - City Clerk <CityClerk@ci.petaluma.ca.us>; Sheri Chlebowski <schlebowski@petk12.org>
Subject: Concern regarding Proposed Gas Station near McDowell School

Hi Councilman Healy,

My name is Chris Thomas, Chief Business Official for Petaluma City Schools and long-time resident of Petaluma. It has been brought to our attention that there is a resolution on the City Council Meeting agenda for May 8 to Adopt a Mitigated Negative Declaration and Mitigation Monitoring and Report for installation of a proposed gas station across the Street (Maria Drive) from McDowell School. Although the resolution states that the City's Notification of Intent to Adopt the Mitigated Negative Declaration was mailed out on or before April 5, 2018 to all residents and property owners within 500 feet, as the property owner for this school and related programs, we do not have any record of receiving such notification regarding this action and have serious concerns about the potential impact of this project on our Elementary School, students, and school community. We would request that this agenda item be deferred to a future meeting so that we have more time to assess this project, any potential impacts on the school, and be better prepared to provide appropriate input to the City Council.

In addition, this meeting conflicts with our Board of Education meeting so cabinet level members will not be able to attend the Council Meeting on the 8th to voice our concerns.

Thank you for your consideration and we look forward to hearing from you.

Regards,

Chris Thomas
Chief Business Official
707-778-4621

Notice to Recipient:

Hines, Heather

From: Hines, Heather
Sent: Monday, May 07, 2018 4:57 PM
To: 'cthomas@petk12.org'
Subject: FW: Safeway
Attachments: Peer Review of HRA.pdf; Safeway Fuel Center.pdf

Mr. Thomas,

Thank you for your comment letter, we have forwarded the letter and the Peer Review to the Planning Commission for their consideration.

I also wanted to verify with you that our records indicate a public notice was sent in April to the School District at the address on file as the property owner (200 Douglas Street). I have noted your request to be notified of all CEQA documents in the future and will add you to our interested parties list for all such hearings regardless of proximity to a school site.

If I can be of further assistance please do not hesitate to contact me directly.

Heather

Heather Hines, Planning Manager
M-Group Consulting Planner
Serving the City of Petaluma
11 English Street, Petaluma, CA 94952
Phone: (707) 778-4316
Hours: M-Th 8am-5pm, closed Fridays



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From: Crump, Katie
Sent: Monday, May 07, 2018 4:28 PM
To: Hines, Heather <HHINES@ci.petaluma.ca.us>
Subject: FW: Safeway

FYI

From: Chris Thomas [<mailto:cthomas@petk12.org>]
Sent: Monday, May 07, 2018 3:58 PM
To: - City Clerk
Cc: citymgr; Mike Healy; mayordavidglass@gmail.com; councilman.albertson@gmail.com; teresa4petaluma@comcast.net; councilmemberkearney@me.com; davekingpcc@gmail.com; Gary Callahan; Sheri Chlebowski; Mike Baddeley; Phoebe Ellis; Ellen Webster; Frank Lynch
Subject: Fwd: Safeway

Hello Commissioners,

Please find a letter of concern and comments from Petaluma City Schools on the Safeway Fuel Center.

Regards,

Chris Thomas
Chief Business Official.
707-778-4621

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Re: How?? How could you have voted for this?

From: Michael Healy (mthealy@sbcglobal.net)

To: rldt@aol.com

Date: Monday, July 9, 2018 10:37 AM PDT

Robert& Linda:

The vote in favor of the Safeway gas station was probably the most disappointing vote to me in my years on the city council and planning commission. I did not like the proposal at all, but I voted for it because I had to. The City doesn't always have the discretion to reject proposals we don't like, and this was one of those situations. The zoning for the project site allows gas stations as a principally permitted use, meaning that Safeway did not need a discretionary conditional use permit. The only two issues before the planning commission were (1) design review, (e.g., color schemes, landscaping, etc.) and (2) approving a mitigated negative declaration confirming no adverse environmental impacts. Within the MND, the 2 primary issues were air quality and traffic. There were detailed expert analyses on both, concluding no adverse impacts. The school district retained air quality experts to review the air quality analysis & concluded it was correct.

In response to your specific question, there are no California regulations specifying how close a gas station can be to a school. There probably should be, but there aren't.

Under these circumstances, if the City had not approved the gas station, Safeway would have sued and won. And the City would likely have been ordered to pay Safeway's attorney's fees.

This point wasn't in the recent Argus article, but when the Safeway gas station first surfaced a few years ago, Kathy Miller & I proposed an urgency moratorium to prevent new gas stations in town until the city council could amend the zoning ordinance to, for instance, require a CUP for any new gas station. That failed to gain support at the city council, & at that point it was pretty much a foregone conclusion that the Safeway gas station would eventually be approved. So if you want to blame someone, blame the councilmembers who refused to support the urgency moratorium.

Regards,
Mike Healy

On Saturday, July 7, 2018 5:36 PM, "rldt@aol.com" <rldt@aol.com> wrote:

Very disappointed!!!!!!

We are writing to express our EXTREME DISMAY at the potential Safeway Gas Station coming in to Washington Square. I have nothing against the gas station -- only the TERRIBLE congested corner location!

This corner is DIRECTLY across from 4C's Preschool and playground, and McDowell Elementary School plus two other schools on the property.

This corner faces residential homes on S. McDowell and McKenzie Ave.

This corner is on a small two-way road, Maria Drive. And the very congested S. McDowell.

This corner is right next to a very busy bus stop.

This corner is very close to the busy Little League fields and McDowell Park playground.

Too many cars. Too many idling cars. Too many fumes! Not a healthy environment!

SO MANY neighbors and teachers have spoken out AGAINST this location.



Re: Safeway

From: Michael Healy (mthealy@sbcglobal.net)
To: Hannah.Beausang@arguscourier.com
Date: Tuesday, August 29, 2017 10:57 AM PDT

I saw Jim Dombroski first thing this morning at Shollenberger. He said he had oral argument last week in his Safeway gas case & he thought it went well.

On Monday, August 28, 2017 5:34 PM, "Beausang, Hannah" <Hannah.Beausang@arguscourier.com> wrote:

Thanks for letting me know. The Safeway folks have been blowing me off, but I'll see what I can find out.

From: Michael Healy [mailto:mthealy@sbcglobal.net]
Sent: Monday, August 28, 2017 3:25 PM
To: Beausang, Hannah <Hannah.Beausang@arguscourier.com>
Subject: Safeway

I left a voicemail last week for the fellow who gave me the tip, but he hasn't called back.
Mike



Carothers, Kent

From: Beatty, Jason
Sent: Monday, September 17, 2018 4:04 PM
To: St. John, Dan; Brown, John
Cc: Hines, H; Stutsman, Jeff; Carothers, Kent; Hines, H; Ervin, O
Subject: RE: Comments re: Sept. 17, 2018 City Council Meeting, Agenda Item 6.B. (Safeway Fuel Center Project)

Dan,

It is my understanding, after a cursory review of the traffic study and talking with planning staff that have been involved with this study for the duration, that the assumptions in the MND still hold true for the traffic turning left out of the project site. The traffic study aggregated the 3 driveways leaving the shopping center out onto Maria into one as a worst case scenario for the Level of Service (LOS) evaluation. The assumptions for traffic leaving the project for evaluating LOS for the site won't change even though for two of the three driveways you can't turn left. If you wanted to go left on Maria out of the Safeway lot you would use the driveway that is closest to the Safeway store.

Kind regards,
Jason

From: St. John, Dan
Sent: Monday, September 17, 2018 3:56 PM
To: Brown, John <JBROWN@ci.petaluma.ca.us>
Cc: Hines, H <HHines@m-group.us>; Stutsman, Jeff <JStutsman@ci.petaluma.ca.us>; Carothers, Kent <kcarothers@ci.petaluma.ca.us>; Beatty, Jason <jbeatty@ci.petaluma.ca.us>; Hines, H <HHines@m-group.us>; Ervin, O <OErvin@m-group.us>
Subject: RE: Comments re: Sept. 17, 2018 City Council Meeting, Agenda Item 6.B. (Safeway Fuel Center Project)

Engineering met on this and has the following response to Mr. Healy's observation:

- Traffic study does show traffic splits from project site onto Maria as Mr. Healy states. Study does say that traffic is assumed to be using a single driveway into and out of the site and is therefore conservative since there are three driveways off Marie. (See Figure 4, intersection 6 is the one accessing the site and representing the three driveways on Maria.
- It is our understanding that only one of the three driveways onto Maria will be designed to prevent left in or left out, the other two will. That was a condition of approval and is not reflected on the current development plans that are in the package.
- Therefore, traffic splits in the traffic study are ok as shown.

That's about it, right?

Thanks,

Dan St. John, Director

Public Works and Utilities Department
City of Petaluma
707-778-4593



From: Beatty, Jason

Sent: Monday, September 17, 2018 1:31 PM

To: St. John, Dan <DSTJOHN@ci.petaluma.ca.us>

Cc: Hines, H <HHines@m-group.us>; Stutsman, Jeff <JStutsman@ci.petaluma.ca.us>; Carothers, Kent <kcarothers@ci.petaluma.ca.us>

Subject: RE: Comments re: Sept. 17, 2018 City Council Meeting, Agenda Item 6.B. (Safeway Fuel Center Project)

We just discussed it. Kent has very little history on this. As I understand it, mostly Curt and Jeff, to a small degree, were involved. I can read through it before the meeting, but it looks like a new condition was added during the PC affecting the results of the traffic analysis. I'm not sure this new condition was evaluated. I'll try to meet with Heather and Olivia and get up to speed this afternoon.

From: St. John, Dan

Sent: Monday, September 17, 2018 1:17 PM

To: Beatty, Jason <jbeatty@ci.petaluma.ca.us>; carothers@ci.petaluma.ca.us

Cc: Hines, H <HHines@m-group.us>

Subject: Re: Comments re: Sept. 17, 2018 City Council Meeting, Agenda Item 6.B. (Safeway Fuel Center Project)

Do you guys have time to discuss this this afternoon before Kent leaves?

From: Beatty, Jason

Sent: Monday, September 17, 2018 1:12:20 PM

To: Ervin, O; St. John, Dan; carothers@ci.petaluma.ca.us

Cc: Hines, H

Subject: RE: Comments re: Sept. 17, 2018 City Council Meeting, Agenda Item 6.B. (Safeway Fuel Center Project)

Wasn't TIA already reviewed and comments provided prior to the PC meeting?

From: Olivia Ervin <OErvin@m-group.us>

Sent: Monday, September 17, 2018 12:49 PM

To: St. John, Dan <DSTJOHN@ci.petaluma.ca.us>; Beatty, Jason <jbeatty@ci.petaluma.ca.us>; carothers@ci.petaluma.ca.us

Cc: Hines, H <HHines@m-group.us>

Subject: Re: Comments re: Sept. 17, 2018 City Council Meeting, Agenda Item 6.B. (Safeway Fuel Center Project)

---Warning: Use caution before clicking any attachments. THIS EMAIL IS FROM OUTSIDE OUR EMAIL SYSTEM.---
Hello All,

At the PC hearing a condition was added to install a median along Maria to preclude a left out of the two-way driveway (approximately mid-block). There is a right only driveway exit onto Maria as proposed (where the existing driveway and proximate to the McDowell intersection). With the added condition, the only left out onto Maria will be from the driveway closest to the existing safeway building (farther from McDowell). There are two existing driveways on McDowell that allow full turning movements. At the west side of the shopping plaza, the two existing driveways on E. Washington allow right out only.

I excerpted the attached distribution graphic and corresponding narrative from the 2014 TIA. This shows the trip distribution assumption. It does not specify from which of the several driveways vehicles accessing the Safeway shopping center would exit/enter. There are 3 options Maria (closest to proposed Safeway gas station), McDowell, or Washington.

It would be ideal to drill down as possible to understand the assumed access/exit points, which would then dictate if unreasonable assumptions were made on the distribution pattern. Who in public works is reviewing the TIA?

Happy to connect and further discuss.



Thanks,

Olivia Ervin, Environmental Planner
M-Group Consulting Planner
Serving the City of Petaluma
707.778-4556
oervin@m-group.us

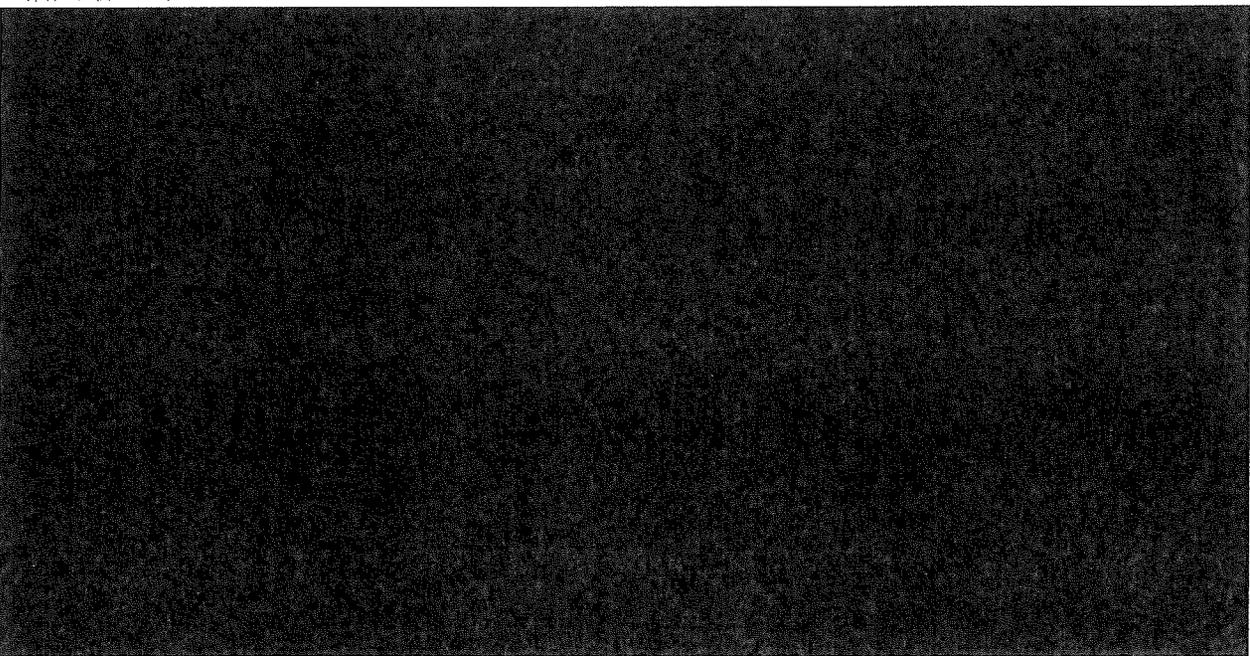
Olivia Ervin | principal environmental planner

M-GROUP A NEW DESIGN ON URBAN PLANNING
POLICY · DESIGN · ENVIRONMENTAL · HISTORIC · ENGAGEMENT · STAFFING
NAPA | CAMPBELL | SANTA ROSA | HAYWARD
1303 JEFFERSON ST. SUITE 100 B | NAPA | CA | 94559 | 707.259.1790

From: "St. John, Dan" <DSTJOHN@ci.petaluma.ca.us>
Date: September 17, 2018 at 11:12:09 AM PDT
To: "Carothers, Kent" <kcarothers@ci.petaluma.ca.us>
Cc: "Beatty, Jason" <jbeatty@ci.petaluma.ca.us>, "Hines, H" <HHines@m-group.us>
Subject: FW: Comments re: Sept. 17, 2018 City Council Meeting, Agenda Item 6.B. (Safeway Fuel Center Project)

[REDACTED] Does the plan physically preclude the left turns from the fueling center onto Maria? And if so, does that mean that the traffic study needs to be updated accordingly [REDACTED]

Thanks,
Dan St. John, Director
Public Works and Utilities Department
City of Petaluma
707-778-4593





Re: How?? How could you have voted for this?

From: Michael Healy (mthealy@sbcglobal.net)

To: rldt@aol.com

Date: Monday, July 9, 2018 10:37 AM PDT

Robert& Linda:

The vote in favor of the Safeway gas station was probably the most disappointing vote to me in my years on the city council and planning commission. I did not like the proposal at all, but I voted for it because I had to. The City doesn't always have the discretion to reject proposals we don't like, and this was one of those situations. The zoning for the project site allows gas stations as a principally permitted use, meaning that Safeway did not need a discretionary conditional use permit. The only two issues before the planning commission were (1) design review, (e.g., color schemes, landscaping, etc.) and (2) approving a mitigated negative declaration confirming no adverse environmental impacts. Within the MND, the 2 primary issues were air quality and traffic. There were detailed expert analyses on both, concluding no adverse impacts. The school district retained air quality experts to review the air quality analysis & concluded it was correct.

In response to your specific question, there are no California regulations specifying how close a gas station can be to a school. There probably should be, but there aren't.

Under these circumstances, if the City had not approved the gas station, Safeway would have sued and won. And the City would likely have been ordered to pay Safeway's attorney's fees.

This point wasn't in the recent Argus article, but when the Safeway gas station first surfaced a few years ago, Kathy Miller & I proposed an urgency moratorium to prevent new gas stations in town until the city council could amend the zoning ordinance to, for instance, require a CUP for any new gas station. That failed to gain support at the city council, & at that point it was pretty much a foregone conclusion that the Safeway gas station would eventually be approved. So if you want to blame someone, blame the councilmembers who refused to support the urgency moratorium.

Regards,
Mike Healy

On Saturday, July 7, 2018 5:36 PM, "rldt@aol.com" <rldt@aol.com> wrote:

Very disappointed!!!!

We are writing to express our EXTREME DISMAY at the potential Safeway Gas Station coming in to Washington Square. I have nothing against the gas station -- only the TERRIBLE congested corner location!

This corner is DIRECTLY across from 4C's Preschool and playground, and McDowell Elementary School plus two other schools on the property.

This corner faces residential homes on S. McDowell and McKenzie Ave.

This corner is on a small two-way road, Maria Drive. And the very congested S. McDowell.

This corner is right next to a very busy bus stop.

This corner is very close to the busy Little League fields and McDowell Park playground.

Too many cars. Too many idling cars. Too many fumes! Not a healthy environment!

SO MANY neighbors and teachers have spoken out AGAINST this location.



Our questions: Is there anywhere else to locate this within the center? Maybe move WestAmerica Bank?? Maybe buy out the already existing Chevron Station (the one that already gives a Safeway discount?)

2nd question: WHAT IS THE CALIFORNIA STATE REGULATION ON HOW FAR AWAY GAS PUMPS HAVE TO BE FROM SCHOOL AND RESIDENCES? Are you breaking a law here? The preschool is RIGHT ACROSS THE STREET!

We would appreciate answers to each of these questions as soon as possible. Thank you.
Robert and Linda Hartrich
RLDT@aol.com



Re: Safeway

From: Michael Healy (mthealy@sbcglobal.net)
To: Hannah.Beausang@arguscourier.com
Date: Tuesday, August 29, 2017 10:57 AM PDT

I saw Jim Dombroski first thing this morning at Shollenberger. He said he had oral argument last week in his Safeway gas case & he thought it went well.

On Monday, August 28, 2017 5:34 PM, "Beausang, Hannah" <Hannah.Beausang@arguscourier.com> wrote:

Thanks for letting me know. The Safeway folks have been blowing me off, but I'll see what I can find out.

From: Michael Healy [mailto:mthealy@sbcglobal.net]
Sent: Monday, August 28, 2017 3:25 PM
To: Beausang, Hannah <Hannah.Beausang@arguscourier.com>
Subject: Safeway

I left a voicemail last week for the fellow who gave me the tip, but he hasn't called back.
Mike

Law Offices of
JAMES M. DOMBROSKI
ATTORNEY AT LAW
LICENSED IN CALIFORNIA AND HAWAII
P.O. BOX 751027
PETALUMA, CALIFORNIA 94975-1027
TELEPHONE (707) 762-7807
FAX (707) 769-0419
Email Address: jdomski@aol.com

March 3, 2014

Via Email

Mike Healy
Petaluma City Council

Re: Safeway Fuel Station

Dear Mike:

I will be unable to attend the Council meeting on March 3, 2014, for the purpose of addressing the impact issues of the proposed Safeway fuel station in Petaluma.

From my perspective, it is important to address the statement made in the editorial section of the Argus Courier on February 27, 2014, that referred to my involvement in the trial against Safeway and the impact of Safeway's fuel pricing practices on competitors. The editorial stated: "In reality, there are no 'dead' gas stations in Dixon and no proof showing that any fuel retailer was put out of business by Safeway." (Emphasis added.)

The source for the quoted statement is suspect. The quoted statement is not supported by the trial record. The trial record clearly demonstrates that the statement is false and misleading. First, it is unclear what is meant by "dead stations". In fact, there were numerous stations in Dixon that were unable to compete in Dixon and sold because of Safeway's fuel pricing. Second, a real estate broker specializing in the sale of gasoline stations in Northern California testified that it was difficult to sell a gas station for its fair market value if it was located near a Safeway fuel center. Third, a former Vallejo gas station owner testified that prior to Safeway adding the fuel center in Vallejo, his monthly volume sales was 150,000 gallons per month and his grocery market sales was \$60,000 per month. However, after Safeway opened its Vallejo fuel center, his volume dropped to 30,000 gallons per month for fuel sales and \$13,000 per month for his grocery market sales. He testified that the impact of Safeway's below-cost pricing practices was that it forced him out of business and that he literally gave his gas station away (trial transcript pages 410-417).

Please feel free to share my letter with other members of the Council.

Very truly yours,

JAMES M. DOMBROSKI

JMD:sd

Ervin, Olivia

From: Hines, Heather
Sent: Tuesday, November 18, 2014 1:28 PM
To: Ervin, Olivia
Subject: FW: Safeway Fuel Center #3011 - S. McDowell Blvd & Maria Drive, Petaluma, CA 94954

From: Michael Healy [mailto:mthealy@sbcglobal.net]
Sent: Saturday, March 01, 2014 11:02 AM
To: Brown, John
Cc: Hines, Heather
Subject: Fw: Safeway Fuel Center #3011 - S. McDowell Blvd & Maria Drive, Petaluma, CA 94954

John,
I'm guessing this will be difficult to square with the traffic study.
Mike

----- Forwarded Message -----

From: Arash Salkhi <asalkhi@hotmail.com>
To: Michael Healy <mthealy@sbcglobal.net>
Sent: Saturday, March 1, 2014 10:07 AM
Subject: RE: Safeway Fuel Center #3011 - S. McDowell Blvd & Maria Drive, Petaluma, CA 94954

Yes. That is what they asked on their Bay Area Air Quality application.

Thanks,

Arash

Date: Fri, 28 Feb 2014 16:46:13 -0800
From: mthealy@sbcglobal.net
Subject: Re: Safeway Fuel Center #3011 - S. McDowell Blvd & Maria Drive, Petaluma, CA 94954
To: asalkhi@hotmail.com

Thanks. Does that mean that 25.71 mg/y is what Safeway asked for?
Mike

From: Arash Salkhi <asalkhi@hotmail.com>
To: Michael Healy <mthealy@sbcglobal.net>
Sent: Friday, February 28, 2014 4:38 PM
Subject: FW: Safeway Fuel Center #3011 - S. McDowell Blvd & Maria Drive, Petaluma, CA 94954

Mike - Below is the link that provides the information from BAAQMD.

Thanks for all your help,

Arash

From: Franklin Dickey [<mailto:fdickey@baaqmd.gov>]

Sent: Friday, February 28, 2014 8:36 AM

To: asalkhi@hotmail.com

Subject: Safeway Fuel Center #3011 - S. McDowell Blvd & Maria Drive, Petaluma, CA 94954

Good morning Arash, here is the information you requested in regards to the Safeway Fuel Center #3011 located at S. McDowell Blvd & Maria Drive, Petaluma, CA 94954. Frank

http://www.baaqmd.gov/~media/Files/Engineering/Public%20Notices/2013/405215/G200026_nsr_405215_eval_082213.ashx?la=en

Frank Dickey

Case Settlement Specialist

Bay Area Air Quality Management District - Legal Unit

939 Ellis Street San Francisco, CA 94109

Office: 415-749-4663 Fax: 415-749-5103

fdickey@baaqmd.gov | www.baaqmd.gov

Francois, Matthew

From: Fred Tanaka <Ftanaka@baaqmd.gov>
Sent: Thursday, December 13, 2018 4:21 PM
To: Natalie Mattei
Cc: Barry Young
Subject: RE: EXTERNAL: RE: Copies of permits

Natalie,
I am not aware if there was a change in practice. This is just the proper way to manage and handle records as a responsible agency.

Fred

From: Natalie Mattei <Natalie.Mattei@albertsons.com>
Sent: Wednesday, December 12, 2018 5:45 PM
To: Fred Tanaka <Ftanaka@baaqmd.gov>
Cc: Barry Young <BYoung@baaqmd.gov>
Subject: RE: EXTERNAL: RE: Copies of permits

Barry, thank you for connecting me with Fred.

Fred, thank you for the clarification. Is this a recent policy? If so, what year was it enacted?

Natalie Mattei
Senior Real Estate Manager
Albertsons Companies
11555 Dublin Canyon Road
Pleasanton, CA 94588
(925) 226-5754 Office | (925) 413-4455 Mobile
natalie.mattei@safeway.com | [LinkedIn](#)



www.albertsonscompaniesrealestate.com

From: Fred Tanaka <Ftanaka@baaqmd.gov>
Sent: Wednesday, December 12, 2018 5:40 PM
To: Natalie Mattei <Natalie.Mattei@albertsons.com>
Cc: Barry Young <BYoung@baaqmd.gov>
Subject: EXTERNAL: RE: Copies of permits

Natalie,
Unless you are the official contact for the facility or get permission from the facility in question, these types of requests should be submitted through a public records request.
You can make that request online at <http://www.baaqmd.gov/contact-us/request-public-records>

If you have difficulties with the Public Records portal, you can contact Public Records at publicrecords@baaqmd.gov.

Thanks.
Fred

From: Barry Young <BYoung@baaqmd.gov>
Sent: Wednesday, December 12, 2018 5:08 PM
To: Natalie Mattei <natalie.mattei@albertsons.com>
Cc: Pamela Leong <PLeong@baaqmd.gov>; Fred Tanaka <Ftanaka@baaqmd.gov>
Subject: Re: Copies of permits

Hi Natalie,

Please contact Fred Tanaka to request a copy of the permits at ftanaka@baaqmd.gov.

Barry G. Young
Senior Advanced Projects Advisor
Bay Area Air Quality Management District
(415) 749-4721

From: Natalie Mattei <natalie.mattei@albertsons.com>
Sent: Wednesday, December 12, 2018 12:32 PM
To: Barry Young
Subject: Copies of permits

Hi Barry,

If I'm seeking a copy of a Permit to Operate or Authority to Construct for a non-Safeway gas station, can I reach out to you or another BAAQMD contact to request it? I wasn't sure if I had to go through the Public Records request on the BAAQMD website. I talked with Aneesh yesterday and he wasn't sure of the policy and directed me to you.

Thank you,
Natalie

Natalie Mattei
Senior Real Estate Manager
Albertsons Companies
11555 Dublin Canyon Road
Pleasanton, CA 94588
(925) 226-5754 Office | (925) 413-4455 Mobile
natalie.mattei@safeway.com | [LinkedIn](#)



www.albertsonscompaniesrealestate.com

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Argus-Courier Editorial

City Council is fighting the wrong battle

Published: Monday, March 3, 2014 at 3:00 a.m.

The Petaluma City Council's pursuit of a temporary ban on new fueling stations, aimed squarely at preventing Safeway from opening a gas station alongside its store on McDowell Boulevard, is perfectly suited to spark a costly and unnecessary lawsuit. In addition to the obvious financial risk, the council's action could also result in preventing local motorists from saving a few dollars at the pump. Why do this?

It was one thing for the city to expend its limited financial resources joining a lawsuit to overturn the County of Sonoma's approval of an asphalt plant near the southern boundary of town. There was, after all, widespread and vocal opposition to the Dutra plant, and the city was already on record as opposing the development.

But it's quite another thing for the city to go to war against Safeway for a proposed gas station that complies with all local land use and zoning laws and has generated almost zero opposition. The only real objections to the project are coming from a handful of competing gas station owners who don't want the competition from Safeway which has an attractive rewards program offering gas discounts for grocery shoppers. The program is very similar to one offered by Lucky and Shell here in Petaluma and elsewhere.

But according to City Councilman Mike Healy, the Safeway gas discount program, if unleashed on unsuspecting local consumers, would cause "urban blight." This would come about, predicts Healy, because other gas stations will go out of business in the face of Safeway's lower gas prices. That's not all. According to Healy, Safeway is out to put other grocery stores out of business as well, leaving empty buildings and "dead" gas stations all over town.

Healy's overwrought fears appear to stem from conversations he's had with fellow Petaluma attorney Jim Dombroski who represents a few gas station owners in Dixon who are suing Safeway, claiming the chain violated state law by selling gas below cost. The lawsuit, originally filed in 2008, was tossed out of court last summer, but Dombroski and his clients are now appealing the ruling.

Healy is claiming that Safeway's intrusion into the fueling marketplace in Dixon caused "multiple gas stations to fail." In reality, there are no "dead" gas stations in Dixon and no proof showing that any fuel retailer was put out of business by Safeway. Nor is there any evidence that Safeway's gas rewards program has put any grocery stores out of business anywhere.

Despite the lack of facts indicating that any real threat exists to the Petaluma community, Healy successfully convinced his colleagues on the city council that something must be done to stop Safeway from lawfully expanding its operations

because doing so could enable the company, when selling gas, to offer a customer rewards program locally that a state appeals court might one day deem illegal.

Because gas stations are permitted uses in Petaluma's zoning code, Healy has proposed a political strategy for which Machiavelli would be proud: Declare that there is a "current and immediate threat to the public health, safety or welfare" of such substantial magnitude that it necessitates a temporary moratorium on new gas station developments. The temporary ban would give the city time to enact a new zoning law that would permanently prohibit Safeway's gas rewards program.

There's only one problem with the strategy: It appears to violate at least a couple state laws as well as several protections in the U.S. Constitution, something made abundantly clear in a 16-page letter submitted to the city from Safeway's attorney earlier this week. The company's letter very clearly outlines the significant legal challenges the city will soon face if the council decides to move ahead with a gas station ban.

If there was a good reason to fight this costly battle, we could understand. But there isn't. City officials are not responsible for protecting the profit margins of local gas station owners from possible unfair price competition. That's the job of the state legislature and the courts.

Also, with the city in fiscal crisis, it makes little sense to reject a few hundred thousand dollars a year in new sales tax revenues from a retail gas purveyor willing to adhere to city zoning and design requirements.

We're also not convinced that Petaluma motorists want their elected officials to limit their chances of saving money when filling up their gas tanks.

There are many important priorities for the city council to tackle this year. Stopping the Safeway gas station is not one of them.

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Janice Cader Thompson
732 Carlsbad Court
Petaluma, CA 94954
707 774-5912

RECEIVED
JAN 15 2019
CITY CLERK

January 15, 2019

Claire Cooper
City Clerk
City of Petaluma
11 English Street
Petaluma, CA 94952

Re: Conflict of Interest Safeway Fuel Center

Dear Claire Cooper,

Concerning the Safeway Fuel Center project. In light of the Petaluma City Council's Brown Act violations and after reading EXHIBIT H., correspondence between Brian Sobel and Councilmember Michael Healy. I am sharing an email I received on the 19th of August 2018 from Stephen Gale: Councilmember Michael Healy's response to an invitation for the Grand Opening of the Democratic Headquarter located in Petaluma. The language in Healy's response shows his dislike for Marc Friedman, Safeway and a bias against the Safeway Fuel Center. The building he referred to in his email was not the building used for the Democratic headquarters.

I am asking that Council Member Michael Healy recuse himself from any public hearings, closed sessions and private discussions to include the January 28th, 2018 city council meeting, (Safeway Fuel Center).

Sincerely,



Janice Cader Thompson

C.c Mayor Teresa Barrett
City Attorney, Eric Danly
Acting City Manager, Scott Brodum

From: Stephen Gale stephengale1@yahoo.com
Subject: Fw: SCDP Campaign HQ Grand Opening
Date: August 19, 2018 at 11:19 PM
To: [REDACTED]



Janice Cader Thompson janicecader@gmail.com

Forwarded FYI.

I was letting all Democratic Party electeds know about the grand opening and this was an unexpected response.

Stephen

Sent from Yahoo Mail for iPhone

Begin forwarded message:

On Sunday, August 19, 2018, 8:12 PM, Michael Healy <mthealy@sbcglobal.net> wrote:

Stephen,

I don't get the impression that the SCDPCC has any idea of the steaming pile of horse poop of a local political mess it has stepped into with the choice of this HQ. The building you will be using is scheduled to be torn down soon for a Safeway fueling center 100 feet from an elementary school serving a 90%+ Hispanic population. The parents, the school district & the neighborhood are all outraged. Yet Safeway & the landlord persist.

I will not be attending the grand opening or having anything to do with the HQ while it is in operation. Many in Petaluma will regard this choice of a HQ as a slap in the face.

I will see you at Howarth Park next weekend.

Best,
Mike

On Sunday, August 19, 2018 6:22 PM, Stephen Gale <stephengale1@yahoo.com> wrote:

Hello Mike,

I wanted to make sure you have the Grand Opening of the Sonoma County Democratic Party's Coordinated Campaign Headquarters on your calendar. The grand opening is Sunday, September 2 at 1:00 PM. Festivities and short speeches from elected officials and endorsed candidates will take place through 3:00 PM.

The address is 1420 E. Washington St., Petaluma. Music of Resistance and Revival will be performed by Planet Wave.

If you have campaign signs to post in the windows or on the walls, please bring them in advance of the event. Please confirm your attendance with the Campaign Manager for the SRDP this year, [REDACTED], [REDACTED].

The link to the Facebook event page is here: [HQ Grand Opening](#)
Look forward to seeing you there !!!

Best,
Stephen

EXHIBIT L



Danly, Eric

From: Kathy Miller <kmillerhome@comcast.net>
Sent: Monday, December 17, 2018 3:37 PM
To: Danly, Eric
Subject: Fwd: Agenda Item 5G

---Warning: Use caution before clicking any attachments. THIS EMAIL IS FROM OUTSIDE OUR EMAIL SYSTEM.---

Kathy Miller
707-321-3888

Begin forwarded message:

From: Michael Healy <mthealy@sbcglobal.net>
Date: September 17, 2018 at 10:56:28 AM PDT
To: Kathy Miller <kmillerhome@comcast.net>
Subject: Re: Agenda Item 5G
Reply-To: Michael Healy <mthealy@sbcglobal.net>

That's what I figured on SMART. As to Safeway, we may actually get a staff recommendation to continue. Stay tuned.
Mike

On Monday, September 17, 2018 10:53 AM, Kathy Miller <kmillerhome@comcast.net> wrote:

I'd rather do the SMART board so I can work on the second Petaluma station.

With respect to the gas station tonight, should we push the hearing to allow staff to look at the contentions being raised about the need to do a full EIR? If we're going to get sued either way, I'd rather vote no on the project.

Kathy Miller
707-321-3888

On Sep 16, 2018, at 8:28 PM, Michael Healy <mthealy@sbcglobal.net> wrote:

Hi Kathy,

It seems to me that you & I are the logical two possibilities for the Homeless System of Care Appointment. We have two members leaving after December, two who we don't know whether they will be still on the council after December, & one who works in Sacramento. That leaves you & me.

But here's another thought. I just learned that Carol Russell is not running for re-election this fall. (You probably already knew that.) She holds one of the two SCTA slots on the SMART board, so that will get filled by M&C early next year. Especially if you would like to try to get that seat, but even if not, I'd be willing to do the Homeless slot. Any thoughts?

Mike



Call my Santa Rosa office (707.524.1900). They should be able to chase me down. Back up is my mobile (707.484.8047) which I often miss in the office.

Warren L. Dranit | **SMT**
Tel (707) 524-1900 | dranit@smlaw.com

From: Kathy Miller [<mailto:kmillerhome@comcast.net>]
Sent: Wednesday, August 1, 2018 3:51 PM
To: Warren Dranit <Dranit@smlaw.com>
Subject: Re: PACC GAC Meeting - August 3, 2018

[REDACTED] so I can go to the meeting. If she can't, can I call you tomorrow morning? I have a site inspection in Lafayette at 10 so it would be between 8:30-10. What's the best number to reach you?

Kathy Miller
707-321-3888

On Aug 1, 2018, at 10:10 AM, Warren Dranit <Dranit@smlaw.com> wrote:

After setting it up, I remembered that you have a [REDACTED] appointment. I actually think it would be good for you to be there. My apologies for the mix up. I would like to get more details on why the project is terrible. I've told Natalie that she should expect tough questions on the project. A call would be best for me. Let me know a good time to call you or just call me when convenient for you. I'm generally available. Thanks.

Warren L. Dranit | **SMT**
Tel (707) 524-1900 | dranit@smlaw.com

From: Kathy Miller [<mailto:kmillerhome@comcast.net>]
Sent: Wednesday, August 01, 2018 10:05 AM
To: Warren Dranit
Subject: Re: PACC GAC Meeting - August 3, 2018

Warren,

I can't make it. I've got a [REDACTED] appt. at 8. For the record, I think it's a terrible project because of the location so the Safeway people probably don't want me there anyway. See you next time.

Kathy Miller
707-321-3888

On Jul 26, 2018, at 10:13 PM, Warren Dranit <Dranit@smlaw.com> wrote:

Petaluma Area Chamber of Commerce
Government Affairs Committee
Meeting Announcement



On Wed, Oct 10, 2018 at 3:26 PM Brown, John <JBROWN@ci.petaluma.ca.us> wrote:

Understood. We will be asking the council to continue to date certain. I've offered December 3rd. We did not have verification that date worked for both parties before the agenda had to go out. So, rather than put in a date that will subsequently need to change, we waited for Thursday distribution to issue the staff report. I thought about noting something on the agenda to indicate the continuance is recommended, but felt that putting a tentative date would be no better than the slip sheet you got. So, it went out the way it did. I get that you want and need more time to make proper findings - Monday all you need to do is agree to move the thing out to date certain. Let me know if you have any other concerns, or if this didn't adequately address the one you expressed. Thanks.
JB

-----Original Message-----

From: Kathleen Miller [mailto:kathleencmilleroffice@gmail.com]
Sent: Tuesday, October 09, 2018 8:58 PM
To: Brown, John
Subject: Safeway Gas Station

John,

I'm not pleased that the agenda item indicates that we should deny the appeal but the staff report will not be available until Thursday night. There must be a reason we should deny the appeal and it is unfair to both the Council and the public that the staff report will not be available until Thursday night, particularly when City offices are closed on Friday. The lack of adequate time to address the staff report will lead to an influx of last minute information which will result in the Council being unable to read and digest the staff report prior to the meeting on Monday. Staff has had plenty of time to address this. I'm not sure what the reason for the delay is but I don't like it or appreciate it.

--
Kathy Miller
Petaluma City Council Member
P.O. Box 7211
Petaluma, CA 94955
707-321-3888

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Danly, Eric

From: Kathleen Miller <kathleencmilleroffice@gmail.com>
Sent: Wednesday, December 19, 2018 9:38 AM
To: Danly, Eric
Subject: Fwd: Safeway gas station

---Warning: Use caution before clicking any attachments. THIS EMAIL IS FROM OUTSIDE OUR EMAIL SYSTEM.---

----- Forwarded message -----

From: Kathleen Miller <kathleencmilleroffice@gmail.com>
Date: Tue, Jan 27, 2015 at 9:29 AM
Subject: Re: Safeway gas station
To: E.A. Barrera <eabarrera14@aol.com>

Hi Ernie,

The issue hasn't been resolved. It was not on our closed session agenda last night. I anticipate it will appear on our closed session agenda sometime in February or March.

I am opposed to the gas station location as I think it will have a terrible impact on traffic, safety and the environment. In the area where the gas station is proposed, there is a very busy Safeway supermarket, a pre-school, an elementary school and a little league baseball field. There are also the Addison Ranch Apartments, a neighborhood park and the new Maria Drive Apartments are under construction. Traffic is already bad there and these type of gas stations have people queuing up for gas, idling their cars and creating traffic impacts on the neighborhood. As you drive your commute, take a look at the queuing at the Safeway gas station in Novato. Then take a look at the intersection where the Petaluma Safeway gas station is proposed at 5 on a weeknight in March after little league season starts and you will see why I'm so concerned about the location. Additionally, with all the children in the area, I'm scared to death that one of them is going to get hit by a car. There's just too much already going on at that intersection.

Kathy

On Mon, Jan 26, 2015 at 4:26 PM, E.A. Barrera <eabarrera14@aol.com> wrote:

> Hi Kathleen -

>

> I was interested in getting some comments from you about the issue of the

> gas station at Safeway and the November 19 letter sent to the city from

> their attorneys.

> Has that issue been resolved?

> What were the reasons for opposition to the gas station?

> My understanding is it will appear in closed session tonight. Is that

7/17/2018

FW: Again, we plea.... re: Safeway gas... meeting tomorrow ... - Heather Hines

FW: Again, we plea.... re: Safeway gas... meeting tomorrow @ Peet's

Brown, John <JBROWN@ci.petaluma.ca.us>

Mon 7/9/2018 8:42 AM

To: Heather Hines <hhines@m-group.us>;

Cc: Kathleen Miller <kathleencmilleroffice@gmail.com>;

Someone on your staff should be well-versed enough in this to provide some brief responses. You and I need to work on bathtubs, today, and it looks like the meeting in question was already had. So, if you are doing the writing, tomorrow is soon enough. IF not you, could we get something out today, please? thanks

From: Kathleen Miller [mailto:kathleencmilleroffice@gmail.com]
Sent: Saturday, July 07, 2018 5:56 PM
To: Brown, John
Subject: Re: Again, we plea.... re: Safeway gas... meeting tomorrow @ Peet's

Thank you for your email. I share your concerns regarding the location. I have forwarded your email to our city manager for response.

Regards,

Kathy Miller

On Sat, Jul 7, 2018 at 7:53 PM Kathleen Miller <kathleencmilleroffice@gmail.com> wrote:

Please reply. Thanks.

----- Forwarded message -----

From: <rldt@aol.com>
Date: Sat, Jul 7, 2018 at 7:49 PM
Subject: Again, we plea.... re: Safeway gas... meeting tomorrow @ Peet's
To: <kathleencmilleroffice@gmail.com>

Concerned residents are meeting at Peet's 7/8/2018 at noon.

We are writing to express our EXTREME DISMAY at the potential Safeway Gas Station coming in to Washington Square. I have nothing against the gas station -- only the TERRIBLE congested corner location!

This corner is DIRECTLY across from 4C's Preschool and playground, and McDowell Elementary School plus two other schools on the property.

This corner faces residential homes on S. McDowell and McKenzie Ave.

This corner is on a small two-way road, Maria Drive. And the very congested S. McDowell.

This corner is right next to a very busy bus stop.

This corner is very close to the busy Little League fields and McDowell Park playground.

Too many idling cars for 17 hours a day 24/7. Too many fumes for little kid's lungs, asthma, etc.

SO MANY neighbors have spoken out AGAINST this location.



Safeway cleverly made an effort in the Health Risk Assessment it presented to the Planning Commission to point out that the added traffic at its proposed site would not detrimentally affect the Petaluma airport. Strategically, however, Safeway made no mention of how the added traffic would affect access to the hospital and its emergency room.

This a significant impact that City Council must recognize and address. I hereby formally request that City Council require a full Environmental Impact Report be done before any further decision be made about the viability of any gas station that Safeway wants to impose on Petaluma at this site.

Sincerely,

JoAnn McEachin
1512 Sierra Dr.
(415) 518-1950

Begin forwarded message:

From: Linda Hartrich <rldt@aol.com>
Subject: Re: Hi Gabe! Re: Safeway Gas
Date: July 9, 2018 at 8:54:59 AM PDT
To: Councilmember Gabe Kearney <councilmemberkearney@me.com>

Hi Gabe, whoops, so sorry, I didn't mean to come across like that. Please accept my apology. I've just been so upset about a gas station being constructed so close to the schools and homes. There is an Appeal being filed today by a group of concerned citizens, teachers and neighbors on McKenzie & McDowell. We all chipped in \$\$.

I got together with a group of people yesterday....the general consensus is that everyone is just feeling like the East side is being slammed with all the massive apt buildings, new homes, added gridlock and gas station.

Thank you for being against this project.

Again, sorry. I guess I'm getting cranky in my old age. Say hi to your mom for me!
Have a good day.

Linda Hartrich

Sent from my iPhone

On Jul 9, 2018, at 8:24 AM, Councilmember Gabe Kearney <councilmemberkearney@me.com> wrote:

Linda,

I am somewhat dismayed by your email and it's tone. I'm sure you are aware of this, but the use of caps lock in written communication is the equivalent to yelling. At no time did I ever vote to approve this gas station. I proposed a moratorium on all new gas stations as a way to prevent this from being approved, and was unsuccessful in my efforts. I am well aware of the location of the gas station and it's inappropriateness. I have been opposed to it since day one.

This item was approved at the Planning Commission level, a commission I do not sit on. If members of the public wish to appeal the decision from the planning commission they are entitled to do that by contacting the Planning Department at petalumaplanning@ci.petaluma.ca.us. They can walk you through what you need to do to appeal.



Petaluma City Schools

200 Douglas Street
Petaluma, CA 94952
lhira@petk12.org
Telephone: 707.778.4621
Fax: 707.778.4822

Notice to Recipient:

Information contained in this message may be privileged, confidential and protected from disclosure. If you are not an intended recipient, it is strictly prohibited to use, disseminate or copy this communication. If you have received this in error, please reply to the sender and then delete the message.

Thank you.

Begin forwarded message:

From: jfroiland@santarosa.edu
Subject: Please Vote YES on the Safeway Gas Station
Date: December 3, 2018 at 2:19:57 PM PST
To: councilmemberkearney@me.com

Message: NO NO NO NO. Climate change maps show the city of Petaluma suffering heavy losses as land is covered by seawater coming up the canal from the bay. Burning oil and gas is why this is happening. JUST SAY NO to big oil and safeway – they don't care about your town. They censored this information from their campaign page and blocked me for asking them to address it. IT'S A TRAP. Go electric.

Name: J Froiland

Begin forwarded message:

From: JoAnn McEachin <joannmceachin@gmail.com>
Subject: Opposition to Petaluma Safeway gas station
Date: September 13, 2018 at 8:26:32 AM PDT
To: councilman.albertson@gmail.com, teresa4petaluma@comcast.net, mayordavidglass@gmail.com, mthealy@sbcglobal.net, councilmemberkearney@me.com, davekingpcc@gmail.com, kathleencmillerooffice@gmail.com, citycouncil@ci.petaluma.ca.us

To Petaluma City Council members,

I would like to address an issue that I have not heard comment on before: specifically, the delay of access to the only hospital and emergency room in Petaluma, which will only be exacerbated by the more than 500 vehicles per day that Safeway has (conservatively) stipulated it expects to attract to its S. McDowell and Maria Dr. location.

The E. Washington and S. McDowell intersection, just one block north of the proposed Safeway gas station site, is recognized now as THE most congested intersection in all of Petaluma. This already traffic-plagued intersection is a mere 4/10ths of a mile from Petaluma Valley Hospital and is an integral part of the primary route to that hospital.

Consider all the non-Petaluma vehicles that, when Safeway advertises its “cheap gas” is available at its new location, will get off of and back on to Hwy. 101 at E. Washington at all hours of the day to go to Safeway. We cannot delude ourselves that this isn't exactly what Safeway is hoping for, however gently and quietly they propose this beneficent “fuel center” for our community.



Eric



From: David Glass <daveglass@comcast.net>
Sent: Thursday, December 20, 2018 3:38 PM
To: Danly, Eric
Subject: Fwd: RE: Safeway Gas Station

---Warning: Use caution before clicking any attachments. THIS EMAIL IS FROM OUTSIDE OUR EMAIL SYSTEM.---

----- Original Message -----

From: dave glass <daveglass@comcast.net>
To: rldt@aol.com
Cc: "Cooper, Claire" <ccooper@ci.petaluma.ca.us>
Date: July 7, 2018 at 5:48 PM
Subject: RE: Safeway Gas Station

I am forwarding your questions to city staff for response.

The preliminary answer to your question is not going to be the answer you are most likely looking for.

The property zoning permits such a use, and it appears the restrictions that are in place under the law for such use in proximity to schools do not meet the threshold to withhold approval of a project such as this.

This project will comply with all California Laws regarding such issues as pollution. No laws will be broken regarding this matter either to deny approval or to allow for an approval.

Nothing in this correspondence should be interpreted as an opinion of support or lack of the same. As you mention California Law, under the law as a decision maker, I am required to keep an open mind, review all evidence in the record, and only then am I able to make an informed decision on the matter.

I realize this issue was in front of the Planning Commission recently and was approved on a divided vote. It may be coming to the city council on an appeal of that decision. Therefore, I will reserve all other comments on this matter until such time the appeal period has expired, or the appeal has been heard at the city council.



I am confident city staff will be in communication with you in the coming days.

Thank you.

David Glass

From: rldt@aol.com [mailto:rldt@aol.com]
Sent: Saturday, July 07, 2018 5:34 PM
To: mayordavidglass@gmail.com
Subject: Safeway Gas Station

We are writing to express our EXTREME DISMAY at the potential Safeway Gas Station coming in to Washington Square. I have nothing against the gas station -- only the TERRIBLE congested corner location!

This corner is DIRECTLY across from 4C's Preschool and playground, and McDowell Elementary School plus two other schools on the property.

This corner faces residential homes on S. McDowell and McKenzie Ave.

This corner is on a small two-way road, Maria Drive. And the very congested S. McDowell.

This corner is right next to a very busy bus stop.

This corner is very close to the busy Little League fields and McDowell Park playground.

Too much pollution. Too much noise pollution. Too many idling cars. Too many fumes.

SO MANY neighbors have spoken out AGAINST this location.

Our questions: Is there anywhere else to locate this within the center? Maybe move WestAmerica Bank?? Maybe buy out the already existing Chevron Station (the one that already gives a Safeway discount?)



nd question: WHAT IS THE CALIFORNIA STATE REGULATION ON HOW FAR AWAY GAS PUMPS HAVE TO BE FROM SCHOOL AND RESIDENCES? Are you breaking a law here? The preschool is RIGHT ACROSS THE STREET!



We would appreciate answers to each of these questions as soon as possible. Thank you.

Robert and Linda Hartrich

RLDT@aol.com



Re: **Joe, Samantha**

From: Kathleen Miller <kathleencmillerooffice@gmail.com>
Sent: Monday, June 25, 2018 6:40 PM.
To: Brown, John
Subject: Re: FW: Hi Kathy -- re: Safeway Gas Station

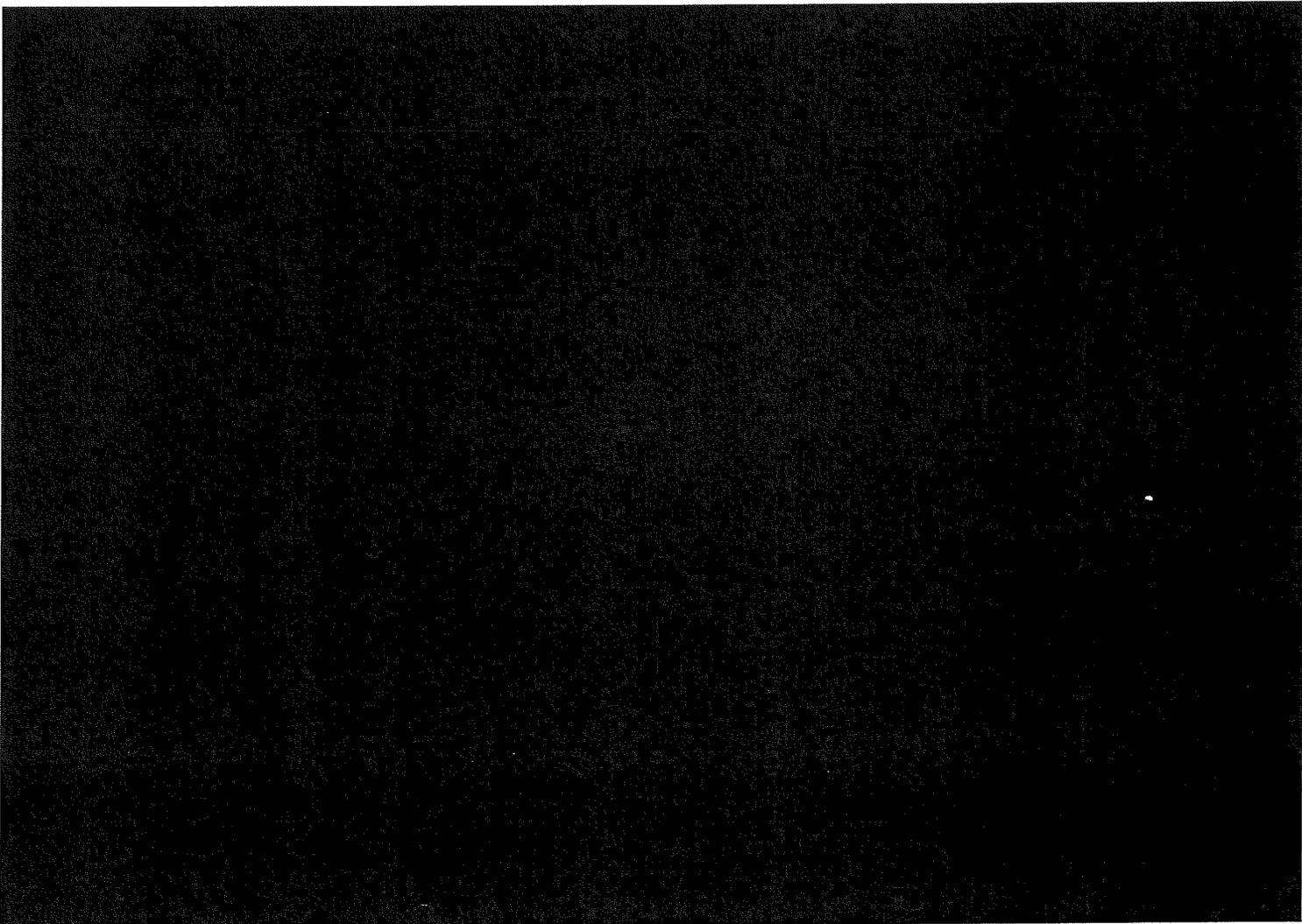
Thanks. I've made no secret of my desire to block this project at this location from the very beginning. I think the traffic studies are flawed and it's going to create a huge mess. I have a problem with traffic studies that say no problem when I know from driving this area almost daily that traffic is a huge issue in this neighborhood and the proximity to schools, the Little League field, the park and the transit station will create a mess. I don't have a problem with a Safeway gas station, I have a problem with the location.

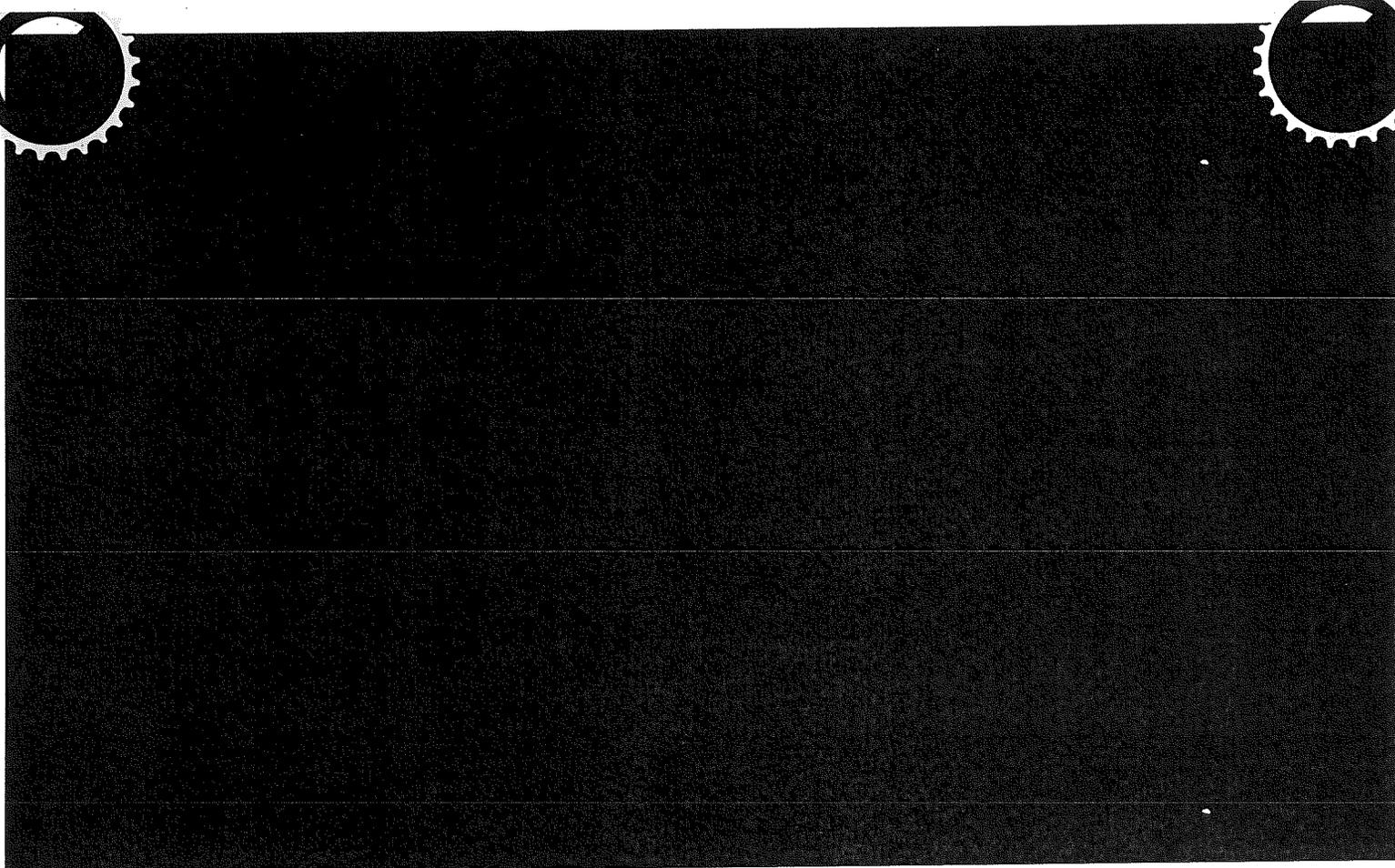
On Mon, Jun 25, 2018 at 9:21 AM, Brown, John <JBROWN@ci.petaluma.ca.us> wrote:

Answer to your inquiry, and some advice regarding the record.

Let me know if you have any other questions or concerns.

JB





From: Kathleen Miller [<mailto:kathleencmillerooffice@gmail.com>]
Sent: Sunday, June 24, 2018 1:20 PM
To: Brown, John
Subject: Fwd: Hi Kathy -- re: Safeway Gas Station

See below. Is there anything we can do to stop this project from going in at this location? It's going to be disastrous for the neighborhood.

----- Forwarded message -----

From: Kathleen Miller <kathleencmillerooffice@gmail.com>
Date: Sun, Jun 24, 2018 at 1:18 PM
Subject: Re: Hi Kathy -- re: Safeway Gas Station
To: <rldt@aol.com>

Linda,

Thank you for your email. I absolutely agree with you that it is a terrible location for a gas station. I would much rather see it put somewhere else. Unfortunately, it is a permitted use in that location so although I will do everything in my power to stop it, I might not be able to without exposing the city to liability.

Kathy

On Sun, Jun 24, 2018 at 10:11 AM <rldt@aol.com> wrote:

Hi Kathy.



Good morning. I am writing to express my concerns about a potential Safeway Gas Station on the corner of S. McDowell/Maria Drive. This is a crowded, busy corner, already in traffic gridlock with all the new apartment buildings on Maria. This location is DIRECTLY across from 4Cs Preschool and playground, McDowell Elementary School, numerous homes on McDowell and McKenzie, the Little League field, a busy bus stop and McDowell Park. Many children cross the street here.

The wind blows toward the schools. I have searched "Childhood Leukemia Rates for Children living or going to school near gas stations". It is alarming! Not to mention asthma or chemical or respiratory issues.

Is there anywhere else they can locate this gas station?

Can they possibly buy out the existing Chevron station?

Safeway is a business. What people don't realize is they raise their grocery prices to subsidize the lower gas prices. Or they count on people buying high-priced junk food in the convenience store.

I have not been able to find the answer to this question: "What are the California regulations of how many feet away a gas station can be built in proximity to schools and homes?" I would appreciate an answer to this.

I vote for the health of our Petaluma children. I value our children and grandchildren over saving a few bucks at the pump.

PLEASE don't let this gas station cause illnesses, cause more gridlock, cause trauma to the neighbors, and ruin that corner.

It would be a BIG MISTAKE.

Thanks. I would appreciate a reply.

Sincerely,

Linda Hartrich

RLDT@aol.com

--
Kathy Miller Petaluma City Council Member PO Box 7211 Petaluma, CA 94955 707-321-3888

--
Kathy Miller Petaluma City Council Member PO Box 7211 Petaluma, CA 94955 707-321-3888

City of Petaluma records, including emails, are subject to the California Public Records Act. Unless exemptions apply, this email, any attachments and any replies are subject to disclosure on request, and neither the sender nor any recipients should have any expectation of privacy regarding the contents of such communications.



Office, Samantha

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RLDT@aol.com



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Kathy Miller Petaluma City Council Member PO Box 7211 Petaluma, CA 94955 707-321-3888

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EXHIBIT M



Safeway cleverly made an effort in the Health Risk Assessment it presented to the Planning Commission to point out that the added traffic at its proposed site would not detrimentally affect the Petaluma airport. Strategically, however, Safeway made no mention of how the added traffic would affect access to the hospital and its emergency room.

This a significant impact that City Council must recognize and address. I hereby formally request that City Council require a full Environmental Impact Report be done before any further decision be made about the viability of any gas station that Safeway wants to impose on Petaluma at this site.

Sincerely,

JoAnn McEachin
1512 Sierra Dr.
(415) 518-1950

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From: Linda Hartrich <rldt@aol.com>
Subject: Re: Hi Gabe! Re: Safeway Gas
Date: July 9, 2018 at 8:54:59 AM PDT
To: Councilmember Gabe Kearney <councilmemberkearney@me.com>

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I got together with a group of people yesterday....the general consensus is that everyone is just feeling like the East side is being slammed with all the massive apt buildings, new homes, added gridlock and gas station.

Thank you for being against this project.

Again, sorry. I guess I'm getting cranky in my old age. Say hi to your mom for me!
Have a good day.

Linda Hartrich

Sent from my iPhone

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This item was approved at the Planning Commission level, a commission I do not sit on. If members of the public wish to appeal the decision from the planning commission they are entitled to do that by contacting the Planning Department at petalumaplanning@ci.petaluma.ca.us. They can walk you through what you need to do to appeal.



Respectfully,

Gabe Kearney
Councilmember,
City of Petaluma

On Jul 07, 2018, at 05:45 PM, rltd@aol.com wrote:

Hi Gabe! Imagine if this gas station would have been built across the street from B.E. School, where you went to school, and where our kids went to school.

We are writing to express our EXTREME DISMAY at the potential Safeway Gas Station coming in to Washington Square. I have nothing against the gas station -- only the TERRIBLE congested corner location!

This corner is DIRECTLY across from 4C's Preschool and playground, and McDowell Elementary School plus two other schools on the property.

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This corner is right next to a very busy bus stop.

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TOO MANY IDLING CARS. TOO MUCH NOISE FOR 17 HOURS PER DAY. TOO MANY FUMES!

SO MANY neighbors have spoken out AGAINST this location.

Our questions: Is there anywhere else to locate this within the center? Maybe move WestAmerica Bank?? Maybe buy out the already existing Chevron Station (the one that already gives a Safeway discount?)

2nd question: WHAT IS THE CALIFORNIA STATE REGULATION ON HOW FAR AWAY GAS PUMPS HAVE TO BE FROM SCHOOL AND RESIDENCES? Are you breaking a law here? The preschool is RIGHT ACROSS THE STREET!

We would appreciate answers to each of these questions as soon as possible. Thank you.

Robert and Linda Hartrich
RLDT@aol.com

Gabe -- Please read all the comments on Nextdoor. People just DON'T want this LOCATION for a gas station. There are currently many cases of cancer on the East side. Lucas, Amy, Rachael, etc. etc. It's NOT healthy to pollute downwind of a preschool and three other schools on the McDowell site....

Help!!! There is a meeting tomorrow at Peet's at noon.....for those concerned. 7/8/2018.

sorry to rant, LOL

Linda H.

Begin forwarded message:

From: michaelangelak97@gmail.com

Subject: Please Vote YES on the Safeway Gas Station

EXHIBIT N

FISCHER ★**PETALUMA CITY COUNCIL**

KEEP PETALUMA LIVABLE

Sustainability

As your city council member, I will work to create a sustainable Petaluma. What does “sustainable” mean?

Of course, a sustainable community is one that does all it can to reduce climate change and to enhance resiliency, such as by preparing its citizens for disasters.

A sustainable community is also one that:

- Supports development projects that provide city revenue and have minimal traffic impact
- Has fair and equitable wages
- Provides affordable housing for its workers—*as well as* shelter and services for its homeless
- Encourages a local economy where money circulates *within* the community
- Provides robust alternative modes of transportation
- Values the contributions of *all* its members, including those who speak a different language
- Maintains and enhances its green spaces

I support Measure M because it will provide more than \$700,000 each year to support Petaluma's parks.

Housing

I will work to bring mixed-use housing along commercial corridors that are close to transportation. This type of housing provides retail revenue, jobs, and services—allowing people to live, work, play, and shop in one place. Mixed-use housing can create a walkable neighborhood and reduces traffic congestion. It also means we don't reserve valuable building space for parking lots of cars.

I support Prop 10 because it allows our renters to stay here while we develop more housing. Increased housing means less competition for available units.

Transportation

To reduce congestion, I will work to create a variety of types of transportation. This includes establishing more crosstown connectors, including bike lanes and walkways. We also need a robust public transit system that links riders to the SMART train, our children to their schools and playing fields, and those without cars to the services they need.

I oppose Prop 6 because it would eliminate the \$1 million dollars Petaluma currently receives each year, which helps us maintain our infrastructure. I oppose the future development of fossil fuel gas stations and will work to change our zoning code to reflect this position.

BUILD COMMUNITY

Communications, participation, and outreach

I will host regular town hall meetings where you will not only learn what is happening in our city, but I will also learn from you. Let's make face-to-face conversations more commonplace.

We also need to upgrade our City website to make it more user friendly and easy to navigate. If needed, I will find talented programmers who are willing to volunteer their time to upgrade the website.

Petaluma River

Our river is central to our identity and vital to our economy. I value its role in the ecological system, as well as the opportunities it provides for recreation and transportation. Dredging is long overdue and necessary for the health of our community and our watershed.

At his recent Petaluma town hall meeting, Congressman Jared Huffman announced that the United States Army Corps of Engineers may dredge our river as early as next summer. I will support the continued efforts of our Congressman to insure that funding is provided for this project.

Fairgrounds

We have a 50-year-old agreement to rent this 60+ acre property to the Fair Board for \$1 a year. We need to regain control of this asset and create revenue from this vital piece of public property.

I propose that we establish a planning committee, appointed by the Fair Board and our City Council—along with input from a city planner—to create a specific plan for this centrally

located city asset. I would like to see this be our city center - where all of our city services are located - and we come together as a community.

BALANCE CITY OBLIGATIONS WITH COMMUNITY NEEDS

Our primary revenue stream comes from taxes. Our share is 11 cents for each dollar of property taxes and 1 cent of each dollar spent for sales taxes. We need to find creative revenue streams and create regional partnerships to maintain basic public safety and community services. I propose a sales transfer tax on high-end single family homes to generate revenue to fund our vital city services.

Community Services

In Sonoma County, 5,000 citizens are homeless; about 1 in 10 live in Petaluma. I will advocate for our homeless by supporting COTS in their mission to assist people to transition from homelessness to a permanent home.

Police Services

Among other steps, I will advocate for crime prevention by designing and maintaining our public and private spaces to deter criminal behavior. I will also support development projects that are self-sufficient and do not sap our already scarce resources. I will advocate to bring back community policing on bicycles so that we get to know our police officers and they have a visible presence in our community.

PLAN TODAY FOR OUR CITY'S FUTURE

MY STORY

I moved to Petaluma five years ago charmed by the immediate access to farm fresh food, the active bicycle culture, the historic downtown on the river, and the easy exchanges I experienced meeting people on the street when walking my dog.

Disheartened by the actions being taken in Washington and empowered by the many other women in this country seeking office and affirmative change, I am stepping up and choosing to participate in the political process.



During my long career as an urban planner I had the opportunity to represent my community on the Planning Commission and my clients before numerous city boards and councils. My current role as a volunteer board member of the United States Green Building Council Redwood Chapter provides me the platform to integrate my ideals about the built environment and environs in our county.

Many local residents know me as the former Operations Manager for Daily Acts. Today, I work as an executive team member of the nonprofit Bionutrient Food Association (BFA), whose mission is “to increase quality in the food supply.” From my work, I know that creating affirmative change in our complex environment is an ongoing process - a marathon, not a sprint. My work inspires me every day to make that change a reality.

I represent the BFA on the Sonoma County Food System Alliance (SCFSA), a coalition of diverse stakeholders working to envision and create a healthy, sustainable, local food system through leadership and collective action. The SCFSA is currently exploring the opportunity to add a Healthy Communities element to the Sonoma County General Plan.

I will work toward keeping Petaluma livable, building community, and balancing the city's obligations with the needs of the community. I want to plan today for our City's future.

D'Lynda Fischer
Candidate, Petaluma City Council

DONATE NOW

EXHIBIT O

Hines, Heather

From: Mary Davi <Mary.Davi@safeway.com>
Sent: Tuesday, August 26, 2014 8:41 AM
To: Brown, John
Cc: Mark Friedman; Steve Berndt; Wendy Gutshall; Hines, Heather
Subject: RE: Proposed Safeway Fuel - Estimated Tax Revenue

We will be working with our Fuel and our Marketing Departments to develop an evaluation of the impact on the existing gas stations so that we will have a rebuttal for the PC hearing. We don't yet have results, but I will certainly review them with you when available.

From: Brown, John [mailto:JBROWN@ci.petaluma.ca.us]
Sent: Monday, August 25, 2014 5:38 PM
To: Mary Davi
Cc: Mark Friedman; Steve Berndt; Wendy Gutshall; Hines, Heather
Subject: RE: Proposed Safeway Fuel - Estimated Tax Revenue

Mary, thank you for that. When we spoke on the 6th, I was interested in seeing these numbers, adjusted for "cannibalization". I would view these as gross numbers, the net would represent new business rather than business shifted from other gas stations in Petaluma to Safeway.

I imagine Safeway has an estimate for that number, can you share it please?

Thanks.

John Brown

City Manager

City of Petaluma, CA

From: Mary Davi [mailto:Mary.Davi@safeway.com]
Sent: Monday, August 25, 2014 12:17 PM
To: Brown, John
Cc: Mark Friedman; Steve Berndt; Wendy Gutshall; Hines, Heather
Subject: Proposed Safeway Fuel - Estimated Tax Revenue

Thank you for your assistance in coordinating the August 6th meeting with staff, Mr. Friedman and Safeway representatives. Based on the discussions at the meeting, we resubmitted our application August 13th. With the input from your staff, I believe we have been successful in addressing all the City's issues as stated in the May 28th Incompleteness Letter.

Steve asked me to work with the Safeway associate who prepared the Sales Tax chart to streamline the format and delete any extraneous data. Therefore, attached is the restated Estimated Taxes Generated statement dated August 22, 2014. Although the statement has been clarified, the resulting Estimated City Revenue of \$439,744 expected to be generated by our Fuel Center is unchanged.

Thanks again for your assistance.

Mary W. Davi
Real Estate Manager
Safeway Inc.
5918 Stoneridge Mall Road
Pleasanton, CA 94588
925-467-3510 Direct
925-467-2007 Fax

mary.davi@safeway.com

"Email Firewall" made the following annotations.

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Hines, Heather

From: Brown, John
Sent: Monday, August 25, 2014 5:39 PM
To: Hines, Heather
Subject: FW: Proposed Safeway Fuel - Estimated Tax Revenue

I sent one of my own, to let them know I am interested too.
Thanks, JB

From: Hines, Heather
Sent: Monday, August 25, 2014 3:16 PM
To: Brown, John
Subject: FW: Proposed Safeway Fuel - Estimated Tax Revenue

FYI

From: Mary Davi [<mailto:Mary.Davi@safeway.com>]
Sent: Monday, August 25, 2014 3:15 PM
To: Hines, Heather
Subject: RE: Proposed Safeway Fuel - Estimated Tax Revenue

We will be working with our Fuel and our Marketing Departments to develop an evaluation of the impact on the existing gas stations so that we will have a rebuttal for the PC hearing. I'll review this with you when we have something meaningful.

When I heard the earthquake news early Sunday morning and the reporter was talking about North Bay, I was concerned that Petaluma might have been affected, but I guess your area didn't even feel it. I don't think there was any damage in my area (although it sure woke me up at 3:00 a.m.), our stores in Sonoma County and surrounding areas all had damage and our poor little Napa store is closed with very severe structural damage.

Mary D.

From: Hines, Heather [<mailto:HHINES@ci.petaluma.ca.us>]
Sent: Monday, August 25, 2014 12:33 PM
To: Mary Davi
Subject: RE: Proposed Safeway Fuel - Estimated Tax Revenue

Mary,

One of the concerns that we have heard repeatedly is about the cannibalization of existing fuel sales in Petaluma to the new Safeway gas station. Your data shows anticipated sale of 8.5 million gallons of fuel per year. Do you have any data illustrating how much of that is anticipated to be new fuel sales and how much will be sales taken from existing fuel stations? I think this will be one of the first questions asked about the data.

Thanks.

Heather

From: Mary Davi [mailto:Mary.Davi@safeway.com]
Sent: Monday, August 25, 2014 12:17 PM
To: Brown, John
Cc: Mark Friedmañ; Steve Berndt; Wendy Gutshall; Hines, Heather
Subject: Proposed Safeway Fuel - Estimated Tax Revenue

Thank you for your assistance in coordinating the August 6th meeting with staff, Mr. Friedman and Safeway representatives. Based on the discussions at the meeting, we resubmitted our application August 13th. With the input from your staff, I believe we have been successful in addressing all the City's issues as stated in the May 28th Incompleteness Letter.

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Lisa Davison

From: Olivia Ervin
Sent: Friday, May 18, 2018 9:22 AM
To: Lisa Davison
Subject: Safeway Response to Comments
Attachments: Attachment 2 Response to Comments.docx

Lisa,

I need you to prepare response to comments memo for Safeway. The Public IS/MND is here on box. I am trying to recall the most recent R2C that was prepared, I pulled the attached, which was for the Citywide Creeks project (we also did the response to comments for Pacifica on a subdivision, but I think the attached is the best base).

There are number of public comments that were received. You do not need to read them all (probably only ESA's), just list them out:

- Regulatory Agencies: SCH Response (confirmed receipt and only had Caltrans letter), Caltrans and DTSC (on DTSC no formal letter was ultimately submitted but they inquired, received a copy of the Phase I and stated their ratification and that they had no further comments, reminder me to forward the email chain for the record)
- School District (with ESA peer review of HRA)
- Number of neighbors, community members, school personal (teachers, principal, parents etc)

We are not doing itemized response to comments, rather we are going to prepare Master Responses on Health Risk and Traffic, including the following specific items.

- Regulatory Context for Area Source Emissions/Authority to Construct Permit issued for thrust with 25.71 MG/Y (BAAQMD's Role as agency responsible for maintaining AQ standards, how they do this through regulating certain uses, like gas station, that they issue authority to construct permits through a ministerial process that involves a HRA of their own, noticing to neighbors 1,000 feet occurred in 2014 explain who was notified and responses received by BAAQMD for their effort (which is separate from the City's process), and consideration of exposure limits, 25 MG cap was established based on max acceptable exposure risk, see BAAQMD staff report and check out their website for additional detail on their process.
- Existing Condition bolster description of school facility (elementary school with multiple bld, and also multiple programs, seniors early start, etc. Public comment that IS/MND only mentions the school once, let's expand the setting detail for that facility.
- Adequacy of the Health Risk Assessment prepared by I&R for 8.5 MG thru put (1/3 of that allowed by BAAQMD.) A peer review was issued by ESA attacking the methodology used in the HRA, I&R prepared a last minute response to comments, which is already part of the record and can be referenced to support our response, see hardcopy. I want this item to address the approach used by I&R, why it is acceptable that it appropriately applied the guidelines from BAAQMD.
- Concerns Raised by community Health Risk Exposure to Students and Staff at McDowell Elementary School. Numerous public comments received in writing and oral testimony at Planning Commission hearing. We need to clearly explain the thresholds for Health Risk, individual and commutative. Existing risks without the project, new risk introduced by the project, and why it is considered LTS under CEQA. We need to also be sure to clarify the risks for each person, student, teacher and resident, there was confusion that as a student and resident you'd be doubly exposed, that is not the case it looks at worst exposure not combined. (Then I want to think about this going in the direction of a exploring consistency with local Land Use policies, not an AQ impact, but possible conflict with local policy regarding protection of health, compatibility with school (let's discuss once you identify a few policies that may be appropriate).
- CHS 2018 Traffic Memo Clarify Trip Generation (No deductions were taken, trip gen is same as 2014 study, but info was added to show what could have been taken)

- Trip Generation Used Empirical Data collected from other Safeway because it was more conservative than ITE and more closely represents operating conditions.
- Pedestrian Access (safety of McDowell/Maria Intersection) frame this up. We will get collision info from Traffic Sub and expand.

We can chat as you dive in.

Thanks,
Olivia

Ervin, Olivia

From: Hines, Heather
Sent: Thursday, May 10, 2018 9:18 AM
To: Evelyn Ellis (EEllis@m-group.us)
Cc: APetersen@m-group.us; Ervin, Olivia
Subject: FW: Please vote NO on Safeway gas station

From: Betsy Boyle [mailto:betsy.boyle.lib@gmail.com]
Sent: Wednesday, May 09, 2018 7:57 PM
To: Hines, Heather <HHINES@ci.petaluma.ca.us>
Subject: Please vote NO on Safeway gas station

Dear Planning Committee,
Please vote No on Safeway gas station, the location is too close to schools and homes for so many idling cars and exhaust fumes. I have been to Safeway gas at the shopping center at Hamilton and there is always a long line up of cars there and it is not a desirable situation for our community!! Furthermore, it would cause further traffic issues for the already horrible intersection of McDowell and Washington. As a Petaluma East Side resident dealing with that traffic nightmare at least 5 evenings a week, I'm pretty certain that alone makes the Safeway gas location a poor choice.
Thank you in advance,
Elizabeth Boyle
106 Park Place Dr.
Petaluma CA 04954

Ervin, Olivia

From: Robbe, Tiffany
Sent: Wednesday, May 09, 2018 12:26 PM
To: Ervin, Olivia
Subject: RE: Petaluma Addendum Example

Yes, that the use question is not really on the table does make it tricky!

From: Ervin, Olivia
Sent: Wednesday, May 09, 2018 11:56 AM
To: Robbe, Tiffany <TROBBE@ci.petaluma.ca.us>
Cc: Lisa Davison <LDavison@m-group.us>
Subject: Re: Petaluma Addendum Example

Safeway was continued last night. Huge neighborhood and school turnout speaking against the project due to health risk exposure of the children and traffic.

It's tricky because PC does not have to consider use (it's allowed by right).

Olivia Ervin, Environmental Planner
M-Group Consulting Planner
Serving the City of Petaluma
707.778.4556
oervin@ci.petaluma.ca.us

From: Robbe, Tiffany
Sent: Wednesday, May 9, 2018 9:26 AM
To: Ervin, Olivia
Cc: Lisa Davison
Subject: RE: Petaluma Addendum Example

Here it is
What did the PC do with Safeway?

From: Ervin, Olivia
Sent: Wednesday, May 09, 2018 8:52 AM
To: Robbe, Tiffany <TROBBE@ci.petaluma.ca.us>

Lisa Davison

From: Lisa Davison
Sent: Saturday, November 24, 2018 8:37 AM
To: Olivia Ervin
Subject: Case Law - Public Opposition to MND

Hi Olivia,

I'm catching up on CEQA Cases and this paragraph from the Fremont Niles case caught my eye as it relates to the Safeway project.

- CEQA is interpreted to afford the fullest possible protection to the environment within its language's reasonable scope; the EIR is the "heart of CEQA"; and fostering informed self-government through public participation is an essential part of the process. The "low threshold" "fair argument" test requires that an EIR be prepared if there is *any* substantial evidence in the record, contradicted or not, supporting a "fair argument" that a project *may* (meaning a "reasonable possibility") have a significant affect. The existence of a fair argument is a legal issue; judicial review is de novo with a preference for resolving doubts in favor of environmental review; and relevant personal observations on non-technical subjects (as opposed to argument, speculation, and unsubstantiated opinion) can qualify as substantial evidence supporting a fair argument. While most CEQA practitioners can probably recite these basic legal principles in their sleep, they do serve to remind project proponents of an important "fact of life" in the CEQA world: if your project faces intense and dedicated neighborhood opposition, as did the Project here, it will be a daunting task to uphold an MND against legal challenge.

https://www.ceqadevelopments.com/2018/08/20/context-matters-first-district-holds-ceqa-requires-eir-not-mnd-to-analyze-mixed-use-projects-potentially-significant-aesthetic-and-traffic-impacts-on-fremonts-niles-historical-di/?utm_source=Miller+Starr+Regalia+-+CEQA+Developments&utm_campaign=c52cb3a689-RSS_EMAIL_CAMPAIGN&utm_medium=email&utm_term=0_2b3a24553f-c52cb3a689-72965009

LISA DAVISON | ENVIRONMENTAL PLANNER

M-GROUP A NEW DESIGN ON URBAN PLANNING

POLICY · DESIGN · ENVIRONMENTAL · HISTORIC · ENGAGEMENT · STAFFING

SANTA ROSA | CAMPBELL | NAPA | HAYWARD

499 HUMBOLDT STREET | SANTA ROSA | CA | 95404 | 707.540.0723 ext. 216

M-LAB: A THINK TANK FOR CITIES: [JOIN THE CONVERSATION!](#)

7/17/2018

RE: Petaluma Safeway - Heather Hines

RE: Petaluma Safeway

Baig, Yousef <Yousef.Baig@arguscourier.com>

Mon 7/2/2018 4:21 PM

To: Brown, John <JBROWN@ci.petaluma.ca.us>;

Cc: Heather Hines <hhines@m-group.us>;

OK; thanks. I feel like that's fairly in line with how we've been reporting on it the past however many years. I'm not sure what the architect was seeking in terms of the wording, or by alleging the city reports are wrong. The end result is 16 places for cars to get gas, whether it's referred to as "pumps," "dispensers," "fuel stations" – whatever. That's not why it struggled to get approval ...

From: Brown, John [mailto:JBROWN@ci.petaluma.ca.us]
Sent: Monday, July 02, 2018 1:44 PM
To: Baig, Yousef <Yousef.Baig@arguscourier.com>
Cc: Heather Hines (hhines@m-group.us) <hhines@m-group.us>
Subject: FW: Petaluma Safeway

Per your inquiry, Heather's answer, below

From: Heather Hines [mailto:hhines@m-group.us]
Sent: Monday, July 02, 2018 1:40 PM
To: Brown, John
Subject: Re: Petaluma Safeway

It is eight dispensers, each with two fueling positions.
There can be 16 cars all pumping gas at the same time.
Our impact fees are assessed by fueling positions, so this was an important distinction for the project.

Heather

HEATHER HINES | PRINCIPAL
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SANTA ROSA | CAMPBELL | NAPA | HAYWARD
499 HUMBOLDT STREET | SANTA ROSA | CA | 95404 | 707.540.0723 ext. 206
M-LAB: A THINK TANK FOR CITIES: JOIN THE CONVERSATION!

From: Baig, Yousef [mailto:Yousef.Baig@arguscourier.com]
Sent: Monday, July 02, 2018 11:35 AM
To: Brown, John
Subject: FW: Petaluma Safeway

Just to be sure, there are SIXTEEN total gas dispensers – not eight, right? Otherwise, this guy (I'm assuming the architect) is alleging years of city staff reports and Argus coverage has been incorrect and gone unchecked, which I have a hard time believing.



I do not believe that another source of fossil fuel to our community is a value. I especially do *not* agree with exposing our cities children to the damages of having a gas station less than 100ft away from where they spend most of their day.

In addition, this area does not need to have the congestion of one or more lines of *idling* cars. Petaluma had enough traffic issues and I do not believe we need to add to that list.

At what expense are we willing to pay for increased traffic congestion, the health of our children, and the safety of all resident, especially those who feel like they have no say?

Respectfully,

Erin Chmielewski
Concerned Citizen

Begin forwarded message:

From: jmkruljac@gmail.com
Subject: Please Vote YES on the Safeway Gas Station
Date: December 4, 2018 at 5:56:42 AM PST
To: teresa4petaluma@comcast.net

Message: I just wanted to say that I am extremely disappointed and a little angry that you have deferred this vote yet again. Really?! A 16th environmental study? For what? So that it will show the same thing as the first 15? Please stop wasting time for something that should have been approved a long time ago. This is reminiscent of the whole Target situation. Fight, argue, waste time and money and eventually it gets approved. Ridiculous! Just because the no Safeway gas campaign is louder does not mean they are the majority. I guess jobs, road improvements, and tax money are not something Petaluma needs?

Name: Jessica Kruljac

Begin forwarded message:

From: "Brown, John" <JBROWN@ci.petaluma.ca.us>
Subject: Comments Regarding Safeway Fuel Project
Date: September 18, 2018 at 7:18:02 PM PDT
To: "dbreen@baaqmd.gov" <dbreen@baaqmd.gov>
Cc: "Danly, Eric" <edanly@ci.petaluma.ca.us>, "Hines, H" <HHines@m-group.us>, "Ervin, O" <OErvin@m-group.us>, "Crump, Katie" <KCRUMP@ci.petaluma.ca.us>

Dear Mr. Breen:

We received your September 17, 2018 correspondence regarding the subject project, which we forwarded to appropriate City staff and provided to the Petaluma City Council.

I called your office yesterday upon its receipt, to discuss with you the public hearing scheduled for last night's Council meeting. I left a message with Ms. de Guzman, your executive assistant, but did not receive a return call. I wanted to discuss our strategy going into last night's meeting, and the revised recommendation for a meeting continuance.



At the meeting, due to the receipt of a large volume of last-minute correspondence, some of which includes new information that will require time to evaluate, the City Council continued the public hearing date to October 15, 2018.

Petaluma appreciates BAAQMD's input, and my staff will be in contact with you to discuss your comments in detail.
We will use the contact information supplied in yesterday's correspondence.

Thank you for your letter; if you have any questions or concerns, please do not hesitate to call me at 707 776-3765.

Sincerely,

John C. Brown
City Manager
City of Petaluma, CA

From: Aloha de Guzman [<mailto:agalimba@baaqmd.gov>]

Sent: Monday, September 17, 2018 2:57 PM

To: citymgr

Cc: Jack Broadbent; Brian Bunger; Damian Breen; Gregory H. Nudd; Teresa Barrett ; Shirlee Zane; Michelle Whitman ; Christine Culver; Vanessa Johnson

Subject: Comments Regarding Safeway Fuel Center Project

Importance: High

Dear Mr. Brown,

Attached for your reference is a letter from the Bay Area Air Quality Management District regarding the above subject matter. If you have any questions or concerns, please feel free to contact Mr. Damian Breen at (415) 749-5041 or dbreen@baaqmd.gov

Thank you!

Regards,
Aloha de Guzman
Executive Assistant

Bay Area Air Quality Management District
Executive Office
375 Beale Street, Suite 600 | San Francisco, CA 94105
Office: 415.749.4782 | Cell: 415.745.5633
adeguzman@baaqmd.gov | www.baaqmd.gov

City of Petaluma records, including emails, are subject to the California Public Records Act. Unless exemptions apply, this email, any attachments and any replies are subject to disclosure on request, and neither the sender nor any recipients should have any expectation of privacy regarding the contents of such communications.

Begin forwarded message:

From: Christopher Fisher <chris@theraucousrooster.com>

Subject: A procedural question re: city council and the Safeway gas station project

EXHIBIT P

- **Nearly three in five agree that the City should allow increased competition and two-thirds say that they are concerned about the rising costs of gas.** Fifty-nine percent say that city leaders should do more to allow new gas stations to open to improve competition and 67 percent are concerned about rising gas prices. Additionally, 64 percent of voters disagree with a statement saying that gas prices in Petaluma are reasonable and more than half say that they travel to other cities to purchase gas.

Figure 2: Attitudes Toward Gas Stations and Gas Prices in Petaluma

Statement	Total Agree	Total Disagree
I am concerned about the increasing cost of gas in Petaluma	67%	30%
City leaders should do more to allow new gas stations to open if it will improve competition and reduce gas prices	59%	34%
I often travel to other cities to buy gas because it's too expensive in Petaluma	52%	44%
Gas is a major part of my family's budget	48%	51%
Gas prices in Petaluma are reasonable and affordable for my family	33%	64%

- **A plurality of voters agrees that the gas station will be good for Petaluma.** Forty-eight percent of voters say that the new gas station will be good for Petalumans. Only one-quarter of voters think it will be bad for the city.

Figure 3: Perception of the Impact of Gas Station Development

Statement	% Agree
A new gas station will be good for Petaluma because it will give people more options for purchasing gas, leading to added convenience and lower prices	48%
A new gas station will be bad for Petaluma because it will harm our environment and worsen traffic congestion.	25%
Both/Neither/Don't know	27%

- **After a balanced exchange of the benefits and downsides of a new gas station, a majority continue to offer support for the project.** Survey respondents heard a balanced series of statements in favor of the gas station and criticisms of a new gas station. After hearing this information, their overall perception did not shift greatly, and a majority continued to support the proposed project (Figure 4 on the next page).

Figure 4: Support for the Safeway Gas Station Development After Information

Position	Initial Support	After Positive Information	After Critical Information
Total support	55%	58%	55%
Total oppose	30%	31%	35%
Undecided	15%	12%	10%

Taken together, this information suggests that Petaluma voters are supportive of constructing a new gas station at the Safeway on Washington St. Nearly seven in ten have heard of the issue and two-third of voters are worried about gas prices in town. When voters are highly familiar with a local issue, as they are in this instance, the chances of substantial fluidity in voter opinion over time becomes less likely. In fact, a majority is supportive of the project initially and they remain consistently supportive as they learn more about it.

¹ **Methodology:** From June 21-24, 2018, FM3 completed 502 online and telephone interviews (on both landlines and cell phones) with likely November 2018 voters in the City of Petaluma. The margin of sampling error for the study is +/-5.7 at the 95% confidence level; margins of error for population subgroups within the sample will be higher. Due to rounding, not all totals will sum to 100%.

Fairbank, Maslin, Maullin, Metz & Associates (FM3 Research or FM3) is a California-based company with offices in Los Angeles and Oakland. FM3 has been conducting public policy-oriented opinion research since 1981 on issues of major economic and social concern, such as health care; education; environmental protection; natural resource conservation and development; transportation; constituent satisfaction with public services and support for policy proposals; budgetary issues and taxation; land use, growth, and property development; communications technology; energy development; and organizational branding.

EXHIBIT Q



PLANNING COMMISSION AGENDA

CITY COUNCIL CHAMBERS, 3300 CAPITOL AVENUE, FREMONT CA 94538

General Order of Business

1. Preliminary (Call to Order – 7:00 p.m.,
Salute to the Flag, Roll Call, Approval of Minutes, Disclosures)
2. Consent Calendar
3. Public/Oral Communications
4. Public Hearing Items
5. Miscellaneous Items (Matters of Interest)
6. Adjournment



Addressing the Planning Commission

Any member of the public may speak on any item under discussion by the Planning Commission after "being recognized" by the Chairperson. Generally, after the Chairperson introduces an item, the order of presentation begins with comments by staff. The project applicant or their authorized representative may then comment. Next, interested members of the public may speak. Additional comments by the applicant or staff, as appropriate, may follow. At the close of testimony, the matter will return to the Planning Commission for discussion and action.

Consent Calendar

Items on the Consent Calendar are scheduled public hearing items which are considered routine by the Planning Commission. The Consent items will be enacted by one motion and one vote and include the following:

- Items recommended for continuance to a later meeting.
- Items for which staff has received no indication of public concern and for which staff is recommending approval.
- Items which have been moved from the regular hearing agenda and placed on the Consent Calendar at the beginning of any particular meeting.

Items on the Consent Calendar may be removed by any member of the public or Planning Commission. If removed from the Consent Calendar, the item will be placed on the regular hearing agenda in its normal sequence on the agenda. When the Planning Commission approves a consent item, it approves the staff recommendation together with any conditions of approval included in the recommendation.

Please note that items on the regular hearing agenda may be placed on the Consent Calendar at the beginning of any particular meeting when requested by a member of the Planning Commission and with the approval of the Chairperson. If a Planning Commissioner requests that an item be moved from the regular hearing agenda and placed on the Consent Calendar, the Chairperson will ask if anyone in the audience or any other Commissioner wishes to speak to the item or have the item heard. If no one wishes to do so, the Chairperson may move the item to the Consent Calendar and it will be considered at that

time. Accordingly, anyone wishing to speak to an item should be present at the beginning of the meeting.

Oral Communications

Any member of the public desiring to speak on a matter which is not scheduled on this agenda may do so under Oral Communications. As a matter of policy, the Planning Commission does not take immediate action on items presented under Oral Communications.

General Information

The Planning Commission usually meets on the 2nd and 4th Thursday of each month. [Exceptions: Only one meeting in August, November, and December.] Commission meetings are held in the City Council Chambers at 3300 Capitol Avenue.

Stenocaptioning and/or earphones for people who are hearing impaired are available from the Recording Clerk 15 minutes prior to the meeting. A driver's license will be held as a deposit. Commission meetings are open captioned for the deaf in the Council Chambers and closed captioned for home viewing. Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the Planning Department at (510) 494-4440. Planning Commission meetings are open captioned for the deaf in the Council Chambers and closed captioned for home viewing. For more information on Planning Commission please visit our website at www.fremont.gov or contact the Planning Department at (510) 494-4440.

The regular meetings of the Fremont Planning Commission are broadcast on Cable Television Channel 27.

Availability of Public Records

All documents submitted to Boards and Commissions will become public information and posted to the www.fremont.gov website. Public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the Planning Commission prior to the meeting will be available for public inspection at 39550 Liberty Street during normal business hours, at the time the records are distributed to the Planning Commission. Copies of staff report are available at the Development Services Center at 39550 Liberty Street (between Stevenson Blvd. and Walnut Ave.) and at City Hall at 3300 Capitol Avenue the week of the meeting and are free of charge. Plans and other supporting documents may be viewed any day until noon the day of the Planning Commission meeting. Copies will be provided at cost when feasible. The Development Services Center is open 8 a.m. to 4 p.m., Mondays through Thursdays; and 8 a.m. to 12 p.m., Fridays. Planning Commission final agendas, which include location maps, staff reports and proximity maps can also be viewed on the Internet at www.fremont.gov/planningcommission.

The Planning Commission meetings are now also live over the Internet. Please note: Live webcasts are only available when the Planning Commission is in session. If the Planning Commission is not in session, the web browser will return a "busy" error.

To send an email or voice mail message to a particular Commissioner send to:

Commissioners	E-mail	Phone
All Commissioners	Planning_commission@fremont.gov	
Brannin Dorsey	bdorsey@fremont.gov	(510) 494-4491
Reshma Karipineni	rkaripineni@fremont.gov	(510) 494-4492
Alice Cavette	acavette@fremont.gov	(510) 494-4493
Kathryn McDonald	kmcDonald@fremont.gov	(510) 494-4494
Roman Reed	rreed@fremont.gov	(510) 494-4495
Ripple Leung	rleung@fremont.gov	(510) 494-4496
Craig Steckler	csteckler@fremont.gov	(510) 494-4497

We appreciate your interest in the conduct of your City's business. Information about the City or the items discussed in this report may be referred to:

Planning Commission Secretary
City of Fremont Planning Division
39550 Liberty Street, P.O. Box 5006
Fremont, CA 94537-5006
Telephone: 510-494-4440

Planning Commissioners

Brannin Dorsey - Chairperson
Reshma Karipineni - Vice Chair
Alice Cavette
Ripple Leung
Kathryn McDonald
Roman Reed
Craig Steckler

City Staff

Kristie Wheeler, Planning Manager
Wayne Morris, Planning Commission Secretary
Erik D. Ramakrishnan, Deputy City Attorney



CITY OF FREMONT
Agenda
Planning Commission Regular Meeting, April 26, 2018
City Council Chambers
7:00 PM

1. PRELIMINARY

- 1.1 Call to Order
- 1.2 Salute to the Flag
- 1.3 Roll Call
- 1.4 Approval of Minutes - Regular meetings of March 22 and April 12, 2018
- 1.5 Disclosures

2. CONSENT CALENDAR

NOTICE: ITEMS ON THE PUBLIC HEARING CALENDAR MAY BE MOVED TO THE CONSENT CALENDAR IF NO ONE IS PRESENT TO SPEAK ON THE ITEMS. ALL APPLICANTS AND INTERESTED PERSONS ARE ADVISED TO BE PRESENT AT THE START OF THE MEETING.

3. PUBLIC/ORAL COMMUNICATIONS

4. PUBLIC HEARING ITEMS

Item 1. MISSION CHEVRON – 38010 Mission Boulevard - PLN2016-00262 - To consider a Conditional Use Permit and Discretionary Design Review Permit for a gasoline service station and car wash facility consisting of six double-sided fuel pumps, a 2,000-square-foot convenience store, a 2,000-square-foot retail space, two automated car wash tunnels, and associated site improvements in the Niles Community Plan Area, and to consider a finding that the project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15332, Infill Development Projects.

Project Planner - Joel Pullen, 510-494-4436, jpullen@fremont.gov

Recommended Action: Approved based upon findings and subject to conditions.

Item 2. BEARD COMMON – 33650 Beard Court - PLN2016-00392 - To consider a Planned District Amendment, Vesting Tentative Tract Map No. 8333, and a Private Street to allow the development of five single-family detached houses on an approximately 0.6-acre site at 33650 Beard Court in the North Fremont Planning Area, and to consider a categorical exemption from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15332, Infill Development Projects.

Project Planner - Bill Roth, 510-494-4450, broth@fremont.gov

Recommended Action: Recommend approval to the City Council, based on findings and subject to conditions.

5. DISCUSSION ITEMS

6. MISCELLANEOUS ITEMS

Information from Commission and Staff:

- 6.1 Information from staff: Staff will report on matters of interest.
- 6.2 Information from Commission: Commission members may report on matters of interest.
- 6.3 Report on actions of City Council Regular Meeting.

7. ADJOURNMENT

EXHIBIT R

City Council Item #5
Staff Report

Date: January 16, 2018

To: Mayor and Councilmembers

From: Paul Eckert, City Administrator and Donna Decker, Planning

<input checked="" type="checkbox"/>	Regular
<input type="checkbox"/>	Special
<input type="checkbox"/>	Closed
<input type="checkbox"/>	Emergency

Subject: **Appeal of Site Development Plan Review No. 4-17;** An appeal of the December 11, 2017 Planning Commission approval for an application for a site development plan to develop a 3,180 square foot convenience market, an 8-MPD (pump) fuel canopy, and a 938 square foot carwash located on a portion of an approximately 2.74 acre site located at 1646 Hwy 99 on the east side of Highway 99, south of Hazel Street. (010-210-057). The project will utilize the existing driveway on the northerly parcel consisting of approximately 0.28 acre, located at 2520 Hwy 99. (010-210-058)

Recommendation

City staff respectfully recommends the City Council:

1. Determine the project is Categorically Exempt per the California Environmental Quality Act, Section 15332(a-e), Class 32, Infill Development Projects; and,
2. Deny the appeal and approve Site Development Plan Review 4-17.

Summary

On December 11, 2017, the Planning Commission reviewed and approved the Site Development Plan Review No. 4-17 to develop the parcel located at 1646 Highway 99. The site is the location of the past McConnell Chevrolet. It is currently tenanted with two users; Bi-County Irrigation and Hazel Street Vintage & Company.

The development will subdivide the parcel into two parcels; 1) the AM/PM will front on Hwy 99 and 2) a parcel will be located to its east for future development.

An appeal of the Planning Commission decision was filed on December 19, 2017. Jointly, eight individuals who have interest in similar businesses signed the appeal. The appeal is based upon the proposed business in direct competition with existing businesses. The appeal notes the longevity of these businesses and that livelihoods will be impacted by allowing the AM/PM to proceed.

The site is consistent with the General Plan land use designation, zoning designation of C-2, General Commercial. The site is underutilized and considered infill development. Staff recommends the City Council deny the appeal and uphold the approval by the Planning Commission.

Discussion

Location

The subject site is an approximately 2.74-acre parcel located on the east side of Highway 99 south of Hazel Street. The use of the surrounding properties is commercial adjacent to the west, north and south boundaries with single family residential also located to the north. The parcel is contiguous to Fairview Street at the east property boundary.

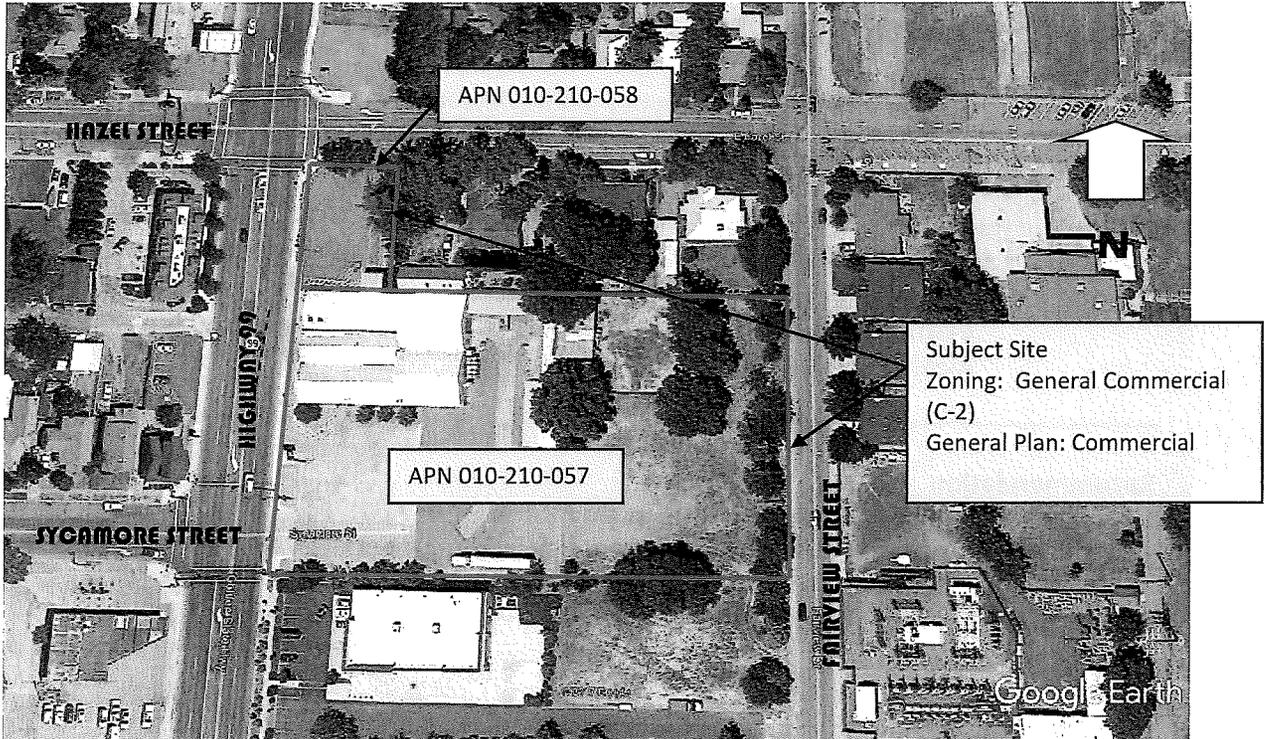


Figure 1: Location Map

General Plan and Zoning

The General Plan designation for the parcels is Commercial and the zoning designation is General Commercial (C-2). The proposed use for a fuel station and mini market are allowed uses and no additional entitlement is required for development excepting the processing of a Parcel Map and sign review approval.

Site Design

The site is entered from Highway 99 at the existing signalized 48'-2" driveway apron located directly across Sycamore Street. This access will be a joint use drive to provide ingress to the AM/PM and to the yet to be developed site on the east side adjacent to Fairview Street. The site will be exited by this same 48'-2" access drive and by the existing driveway located on the adjacent parcel to the north. This access is signalized at Sycamore Street. The parcel to the north would be required to have ingress/egress restrictions for right in/right out turning movements. Signage will also need to be provided at the north driveway requiring "Right Turn Only" to insure the public is informed. A condition of approval has been provided.

The proposed site design keeps the existing curb, gutter, and sidewalk at the front of the parcel adjacent to Hwy 99.

The City has recently been engaged in discussions with District 3, Caltrans, related to planned improvements along the Highway 99 corridor. The City has also prepared planning documents to increase the safety of the pedestrian along the corridor. Due to the future improvements of the Highway 99 corridor and the City of Gridley studies, the project has been conditioned to remove the sidewalk and provide the landscape as separation at back of curb to the sidewalk. The transition will be at the driveways. Caltrans has noted there may be conflicts in truck turning radii and some relocation of equipment may be required for an encroachment permit. The comments from Caltrans received after the Planning Commission hearing have been incorporated into the conditions of approval should the project be approved and the appeal overturned.

The pedestrian path of travel from the Highway 99 sidewalk at the north property line is striped to the island near the parking area. It appears this is a ramp up. This location should be modified to allow landscaping that can accommodate a tree.

The site is configured with the following constructed elements:

• Building Footprint	3,180 Sq. Ft.	7.5%
• Car Wash (Future)	1,056 Sq. Ft.	2.5%
• Fuel Canopy Area	4,408 Sq. Ft.	10.5%

The areas described above may vary when actual construction drawings are prepared for submittal.

The site will also disrupt the parcel that is being created via a Parcel Map. When demolition, remove or replace or the addition of utilities are constructed, the surfacing should be replaced in kind and should be placed in such a quantity to ensure longevity. A path of travel from Fairview should be provided as well. The Gridley High School is an open campus and it is anticipated that the AM /PM will be a lunchtime destination point. Therefore, a sidewalk should be provided along the frontage and into the site that is a safe path of travel. The project has been conditioned.

Parking

The site has dual uses as a fuel station, retail market and a car wash. In accordance with Chapter 17.76, the code requires a minimum of one space for every 300 square feet for general sales and retail, service stations require 1 space for every 3,000 square feet of land area and the car wash would be considered retail also requiring 1 space for every 300 feet:

• Mini market	3,180 sf	$1/300=10.6$	11 Spaces
• Fuel Station	42,146.50 sf	$1/3,000=14.0$	14 Spaces
• Carwash	1,056 sf	$1/300=3.52$	4 Spaces
		Total Parking required:	29 Spaces

The site plan indicates there are 16 spaces provided along the west and south sides of the mini market. Under the fuel canopy another 16 spaces are provided for fueling and oftentimes patrons leave their car parked as they go into the market. This provides a total of 32 spaces meeting the parking requirements for the development.

Building Design

The building design offers a contemporary design that reflects typical architecture. The design provides for a stucco finish, crown detailing at the parapet, and screening for the roof mount equipment. The colors are pleasant and will blend with other adjacent new construction such as Auto Zone and Ace Hardware. The exterior will be a three-coat stucco application. The fuel canopy is depicted on sheet A5. The applicant has provided a standard plan to show the colors, canopy detailing all of which will look similar to the plan but bigger. Plan sheet A7 provides a photo simulation of what the development will appear to look like when the site is completed.

The trash enclosure utilizes split face block to match the building colors. The project has been conditioned to provide a cover in accordance with Section 17.72.100 of the Gridley Municipal Code.

Site Operation

The applicants have further notified the Planning Department that the site will be operated on a 24-hour basis and will also sell beer and wine. The General Commercial zoning designation is silent related to hours of operation and there is no restriction to beer and wine sales other than approval and licensure through ABC. No conditions restricting the hours or sales have been added to the conditions.

Landscaping

The landscaping plan is a good start for the project; however, a landscape documentation package will need to be submitted in accordance with Title 13 of the Gridley Municipal Code. This will include the irrigation, water usage calculations, and other requirements that are outlined in the Title. The project will be conditioned to submit landscape and irrigation plans and water use calculations at the time of building permit application unless otherwise requested by the applicant.

Appeal

The City Council is considering this project because the Planning Commission approval has been appealed. A Site Development Plan review is a Planning Commission decision unless appealed.

The appeal filed states concerns related to:

1. Lack of population growth within the City boundary proper;
2. Traffic flow;
3. Location;
4. Existing business ownership/competition;
5. Revenue loss of existing businesses.

Albeit these are personal concerns of the appellants, the appeal is not based upon a conflict the

proposal may have to its zoning land use designation, the Gridley Municipal Code, or incompatible land uses which are relevant to the project approval. The scope of the appeal is based on the loss of revenue to existing businesses as a result of a market competitive new business establishing itself.

Responses to concerns:

1. Lack of population growth within the City boundary proper

The City of Gridley has a low population growth rate. This is not a point of analysis for the project in that the review is directly related to land uses that are allowed. In this case, the site is an infill site, conforms to CEQA as such, and low population growth is not a point for analysis of the project because there is not impact from the project related to low population growth.

2. Traffic flow

The appeal notes that the level of traffic has not increased along the Highway 99 corridor sufficient to support the new AM/PM. Traffic is typically analyzed via an environmental review related to project specific impacts of traffic, not that there would not be enough traffic to support the business. The site has been developed for some time, was used as an auto dealership, and had signalization constructed to meet traffic demand. The project is categorically exempt because it is considered an infill site.

The applicant has conducted a market study for their use to determine the viability of their investment. This is not an area that staff considers in the evaluation of the project.

3. Location

The appeal notes that the traffic will create added congestion particularly in the movement from the site turning south at the signal. The intersection at the south entry (main 48'-2" wide driveway) to the site is Sycamore Street and is signalized. The turning movement from the north parcel is restricted to right in – right out.

The location is not an issue from a planning and land use review. The site is zoned General Commercial, appropriate for the use and traffic is signalized.

4. Existing business ownership/competition

The concern the business owners have is sincere; however, this is a free market economy and cities are not able to deny a project based upon market competition as the argument for appeal. The site has a General Plan designation of Commercial, a land use zoning designation as General Commercial (C-2) and

the proposed project is a permitted, allowed use in these land use designations.

5. Revenue loss of existing businesses

The approval of the proposed project does not encompass the consideration of business revenue loss to existing business'. This is related to market competition and the approval of the project does not consider this as an impact of the project.

Public Notice

A notice was posted in the Gridley Herald 10 days in advance of the City Council meeting, posted at City Hall, mailed to property owners within 300 feet of the project boundaries and mailed to the appellants of this action. The project documents have been made available at the Administration public counter, and placed on the City website for review. At the time this report was prepared no comments had been received other than the appeal noted above and attached herein as Exhibit A.

Environmental Review

The proposed project is categorically exempt from CEQA per the California Environmental Quality Act, Section 15332(a-e), Class 32, Infill Development Projects.

Attachments –

1. Exhibit A- Appeal
2. Exhibit B-Conditions of Approval
3. Exhibit C- Project Plans.

December 15, 2017

DEC 19 2017

To: Planning Commission and City Council – City of Gridley

We all named below are writing to oppose the proposed development of a 24 Hour - AM/PM Convenience Store to be built at the corner of Highway 99 and Hazel Street. This is a 3,180 square foot building and 8 pump fuel canopy with a 938 square foot car wash.

As current business owners in Gridley, we are directly affected by this proposal. We have several concerns as we all have invested many years of our lives serving the community of Gridley.

Population Growth – Per census statistics, Gridley has had very minimal population growth within the last 20 years. The census in 1997 was 4,660, and 2016 -2017 is at 6,586. This is growth of less than 2,000 people in a 20 year span.

Traffic Flow – Per Caltrans, the traffic flow on Highway 99 in 1997 during the peak hours was an average of 1,400 cars, 2016 data now show approximately 2,000 cars traveling thru Gridley. This is an increase of 600 cars again over the span of 20 years.

- The population growth at an average of 96 additional people **per year** and 30 additional cars **per year** traveling thru Gridley does not in any way support the large AM/PM 8 pump convenience store.

Location – Community members have a concern as to the traffic congestion this project will cause. Lynne Spencer from Chamber of Commerce was present at the planning meeting and voiced her concerns. Another local resident made the following point.

“What would be the ingress and egress point for any new business along the highway? Keep in mind that the center turn lane is clearly overburdened right now. Adding vehicles turning south when leaving a gas station, and crossing the highway - creates another impact point for an already dangerous stretch of road. Also, cramming more vehicles into the center lane to make a left turn into the gas station just adds to the congestion. Absent a 4 way signal light”.

This is also the entrance going into the High School, it's a high traffic intersection, and many of the school busses are in travel of this intersection.

Competition – It was mentioned at the planning meeting that competition is good for the community. The community already remains competitive with the businesses already established with minimal population growth within the city. We are not getting any new housing subdivisions and/or any large establishments that may bring in additional jobs and/or people into the community. We cannot rely on highway traffic to contribute to our businesses and be able to support a large initiative as AM/PM. We will not be able to compete with their gas pricing as they are able to sell gasoline at a lower price due to the sales volume and better contract pricing. The automobile industry is already looking towards increasing the number of electric cars that will become available within 2017-2020, which in itself will impose competition to the gasoline business.

AM/PM also serve hot foods as well as other convenience store stocked merchandise. The fast food sales will also impose competition to our local fast food restaurants that have been in our town for quite some years.

In comparison to other areas, Gridley with its current population is already very competitive within the current businesses in town.

The City of Live Oak has 4 gas station/convenience stores with population of 6968.
The City of Paradise has 5 gas stations/convenience stores with population of 26,551.

Longevity and Ownership – All of the current gas stations and convenience stores have been fully operated by business owners themselves by being involved in the day to day operations. They all invest into our community by donating and supporting local events and businesses. An example of that is during the floods earlier this year when everyone had been evacuated, the Gridley Police Department reached out to Sam as the city was in need of fuel, water and food items. Without any hesitation Sam came and opened up his store, while Jeff took upon himself to open up his store to help. This is working together and fully supporting the Police Department and the community. This demonstrates loyalty and ownership in our town. Longevity in the community proves our business owners have been committed to this community and we would like to continue to operate their businesses successfully in the years to come.

Fast Trip - Owned and Operated by Donald Maciel (Butch) for 21 years.

Stohlman's Union Station - Owned and Operated by Jeffrey Palmer for 35 1/2 years and previously owned and operated by his grandfather for 33 years. Total of 68 years

7-Eleven - Owned and Operated by Sam and Kal Bhullar for 21 years

Mac's Market – Owned and Operated by Dean and Shannon McKelvey for 24 years

Fast Track – Owned and Operated by Manjit Singh Lally and Jawinder Kaur for 16 years

Revenue – It was mentioned by one of the planning commissioners that this would bring additional revenue to the city. How would that be possible if we have not increased in our population? It would be basically robbing one business to support another.

If the City of Gridley had the growth by additional thousands of people over the last 20 years or so, this would be justifiable, but that is **not** the case here.

Diesel – Property Owner J.T. Kullar had mentioned that the city is not able to supply diesel to the farmers in the area. All of the gas station currently have diesel available at their locations with the exception of 7-Eleven.

Proposed Gas Station by Chander Sidher – Couple of years back Chander Sidher had proposed building a similar gas station in Gridley. At the time the project was not approved by the Board of Supervisors due to safety concerns. We feel similar safety concerns remain at this time with this project.

- We are not able to understand as to why this project is being approved by the planning commission (without even going to the city council) at this time when Chander Sidher's project was disapproved?
- We do not understand as to how this project is being approved without any communication to the community and businesses in the area that are directly impacted.
- We do not understand how it was not reviewed that currently all 5 gas stations have a total of 16 pumps and the planning commission approved a new development with 8 pumps, that is 50% of the market share of gasoline from other stores. How can the other business compete with that? (Again highlight the minimal population growth and traffic; this will directly impact other gas stations).
- How can the city not take into consideration the loyalty and longevity and agree with the possibility of these businesses being forced to close down with approval of the new development. For all of them their businesses are their source of income for themselves and their families.
- We feel the need to wait for Cal Trans's consideration as to how they will be expanding the highway in the near future. This will also impact the traffic and safety concerns.

We all realize growth and revenue is important to all cities and needs to happen to be able to grow. And we all agree and support that, but not by adding another convenience store. We as a community need to look at other options of bringing in manufacturing plants, healthcare facilities, and other services that will help provide jobs for large number of people.

With taking all of the above into consideration the detriments to us are severe and obvious, there is no justification beyond self-interest of AM/PM and the property owners.

The services provided by the proposed AM/PM are neither unique nor needed, as evidenced by the abundance of similar businesses in close proximity. The harms it causes are neither necessary nor reasonable for business owners in Gridley.

We have stated our concerns and we all trust that the Board will consider all the detriments this request will cause the business owners who have served this community for many years and how they are directly and immediately affected as well as negatively impacted.

The Board has done so before, as it denied the proposed development of Chander Sidher's gas station and we trust that the Board will do it again in this case.

Thank you to All City and Planning Board Members

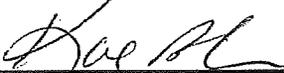
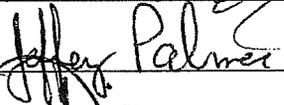
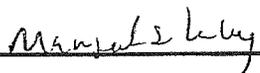
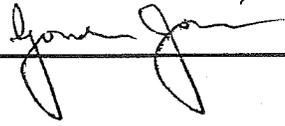
<u>Print Name</u>	<u>Signature</u>	<u>Date</u>
Kat Bhullar		12-18-19
SAM BHULLAR		12-18-17
DONALD MAJOR		12-18-17
Jeffery Palmer		12-18-17
JEAN MCKEWAY		12-18-17
Rasand Kaur		12/18/17
Manjit S Lally		12/18/17
Gordon Jones		12/18/17

Exhibit B
(CITY COUNCIL) CONDITIONS OF APPROVAL
Site Development Plan Review No. 4-17
1646 and 2250 Hwy 99 APN 010-210-057 and 010-210-058
January 16, 2018

Approved Use:

Site Development Plan Review No. 4-17; Application for a site development plan to develop a 3,180 square foot convenience market, an 8-MPD (pump) fuel canopy, and a 938 square foot carwash located on a portion of an approximately 2.74 acre site located at 1646 Hwy 99 on the east side of Highway 99, south of Hazel Street. (010-210-057) The project will utilize the existing driveway on the northerly parcel consisting of approximately 0.28 acre, located at 2520 Hwy 99. (010-210-058)

Conditions of Approval:

General

1. The approved use for SDP 4-17 shall be substantially as described within this staff report, submitted site plans, narratives, and applications on file in City Hall except as modified by the following conditions. Minor changes to the use, areas, etc. shall be subject to the review and approval by the Planning Department.
2. The applicant shall submit for review samples of colors and material to the Planning Department for review and approval at the time of building permit submittal.
3. The applicant/property owner shall file a Declaration of Acceptance of the Final Conditions of Approval within 30 days of Planning Commission approval. The application shall expire one (1) year from the date of Planning Commission approval unless a building permit has been secured prior to the one (1) year date. If no permit has been secured, the applicant/owner or his/her successor may apply for an extension of the Site Development Plan review. The proposed extension will meet all current requirements at the time of the request and shall be reviewed and approved by the Planning Commission.
4. All construction shall be in accordance with all the City of Gridley and the County of Butte currently adopted Building Codes; including but not limited to the Plumbing Code, Mechanical Code, Electrical Code, and the 2016 California Green Building Standards Code. The applicant shall submit a minimum of five (5) complete sets of plans for distribution to City of Gridley staff at the time of building permit application for review.
5. The applicant/owner shall pay permit fees to the County to obtain all building permits. The applicant/owner shall pay fees directly to the City of Gridley for: Development Impact Fees, Electrical Fees, Grading Permit fees, Drainage Fees, and site inspection/project verification fees. The applicant/owner is responsible to reimburse the City of Gridley for plan check costs that accrue for the project.

6. The applicant/owner shall submit plans meeting all conditions of approval for all work to the City of Gridley review for conformance to the Gridley Municipal Code prior to submittal to the County of Butte for building permit review.

Caltrans

7. Prior to construction, the applicant shall have all required approvals and an encroachment permit from Caltrans prior to performing any work within the state right-of-way.
8. A Landscape Maintenance Agreement shall be recorded between the City of Gridley and the property owner for the installation and maintenance of landscaping and other off-site improvements in a form suitable for recordation with the Butte County Recorder binding upon the property owner and his/her successor(s) in interest. All plants shall be maintained in a healthy, disease free condition. Water and fertilizer shall be applied as necessary to maintain their normal color and growth rate. Weak or broken branches shall be removed by pruning. Dropped or faded flowers, seed pods, dead foliage and leaves shall not be allowed to accumulate. Dead plant materials shall be replaced with healthy plants promptly throughout the life of the project development. Annual and perennial planting beds shall be weed and litter free.
9. The site shall be limited at the north driveway located APN 010-210-058 for ingress/egress to right in, right out vehicular movement. Signs shall be posted at the exit drive as reviewed and approved by Caltrans/City of Gridley.
10. Coordinate with Caltrans to determine if additional right of way may need to be deeded at the time of the Parcel Map.
11. Sidewalks shall be replaced in accordance with the most recently adopted standards and shall not be less than six feet in width. Refer to "Site Design" conditions.
12. All driveways may need to be reconstructed to comply with ADA standards.
13. Coordinate with Caltrans to determine if the pole or any utilities are in conflict and/or need to be relocated.

City of Gridley/County of Butte

14. Plans for submittal shall incorporate all required 2016 California Green Building Standards Code or the most recently adopted code by the State of California and its revisions and requirements.
15. All site and building signage shall be submitted for review and approval by the Planning Department prior to placement on any structure or site location.

16. Complete off-site improvements shall be designed, reviewed and approved by the City Engineer and Caltrans prior to permit issuance. Off-site improvements shall be submitted for review and approval by the City of Gridley and Caltrans and shall include the construction of curb, gutter, sidewalk, plan and profile of in right-of-way utilities being tied into (sewer, water, and storm drain, manholes as required), landscaping buffer, irrigation components, fire hydrants, and all electrical connections. Relocation of any utilities or lighting or signalization shall also be shown on the plan and shall show existing location and the proposed new location.
17. The property owner shall enter a written agreement for the maintenance of the on-site building, site, and site amenities, paving, and walkways in a form suitable for recordation with the Butte County Recorder binding upon the property owner and his/her successor(s) in interest. This agreement, at a minimum, shall state that all facilities and related equipment, including lighting, fences building facades, and materials shall be maintained in good repair, free from trash, debris, litter and graffiti, and other forms of vandalism, and any damage from any cause shall be repaired as soon as reasonably possible to minimize occurrences of dangerous conditions or visual blight. All pavement markings shall be maintained so as to be clearly visible throughout the life of the development. Trash, debris, litter or graffiti shall be removed from the site and any facility or equipment as soon as practicable and in no instance more than forty-eight hours from the time of notification by the City. The agreement shall acknowledge that any costs incurred by City staff due to non-responsiveness by the owner or manager of the site will be the responsibility of the property owner not taken care of, the costs of any cleanup by City staff will be a fee born by the owner and his/her successor(s) in interest.
18. The applicant/owner shall submit an application for a Tentative Parcel Map for the land division as shown on the submitted plans. No construction or permits shall be released until the Tentative Map has been processed and reviewed and approved by the Planning Commission. The City may allow the release of a demolition permit, an encroachment permit, and a grading permit for the site.

Electrical

19. Prior to construction, the applicant shall obtain an encroachment permit or other instrument to work on City utilities within the state right-of-way. All work on utilities shall be coordinated with the Gridley Municipal Utility Department.
20. Decorative lighting in conformance to the Highway 99 corridor lighting requirements shall be provided and installed as determined by the City of Gridley Electrical Superintendent. The applicant shall provide a minimum of two decorative style 16 foot LED lights per driveway, fed from the AMPM transformer.
21. The applicant shall coordinate with the Gridley Municipal District Electrical Department for all utilities. The applicant proposes to construct an electrical loop and have service provided by the City of Gridley.

22. All electrical, water, and sewer services are to be supplied from Fairview Street.
23. Electrical service will require a primary 12kv pedestal to be installed to service the proposed location of the AMPM transformer.
24. A transformer may need to be purchased by the applicant; provide a minimum of 8-12 week delivery time, depending upon final load calculations. The applicant shall coordinate with the Utility Department.
25. Address lot 2001-0027971 sewer connection currently being serviced by the existing sewer line planned to be used by AMPM. The owner shall effect an easement agreement for the collection of effluent from the residences to the north which is a pre-existing condition. Utilities planned shall not be demolished as shown on the Demolition Plan until resolution of sewer services are resolved.
26. A separate water meter shall be provided to serve the landscape irrigation supply. All site metering shall be located as reviewed and approved by the Gridley Municipal Utility Department.
27. Abandon the existing 2" water service on the Highway 99 frontage. This will require exposing the existing 10" water main, remove the corp stop, and place a repair band around the tap. The applicant/owner is responsible for all required permits from the City and Caltrans and provide all required traffic control in accordance with the Standard Specifications (Caltrans).

Site Design

28. An exterior lighting plan shall be submitted for review and approval prior to permit issuance. The plan shall ensure that lighting is shielded or recessed to prevent direct glare and reflection is confined to the maximum extent possible to the site and does not go beyond the property boundaries. Exterior lighting shall be considerate of "Dark Sky" design and direct all lighting downward. Light foot-candles shall be at the lowest levels allowed and shall be placed on photovoltaic cells and sensor switches in conformance to the Green Building Code.
29. Outdoor refuse collection areas location and design shall comply with 17.72.100. A cover shall be provided the design of which shall be reviewed and approved by the Planning Department.
30. Bicycle racks and an enclosed bicycle storage area for employees shall be provided on the site.
31. The plans shall be modified to provide separated sidewalk along the frontage of the west property line contiguous to Highway 99 consistent with the adopted City of Gridley

Highway 99 corridor improvements.

32. The driveways shall be reviewed for consistency with the required ADA standards thus requiring removal and replacement. The contractor shall protect all Caltrans and City infrastructure, signaling and all utilities from damage. If damage occurs, the cost to repair and/or replace is born by the applicant/owner/contractor. No reimbursements of costs are available from the City, State, or County.
33. The location of the saw cut shall be revised to match with the proposed property line on the south and the north. The driveways shall be constructed of the same material; eg. Pcc concrete or asphalt concrete, but in no way, shall the driveway approaches have both materials leading to deformity and breakage over time. The applicant/owner shall coordinate with the City Engineer as to preference.
34. The pedestrian path of travel from Highway 99 to the mini market shall be revised in the island such that plant materials are provided. The parking spaces for up to 30% may be smaller in width to accommodate compact vehicles.
35. Verify the use of the large expanse of concrete on the south side of the mini market. Provide planter pockets for tree planting to shade the structure and reduce heat buildup on the site.
36. Provide a pedestrian path of travel from Fairview Street to the developed site/mini market for review and approval by the Planning Director and the City Engineer.
37. All infrastructure demolished, removed, or replaced on the easterly portion of the property shall be constructed in a safe manner as reviewed and approved by the City Engineer. The site shall be cleaned and all debris, vegetation, and weeds shall be removed resulting in a clean site prepared for construction. Any open soil or unpaved surface shall be hydro seeded or planted for complete coverage, with 70% coverage at the time of Certificate of Occupancy issuance.
38. Refer to condition number 45; a SWPPP shall be required and all BMPS installed prior to the commencement of work. Weekly site inspections are required per the GCP to ensure BMPs are correctly placed. Should there be measurable rain forecasted 24 hours in advance of such event, a REAP shall be prepared in accordance with the requirements of the State of California Water Resources Dept. (waterboards.ca.gov)
39. The applicant/owner shall enter an agreement with the property owner of Auto Zone to ensure the landscaping at the south is maintained and allowed to remain. The agreement shall be reviewed and approved by the City of Gridley prior to recordation with the County of Butte.

Engineering

40. Provide adequate fuel delivery vehicle turning area.
41. Provide a Geotechnical Report for the project site. (2 sets required upon submittal)
42. Civil Improvement Plans shall be prepared by a Civil Engineer licensed in the State of California.
43. Improvement plans shall include: Title Sheet, Existing Topographic Plan, Demolition Plan, Calculated Site Plan, Grading Plan, Drainage Plan, Utility Plan, Water Pollution Control Plan (Erosion Control Plan), appropriate details and Construction Notes. (5 sets required upon submittal)
44. Provide a hydrology report in accordance with the City's current Public Works Construction Manual. (2 sets required upon submittal)
45. All water connections will require back flow preventer devices.
46. Fire suppression water service shall be from Fairview Drive.
47. Provide a sanitary sewer manhole (SSMH) within the ROW east of the easterly property line on the existing 8" sewer line. Sewer onsite will remain private from the SSMH.
48. Provide City Engineer signature block on Title Sheet.
49. Approved Caltrans Encroachment Permit is required prior to approval of Improvement Plans.
50. Gridley is not a "Small MS4" as defined by the State Water Board. However, the project may be subject to the post construction storm water quality requirements (section XIII) of the State General Construction Permit (Order 2009-0009). The post construction water balance calculator is provided in SMARTS. An excel spreadsheet based on the SMARTS calculations can be found at https://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml (see Appendix 2). If a general permit is required provide 2 sets of calculations.
51. Include Landscape Documentation Package and plans with the Civil Improvement Plans.

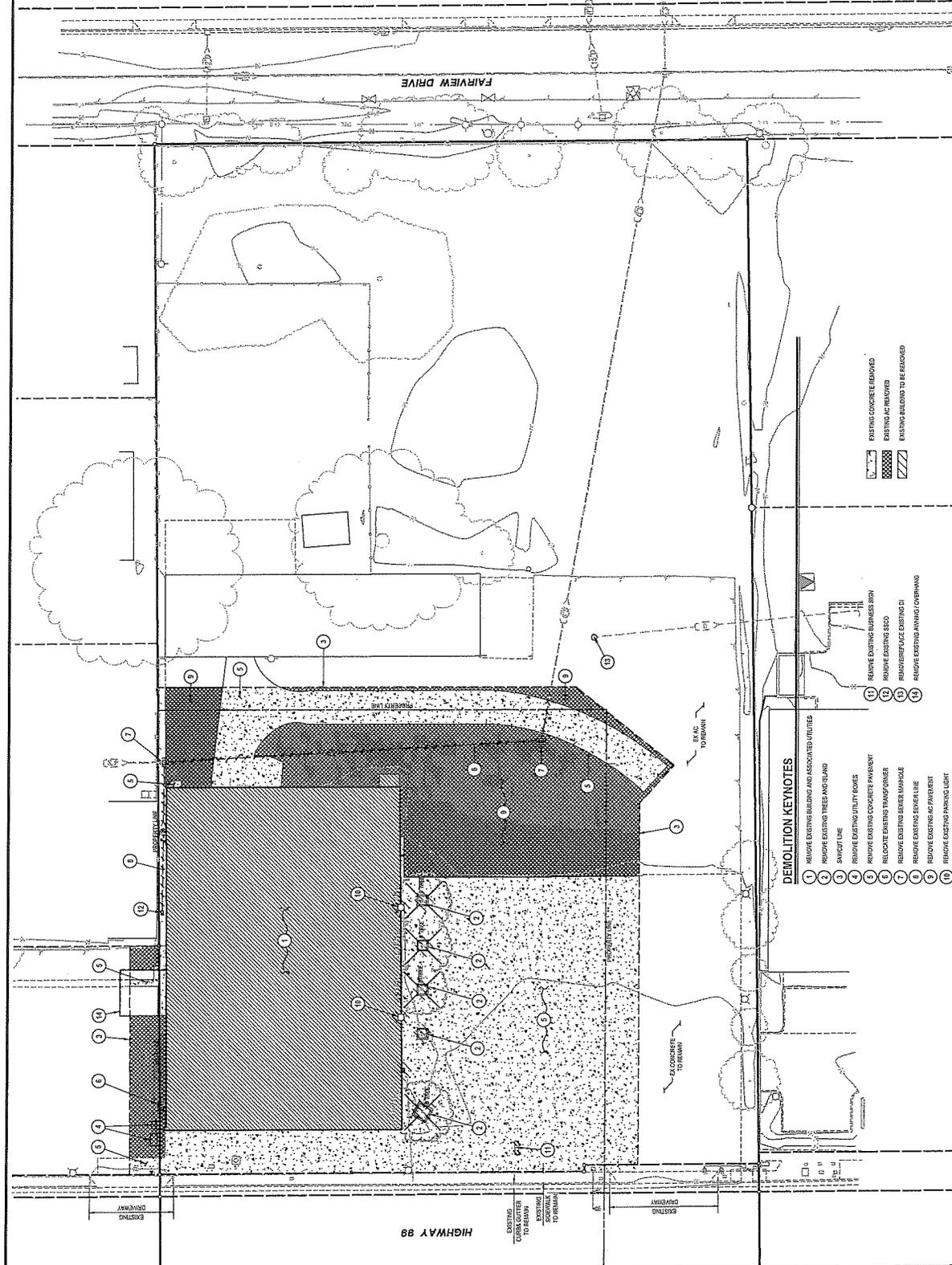
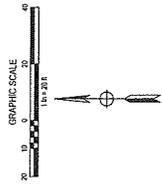
Building

52. The project shall ensure that all interior noise levels are met by construction practices.
53. Plans shall reflect the placement of all gutters and downspouts and depict the connection to the detention basin.
54. Provide required Title 24 Energy Calculations. All measures in the calculations shall be reflected on the plans.
55. Provide a Mechanical Plan for duct layout, system equipment requirements that conform to ACCA Manual J, S, and D analysis and calculations for heat loss and gain as required by the Building Code.

56. During construction, all Butte County Air Quality mitigation measures shall be complied with.
57. Prior to construction, BMP for storm water pollution control shall be in place. The applicant shall provide verification of all General Construction Permit requirements are met and in place.

Fire Department

58. Plans for submittal shall comply with all Fire Department requirements. The applicant shall contact the City of Gridley Fire Department/CalFire for review and approval of site development plans and fire sprinkler systems. Clearly show the fire riser location on the plans for review and approval. A minimum of two fire hydrants are required; one shall be located at the entry to the development within the Caltrans right of way, and one shall be located east of the drive aisle as reviewed and approved by Gridley Fire. Locations shall be established by the Gridley Fire Department/CalFire.
59. The site shall provide all special equipment as required to mitigate fuel fires. Any areas related to fire safety or access shall provide keys to the Gridley Fire Department.



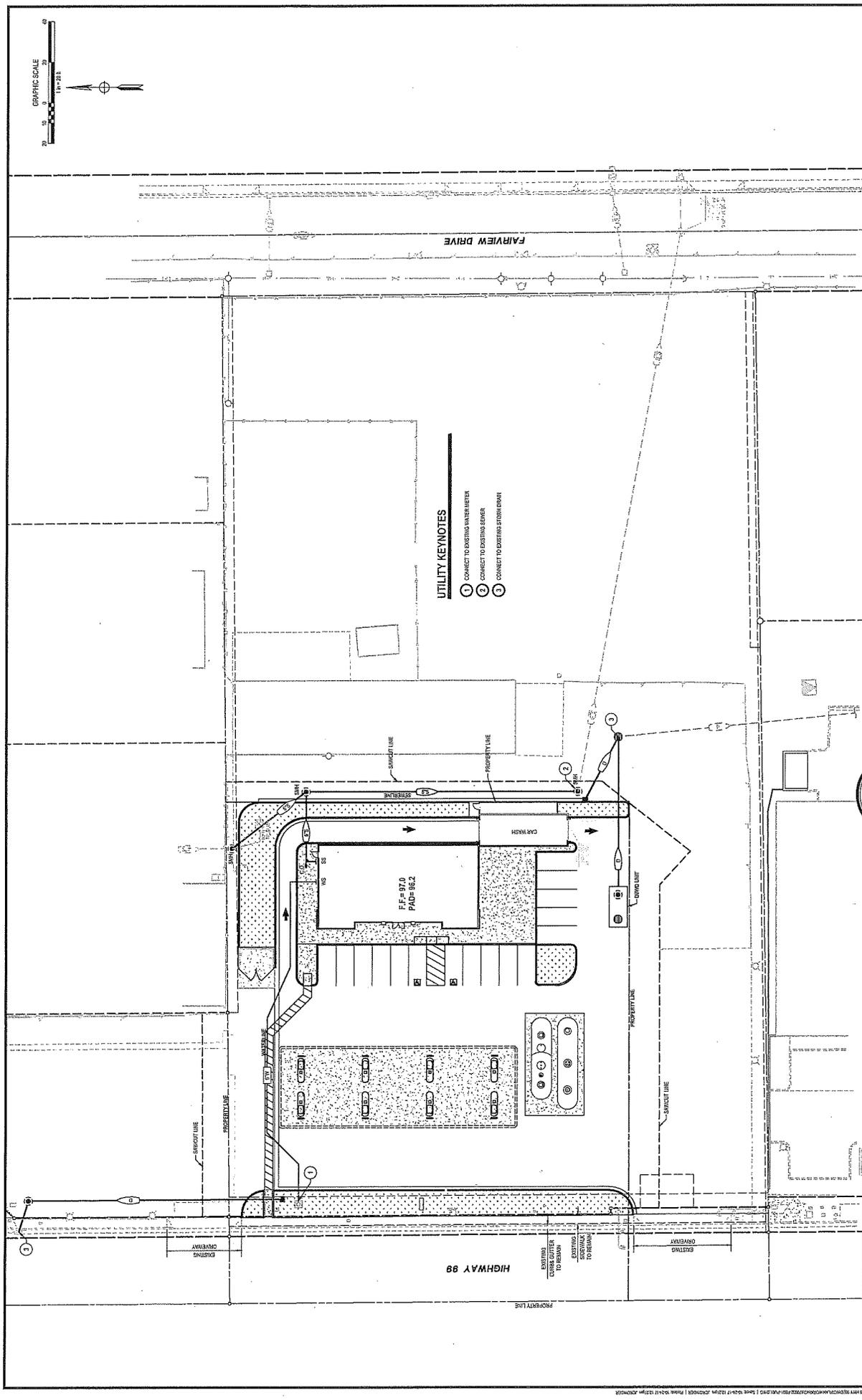
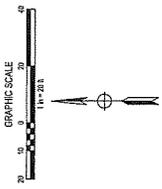
DEMOLITION KEYNOTES

- 1 REMOVE EXISTING BUILDING AND ASSOCIATED UTILITIES
- 2 REMOVE EXISTING TREES AND ISLAND
- 3 SAWCUT LINE
- 4 REMOVE EXISTING UTILITY BODIES
- 5 REMOVE EXISTING CONCRETE PAVEMENT
- 6 RELOCATE EXISTING TRANSFORMER
- 7 REMOVE EXISTING SERVER MANHOLE
- 8 REMOVE EXISTING SEWER LINE
- 9 REMOVE EXISTING AC PAVEMENT
- 10 REMOVE EXISTING PARKING LIGHT
- 11 REMOVE EXISTING BUSINESS SIGN
- 12 REMOVE EXISTING SIGN
- 13 REMOVE EXISTING SIGN
- 14 REMOVE EXISTING SIGN
- 15 REMOVE EXISTING SIGN
- 16 REMOVE EXISTING SIGN

<p>PROPOSED DEMOLITION PLANS FOR AMPM at 1646 HIGHWAY 99 PRELIMINARY DEMOLITION PLAN</p> <p style="font-size: small;">CITY OF GARDEN, COUNTY OF SANTA CLARA, CALIFORNIA</p>		<p>DATE: 03/23/2017 SHEET: PD01 OF: 3</p>
<p>MORTON & PITALO, INC. CIVIL ENGINEERING - LAND PLANNING - LAND DRAWING</p> <p style="font-size: x-small;">27100 Main Road, Suite #120 Fremont, CA 94528 phone: (510) 471-1111 www.mortonpitalo.com</p>		<p>SCALE: HORIZ. 1" = 20' VERT. 1" = 10'</p>
<p>DESIGNED: J.C. DRAWN: PEB PROJ. ENGR. JDT</p>		<p>BECHT MARK: NIS CONTROL POINT L301 EL = 562 (ROAD 60) HORIZ. 1" = 20' VERT. 1" = 10'</p>



JOB NO. 17-0932-00



UTILITY KEYNOTES

- ① CONNECT TO EXISTING WATER METER
- ② CONNECT TO EXISTING SEWER
- ③ CONNECT TO EXISTING STORM DRAIN

		MORTON & PITALO, INC. CIVIL ENGINEERS - LAND PLANNING - LAND SURVEYING 17411 Van Buren Road, Suite # 132 San Diego, CA 92128 Phone: (619) 494-2421 Email: mmp@mpinc.com • Web: www.mppinc.com	PROJECT: AMPM at 1646 HIGHWAY 99 SHEET: PU02 DATE: OCT. 23, 2017
SCALE: HORIZ. 1" = 20' VERT. 1" = 4'	BENCH MARK: USS CONTROL POINT 1301 ELEVATION: 98.53 (MUD 8) ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF SAN DIEGO'S STANDARD SPECIFICATIONS FOR PUBLIC WORKS, LATEST EDITION.	COMPANY: JC DESIGNED: JC DRAWN: PEM PROJECT: PROJ. ENGR. JDT	CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, CALIFORNIA AMPM at 1646 HIGHWAY 99 PRELIMINARY UTILITY PLAN
JOB NO. 17-0032-00			3

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