

January 28, 2019

VIA E-MAIL

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. In response, 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. Our suggested revisions to the resolution denying the Appeal (Attachment 2 to the Staff Report) are attached hereto as Exhibit A.¹

In connection with its consideration of the Appeal and in response to submissions by Appellants and others, Safeway submitted letters dated September 6, 2018, September 11, 2018, September 14, 2018, September 17, 2018, October 10, 2018, November 14, 2018, December 1, 2018, December 2, 2018, December 3, 2018, and January 24, 2019 providing updates and

¹ Multiple efforts to reach City Attorney Danly were made starting on January 24, 2019 to discuss our January 24, 2019 letter as well as the proposed revisions to the resolution. He initially stated that he was free to talk on January 25, 2019 and on January 27, 2019, but then subsequently canceled and indicated that he would not be available until January 28, 2019, the day of the hearing. He also did not reply to my January 27, 2019 email asking whether there were any changes to the Staff recommendation since issuance of the Staff Report.

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voluntary supplemental information for the benefit of City Council, City Staff, and the public record. Today, we are writing to again provide voluntary supplemental information in response to: (i) Moira Sullivan's December 10, 2018 letter to the City Council claiming that the Project will result in significant health risk impacts and (ii) supplemental documents and other materials, some of which were only recently produced by the City despite Safeway's earlier Public Records Act requests dated May 24, 2018 and November 19, 2018.

1. The Project will NOT result in significant health risk impacts.

In a December 10, 2018 letter to the City Council, Moira Sullivan, an associate toxicologist with the State,² writes again to question the health risk assessment ("HRA") prepared by Illingworth & Rodkin for the Project. In her letter, Ms. Sullivan not only insults Mr. Reyff, a respected, credible, and extremely competent air quality consultant, but manages to malign BAAQMD and City Staff as well. As explained in the January 28, 2019 response from Illingworth & Rodkin, attached hereto as Exhibit B, the latest submittal from Moira Sullivan, as with her prior August 14, 2018 submittal,³ is based on argument, speculation, unsubstantiated opinion, clearly inaccurate and erroneous information, and evidence that is not credible. As such, the letter does NOT constitute substantial evidence of a fair argument that the Project may result in a significant environmental impact.

2. The City Council cannot lawfully uphold the Appeal given that City decision-makers and Staff are biased against the Project.

Since our January 24, 2019 letter to you even more evidence has come to light underscoring that City decision-makers and Staff are not neutral and unbiased, as the law requires.⁴

In an August 9, 2018 email to Bernie Album, fellow appellant Glenn Rubinstein notes that Planning Commissioner Scott Alonso, who voted against the Project, advised him that there would be "no collusion risk" for reaching out to the City Attorney "for legal clarification and guidance on the scope of our appeal." It is unknown whether and to what extent the City Attorney or his subordinates advised Appellants as to the scope of their Appeal.

² Ms. Sullivan appears to have used her position with the State to get BAAQMD to conduct a detailed review of the HRA. (See August 23, 2018 email from Moira Sullivan to Aneesh Rana of BAAQMD, attached hereto as Exhibit C.)

³ Illingworth & Rodkin's response to Ms. Sullivan's August 14, 2018 letter to the City Council is provided in Attachment 13 to the Staff Report.

⁴ Documents referenced in this paragraph are attached hereto as Exhibit D. Information pertaining to the approval of the ARCO gas station in Gridley and the Chevron gas station in Niles (Fremont) based on CEQA exemptions are attached hereto as Exhibit E.

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Mr. Alonso was not the only Planning Commissioner with an undisclosed conflict. In a June 26, 2018 email Planning Commissioner Bill Wolpert, who also voted against the Project, wrote to Christian Kallen with Sonoma News regarding a proposed Safeway gas station in Sonoma.⁵ At the Planning Commission hearing that evening, Commissioner Wolpert then questioned Safeway's Senior Real Estate Manager extensively about Safeway's business plans in Sonoma. He failed to disclose this ex parte communication with Mr. Kallen, which appears to have contributed to his reason for voting to deny the Project.

The fact that Appellants did not appeal the MND to the City Council is plainly demonstrated in an August 7, 2018 email from Mr. Album to Mr. Rubenstein, one month after the Appeal was filed, wherein Mr. Album acknowledges that the notion of advocating for an EIR first occurred to him. Indeed, as late as October 3, 2018, City Attorney Danly was referring simply to the "Safeway Fuel Station SPAR Approval Appeal."

In an October 11, 2018 email from former City Councilmember Chris Albertson to then-City Manager John Brown regarding yet another continuance of the City Council's hearing on the Appeal, Mr. Albertson asks in a seemingly knowing, and certainly disapproving, manner: "Hopefully, this delay is not the making of our legal or planning offices."

In a June 27, 2018 email to Mr. Brown, Planning Manager Heather Hines referred to the June 26, 2018 Planning Commission hearing at which the Project was approved as "long and extremely painful." In a July 7, 2018 email, she cautioned proponents of an ARCO gas station across town to review the "videos of the recent public hearings for the Safeway Fuel Center" citing concerns regarding the proximity of the site to a school, even though Ms. Hines stated in a June 25, 2018 email to the City Council that no laws or regulations imposed any siting restrictions on a new gas station near schools or similar uses. As early as May 2013, she also met with Arash Salkhi, owner of three gas stations in Petaluma, including the Valero gas station at 532 E. Washington Street,⁶ to "discuss potential impacts of a Safeway gas station."

Finally, as a separate and distinct basis for disqualifying Councilmember Healy, it appears that Councilmember Healy cannot act to uphold the Appeal based on the doctrine of incompatible offices. Government Code section 1099 expressly prohibits a public officer from simultaneously holding two incompatible public offices, particularly where one office may overrule the other or where there is a "possibility of a significant clash of duties or loyalties." The supervisory role the City Council exercises over the Planning Commission plainly falls within the circumstances

⁵ (See June 26, 2018 email from Bill Wolpert to Christian Kallen of Sonoma News, attached hereto as Exhibit F.)

⁶ On July 10, 2018, the Planning Commission approved a use permit and SPAR for remodeling of the Valero gas station relying on a categorical exemption from CEQA.

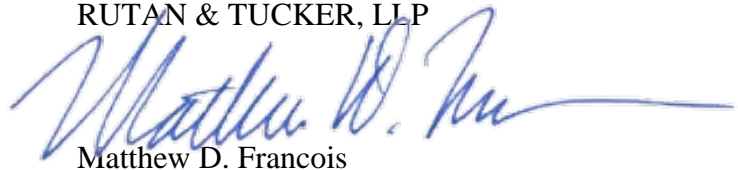
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contemplated by Government Code section 1099.⁷ As such, separate and apart from the disqualifying evidence of bias, Councilmember Healy is precluded from taking action to uphold the Appeal based on the doctrine of incompatible offices.

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

⁷ (See *The Honorable Dorothy L. Schechter*, 63 Ops.Cal.Atty.Gen. 607 (1980) [finding that the offices of planning commissioner and city councilman are incompatible offices, and thus an individual may not simultaneously hold both offices.])

EXHIBIT A

**RESOLUTION OF THE CITY OF PETALUMA CITY COUNCIL
RESCINDING AND REPLACING RESOLUTION NO. 2018-180 ADOPTED
DECEMBER 3, 2018, DENYING THE APPEAL FILED BY JOANN MCEACHIN AND
AFFIRMING THE PLANNING COMMISSION'S APPROVAL OF
THE MITIGATED NEGATIVE DECLARATION BY RESOLUTION NO. 2018-21A AND
SITE PLAN AND ARCHITECTURAL REVIEW BY RESOLUTION NO. 2018-21B
ON JUNE 26, 2018
FOR THE SAFEWAY FUEL CENTER PROJECT
LOCATED AT 335 SOUTH McDOWELL BOULEVARD
ASSESSOR'S PARCEL NO. 007-820-046
File No. PLAP 18-0001**

WHEREAS, ~~Rutan & Tucker, LLP.~~ Safeway, Inc., ~~on behalf of property owner Washington Square Associates, LLC.~~, submitted an application for Site Plan and Architectural Review approval ("Application") to demolish an existing 13,770 square foot vacant building and construct a new 5,931 square foot fueling canopy, 16 fuel dispensers, a 697-square foot convenience store, and associated landscaping and appurtenant parking ("Project") located at 335 South McDowell Boulevard at APN 007-820-046 ("Property"); and

WHEREAS, the Notice of Intent to Adopt a Mitigated Negative Declaration and notice of a public hearing on the Application before the Petaluma Planning Commission was published in the Argus Courier on April 5, 2018 and mailed to residents and occupants within a 500 foot radius of the Project site, in compliance with state and local law; and

WHEREAS, the public review period for the Initial Study/Mitigated Negative Declaration ("MND") ran from April 5, 2018 to May 7, 2018 during which time the document was available for review at the City's Planning Division and on the City's website; and

WHEREAS, on May 8, 2018, the Planning Commission held a duly noticed public hearing, pursuant to Implementing Zoning Ordinance ~~§~~ Section 24.010, to consider the Project; at which time all interested parties had the opportunity to be heard; and

WHEREAS, on May 8, 2018, the Planning Commission continued the item to a date certain of June 26, 2018 to allow interested parties an opportunity to review technical studies and comments received about the Project; and

WHEREAS, public notice of the continued June 26, 2018 public hearing before the Planning Commission was published in the Argus Courier on June 14, 2018 and mailed to all occupants and property owners within a 500-foot radius of the Project site and all public commenters on the project; and

WHEREAS, the Planning Commission held a duly noticed public hearing on June 26, 2018, at which time all interested ~~parties~~ had the opportunity to be heard; and,

WHEREAS, at the June 26, 2018 public hearing, the Planning Commission considered the staff reports dated May 8, 2018 and June 26, 2018, analyzing the application, including the California Environmental Quality Act ("CEQA") determination included ~~therein~~, and all comments received concerning the Project; and

WHEREAS, on June 26, 2018, prior to acting on the Site Plan and Architectural Review ("SPAR") application, the Planning Commission adopted ~~a Mitigated Negative Declaration ("MND")~~the MND and Mitigation Monitoring and Reporting Program ("MMRP") prepared pursuant to CEQA for the Project via Resolution 2018-21A; and

WHEREAS, on June 26, 2018 following its action under CEQA the Planning Commission approved SPAR for the Safeway Fuel Center project pursuant to Resolution 2018- 21B, subject to conditions of approval listed in Exhibit 1 to the Resolution; and

WHEREAS, on June 29, 2018, the City duly filed a Notice of Determination ("NOD") related to the Planning Commission's adoption of the Project MND, which remained posted until July 30, 2018; and

WHEREAS, on July 9, 2018, JoAnn McEachin (~~"Appellant"~~) filed an appeal on behalf of ~~Appellants and~~Friends of McDowell Elementary School, Little League ~~Children~~children and East Petaluma ~~Residents~~residents of the Planning Commission's ~~adoption of Resolution 2018-21A approving an MND for the Project and Resolution 2018-21B approving SPAR for~~approval of the Project (the "Appeal"); and

WHEREAS, the Appeal included a letter specifying the grounds of the Appeal that were signed by Ms. McEachin and 15-16 additional signatures from members of the public~~other persons~~ ("Appellants"); and

WHEREAS, the grounds for appeal given in the Appeal letter included: questioning the community need for the Project; the proximity of the Project to a day care, school and Little League ball park; increased traffic; project emissions and health impacts; and public awareness of the Project; and

WHEREAS, on August 14, 2018 correspondence was received from Moira Sullivan questioning the analysis of the health risks of the Project; and

WHEREAS, on August 31, 2018, a public notice of a September 17, 2018 hearing on the Appeal before the City Council was posted on the Project site in accordance with City Council Resolution No. 2018-107; and

WHEREAS, on September 4, 2018, Richard Sachen submitted a letter to the City claiming that the Project will result in adverse impacts to air quality, traffic, and health risk; and

WHEREAS, on September 6, 2018 a public notice of ~~an appeal hearing before the City Council on September 27, 2018~~the September 17, 2018 City Council hearing on the Appeal was published in the Argus Courier and mailed to all property owners and occupants within 1,000 feet of the Property and City Council Resolution No. 2018- 107, and to all members on the interested parties list for the Project; and

WHEREAS, on September 6, 2018, the City received a memorandum from Illingworth and Rodkin responding to the comments received from Ms. Sullivan and stating that based on the use of conservative assumptions and accepted methodologies, the Project will result in less than significant impacts with respect to community risk for all categories of sensitive receptors; and

~~WHEREAS, also on September 6, 2018 and again on September 11, 2018, counsel for the Applicant, Matthew Francois, submitted supplemental Project information, addressing, among other things, correspondence submitted regarding the Project on behalf of the Sierra Club and distances between the Project site and nearby schools and residences; and~~

WHEREAS, on September 11, 2018, correspondence was received from the Applicant responding to Mr. Sachen's September 4, 2018 comment letter, noting that the MND properly found that the Project would result in less than significant impacts to air quality, traffic, and health risk based on numerous reports and studies prepared by expert consultants and accepted by the City's professional planning staff; and

~~WHEREAS, by letter dated September 12, 2018, Chris Thomas, Chief Business Official of Petaluma City Schools ("School District"), asserted that an Environmental Impact Report ("EIR") is required for the Project based on September 12, 2018, on the City received comments from Meridian Consultants regarding the approved Project MND addressing related to air quality, greenhouse gas emissions, hazardous materials, noise, and traffic, which comments were transmitted with Ms. Thomas' letter; and~~

WHEREAS, on September 14, 2018, memoranda were received from Illingworth and Rodkin and CHS Consulting Group responding in full to the comments from Meridian Consultants and providing further substantial evidence to support the MND's conclusions that the Project would result in less than significant impacts to air quality, greenhouse gas emissions, hazardous materials, noise, and traffic; and

~~WHEREAS, on September 14, 2018, the City received correspondence from Patrick Soluri, legal counsel for the Appellant Ms. McEachin and No Gas Here, correspondence claiming that an EIR was needed for the Project and urging the City Council to deny the Project; and challenging both the Planning Commission's adoption of Resolution No. 2018-21A approving the Project MND and the Commission's adoption of Resolution No. 2018-21B approving the Project SPAR; and~~

~~WHEREAS, the Soluri September 14, 2018 correspondence asserted that the City Council possesses the discretion to deny, and should deny, the Project SPAR based on: considerations of the harmony of the development with its surroundings; the siting of the structure on the property; authority in the City's Implementing Zoning Ordinance ("IZO") permitting imposition of requirements more stringent than those of the IZO for discretionary projects; City General Plan policies regarding locating new stationary sources of air pollutants sufficient distances from residential facilities and facilities that serve sensitive receptors; California Air Resources Board ("CARB") guidance to avoid siting new sensitive land uses within 300 feet of a large gasoline dispensing facility; the proximity of the Project to the 4CS Petaluma Child Development Center at 401 S. McDowell Boulevard; a health risk analysis finding that the project would result in significant health risks to nearby sensitive receptors; siting of the Project creating disharmony; and the Project being contrary to the public health, safety and general welfare by exposing residents to health risks; and~~

~~WHEREAS, the Soluri September 14, 2018 correspondence also asserted that substantial evidence supports a fair argument that the Project may have significant environmental impacts because of conflicting expert analyses concerning: health risks, greenhouse gas emissions, traffic impacts, and hazardous materials impacts, and that therefore CEQA requires the preparation of an~~

~~Environmental Impact Report ("EIR"); and~~

WHEREAS, ~~the Mr. Soluri's~~ September 14, 2018 correspondence also included ~~Project traffic analysis comments~~ prepared by Larry Wymer and Associates Traffic Engineering on the Project traffic studies previously reviewed and approved by City's Planning Commission; and

WHEREAS, on September 17, 2018, the City received comments from Fox and Kapahi on the Project ~~MND health risk assessment ("HRA") previously reviewed and approved by the City's professional planning staff and Planning Commission; prepared by Fox and Kapahi on behalf of Appellant, which analyzed Project health risks and concluded that significant health impacts from the Project required that an EIR be prepared;~~ and

WHEREAS, also on September 17, 2018, ~~Mr. Francois representing the Applicant~~ submitted to the City correspondence responding to Mr. Soluri's correspondence from September 14, 2018 asserting that Mr. Soluri misstates that standard of review applicable to the City's approval of the Project SPAR, that there is no substantial evidence of a fair argument that the Project may result in significant environmental impacts, and providing a technical memorandum ~~from~~ CHS Consulting Group submitted to the City a technical memorandum responding to the traffic ~~analysis comments~~ of Larry Wymer and Associates; and

WHEREAS, also on September 17, 2018, the City received written comments on the Project from Damien Breen, Deputy Air Pollution Control Officer, representing the Bay Area Air Quality Management District ("BAAQMD") commenting on the HRA prepared for the Project; and noting that if the Applicant's current Project proposal differs from the equipment description contained in the Air District Authority to Construct permit issued for the Project, a new permit application requesting authorization for a change must be submitted, and

~~**WHEREAS,** the BAAQMD September 17, 2018 correspondence also commented regarding the health risk assessment ("HRA") prepared by Illingworth and Rodkin on behalf of the Applicant and recommended that the Applicant HRA use the AERMOD dispersion model rather than ISCST3 and run the model with 2 volume sources, and commented regarding the May 7, 2018 peer review of the HRA prepared by ESA Consultants for the District that the Project HRA should run at the maximum permitted throughput limit, that off site teacher/worker maximum health impact should be addressed, suggesting that using full 2015 OEHHA HRA procedures would likely be more conservative and acceptable for CEQA purposes, and concurred with Illingworth and Rodkin's May 8, 2018 response to the ESA peer review of the HRA regarding receptor height for children; and~~

~~**WHEREAS,** a staff report dated September 17, 2018 was prepared as Item 6.B of the September 17, 2018 City Council Agenda which analyzed the Appeal and included and referenced numerous attachments comprising the record of decision before the Planning Commission for its June 26, 2018 consideration of the Project, and numerous comments received from members of the public after the Planning Commission approval, including public comments opposing the Project based on the Project's proximity to the adjacent day care, school, ball fields and perceived health effects, as well as traffic and congestion; and comments supporting the Project based on lowered gas prices, need for access to fuel, and ability to conduct one stop shopping; and; and~~

WHEREAS, shortly before ~~due to the extensive amount of information regarding the~~

~~Project received shortly before and the day of~~ the September 17, 2018 City Council hearing, City staff recommended that the City Council continue the hearing on the Appeal to October 15, 2018, to provide more time for permit staff to better review and provide the Council with analysis of the comments and information submitted following the Planning Commission's June 26, 2018 approvals, Project information received, and to provide additional time for permit interested parties and members of the public to also review the recent comments and submittals ~~information received~~ prior to the Council hearing on the Appeal ~~hearing~~; and

WHEREAS, at the ~~duly noticed public hearing on the Project on~~ September 17, 2018 ~~hearing the City Council continued the item to a date certain of October 15, 2018~~ without deliberation and without opening the public hearing the City Council continued the item to a date certain of October 15, 2018; ~~in order to allow sufficient time to adequately review the new materials~~; and

WHEREAS, on October 10, 2018 the City received correspondence from ~~Mr. Francois representing the Applicant including a response prepared by~~ Illingworth and Rodkin responding to ~~Mr. Soluri's September 14, 2018 correspondence, to the~~ September 17, 2018 HRA comment letter from ~~prepared by~~ Fox and Kapahi ~~on behalf of Appellant~~, and to the September 17, 2018 letter from BAAQMD ~~letter~~; and

WHEREAS, the October 10, 2018 Illingworth and Rodkin response provided a supplemental HRA using the American Meteorological Society (AMS)/EPA Regulatory Model ("AERMOD") model as requested by BAAQMD, which like the original HRA prepared using the Industrial Source Complex Short-Term 3 ("ISCST3") model, a U.S. Environmental Protection Agency ("EPA")-approved and BAAQMD-recommended model, concludes that the Project will result in a less than significant health risk impact to all categories of potential sensitive receptors; and

WHEREAS, the October 10, 2018 Illingworth and Rodkin response further explained in detail the errors, inaccuracies, and misstatements of fact in the Fox/Kapahi letter, including, but not limited to, its improper reliance on Santa Rosa wind data, its overestimation of Project diesel emissions by a factor of ten, and its overstatement of benzene emissions; and

~~**WHEREAS**, the October 10, 2018 Illingworth and Rodkin response noted that the AERMOD air quality dispersion model had not been used for modeling potential impacts from any CEQA project in Petaluma due to the lack of local meteorological data required by AERMOD, that BAAQMD modeling guidance recommends the use of either AERMOD or ISCST3 models for CEQA related HRAs, and that Illingworth and Rodkin conducted a supplemental HRA using the AERMOD model and that analysis, included in the October 10, 2018 correspondence, also concludes that the Project will not result in any significant health risk impacts; and~~

WHEREAS, ~~City staff~~ a staff report prepared a staff report for Agenda Item ~~SB-5.B~~ for the October 15, 2018 City Council meeting, which ~~staff~~ summarized the Project-related information received since the September 17, 2018 City Council meeting and noted that a written response was anticipated from BAAQMD to the Fox/~~and~~ Kapahi September 17, 2018 HRA comment letter and the October 10, 2018 Illingworth and Rodkin supplemental HRA, and recommended that the Council hearing on the Appeal be continued to December 3, 2018, to provide more time for permit review and consideration of the newly-submitted and anticipated Project information from BAAQMD by City staff, decision-makers, interested parties and members of

the public; and

WHEREAS, at the October 15, 2018 City Council meeting ~~the City Council continued the public hearing on the Project to a date certain of December 3, 2018~~ without opening the public hearing and without deliberation the City Council continued the public hearing on the Project to a date certain of December 3, 2018 to allow additional time to review new materials, including new technical studies, and consult with responsible agencies for the Project; and

WHEREAS, on November 13, 2018, the City received from Mr. Breen on behalf of BAAQMD correspondence dated November 8, 2018 responding to the September 17, 2018 Fox Kapahi HRA and the ~~updated~~-Illingworth and Rodkin HRA dated October 10, 2018; and

WHEREAS, the November 8, 2018 BAAQMD- correspondence- ~~noted~~s several- key concerns regarding the Fox/~~and~~ Kapahi ~~HRA comment letter~~, including its use of Santa Rosa meteorological data -as being inappropriate because of wind patterns inconsistent with the Project area, use of benzene emission factors substantially higher than the BAAQMD standard benzene emission factor, and residential exposure assumptions inconsistent with BAAQMD HRA risk calculation -procedures; and

WHEREAS, the November 8, 2018 BAAQMD correspondence stated that BAAQMD had found the October 10, 2018 Illingworth and Rodkin HRA to be acceptable and to have resolved BAAQMD's concerns expressed in the September 17, 2018 BAAQMD letter, and concluded ~~noted~~ that BAAQMD has no further concerns about or comments on the October 10, 2018 Illingworth and Rodkin HRA, ~~and that the Project includes a gas station configuration that differs from that approved in the current BAAQMD Authority to Construct permit, and that therefore the Applicant must apply for permit revisions;~~ and

~~**WHEREAS**, Petaluma residents, neighbors, teachers and administrators of the McDowell Elementary School, 4Cs Child Development Center, and North Bay Children's Center, parents of students, and parents of children using the baseball fields 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 Safeway Fuel Center, including: two commenters noting they have observed pedestrian/vehicle collisions and near collisions in the Project area; another commenter observing that school aged children walk home by themselves, and the crosswalk is already a danger; a commenter expressing concern about heavy traffic and foul balls getting hit next to a busy street; 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 that area; and~~

~~**WHEREAS**, Petaluma residents, neighbors, teachers and administrators of the McDowell Elementary School, 4Cs Child Development Center, and North Bay Children's Center, parents of students, and parents of children using the baseball fields have provided written and oral comments expressing concern that the Safeway Fuel Center would result in substantial changes to the "neighborhood spirit" that would be detrimental to the neighborhood making it less desirable and more dangerous; and~~

WHEREAS, on November 30, 2018 ~~on behalf of Appellants~~, Mr. Soluri provided correspondence to the City ~~disputing Mr. Francois' characterization of the City's discretion concerning approval of the Project and assailing that the City may overturn the Project SPAR~~

~~approval because the Project is disharmonious with its surroundings and inconsistent with the public health safety and welfare;~~urging the City Council to deny the Project and providing a revised supplemental health risk discussion results from Fox and Kapahi also dated November 30, 2018 using ~~Petaluma wind data with the AERMOD model~~; and

~~WHEREAS, on December 1, 2018 on behalf of the Applicant, Mr. Francois provided correspondence to the City arguing that the Appellant did not explicitly appeal the City's approval of the Mitigated Negative Declaration within 30 days of the filing of the Notice of Determination with the Sonoma County Clerk, and therefore the approval of the MND was final and additionally, arguing that no substantial evidence of a fair argument of a significant environmental impact had been submitted and therefore the City cannot lawfully required the preparation of an Environmental Impact Report for the Project; and~~

~~WHEREAS, on December 2, 2018~~ the City received written analysis by Illingworth and Rodkin, submitted on behalf of the Applicant, ~~Mr. Francois provided correspondence to the City asserting~~ Illingworth and Rodkin, analyzing and critiquing which concludes that Fox and Kapahi's supplemental health risk revisions results and concluding that the revisions still applied "an artificial, misleading, and erroneous hybrid meteorological data set to their previous analysis" thereby "compound[ing] the numerous key concerns that we and BAAQMD have identified." ~~that the Project will not result in significant health risks and that the City's discretion regarding approval of the Project is limited to design issues; and~~

~~WHEREAS, on December 3 2018, on behalf of the Appellant, Mr. Soluri submitted a letter responding to Mr. Francois' December 1 and 2 letters and asserting that the Tahoe Vista case does not apply to the City Council's de nova review of appeals of Planning Commission decisions, and that the Friends of Davis case does not apply to the appeal; and~~

~~WHEREAS, on December 3, 2018,~~ the City received ~~on behalf of the Appellant, Mr. Soluri's firm submitted additional comments on the MND from Fox and Kapahi via Mr. Soluri's law firm;~~'s Legal Assistant forwarded to the City responses to comments on the Initial Study/MND for the Project dated December 3, 2018, which responses to comments assert that: independent scientific analyses support that gas stations should not be located near housing or vulnerable populations; the meteorological data used in the revised HRA submitted by Illingworth and Rodkin is not appropriate for predications at a range of less than 1 kilometer; the Applicant diesel particulate emissions estimates are understated; BAAQMD guidance calls for using an exposure duration of 70 years for risk assessments for gas stations; the BAAQMD November 8, 2018 letter notwithstanding, using Petaluma meteorological data with the AERMOD model reveals significant health risks; use of the CAPCOA benzene emission factor is appropriate; the Applicant and BAAQMD underestimate benzene emissions from the Project; and that CARB recommended setbacks for gas stations might be inadequate; and

~~WHEREAS, on December 3, 2018, on behalf of the Applicant,~~ Illingworth and Rodkin submitted a response to the December 3, 2018 submittal from Fox and Kapahi asserting: that the Illingworth and Rodkin HRA modeling using AERMOD and EPA-approved procedures is appropriate and it is improper to draw correlations between the resolution of the meteorological data and the prediction accuracy of the dispersion model; comparing 5-mph travel emission factors used to compute idling emissions to travel emission factors for diesel emission analysis is not appropriate; that BAAQMD recommends using 30-year exposure duration for analyzing cancer

exposure risk; that the Fox and Kapahi benzene emission analyses are overstated due to California fueling station vapor recovery standards; and that BAAQMD uses benzene to compute health risks from gasoline evaporation; and

WHEREAS, the CEQA Guidelines provide, at Section 15064, subdivision (a), paragraph (1) ~~of the CEQA Guidelines provides~~ that if there is substantial ~~evidence~~, in light of the whole record before a lead agency, that a project may have significant ~~effect on the environment~~, ~~the agency shall prepare a draft EIR; -and~~

WHEREAS, Section 24.070.D of the City's Implementing Zoning Ordinance and Section 9.9.0 of its Environmental Review Guidelines provide that an appeal of the Planning Commission's adoption of the MND was required to be filed within fourteen (14) days of the Planning Commission's action; and

WHEREAS, the July 9, 2018 Appeal did not include an appeal from the Planning Commission's adoption of the MND nor did it request that an EIR be prepared; and

WHEREAS, the time to administratively appeal the MND has expired with no appeal having been filed such that the Planning Commission's adoption of it is now final (Implementing Zoning Ordinance § 24.070.D); and

WHEREAS, in accordance with Public Resources Code Section 21167, a legal challenge to the MND had to be filed within thirty (30) days from the filing and posting of the NOD; and

WHEREAS, no legal challenge to the MND was filed within thirty (30) days of the filing and posting of the NOD such that the MND is now conclusively presumed to comply with CEQA (Public Resources Code §§ 21167, 21167.2; *Citizens for a Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91); and

WHEREAS, the CEQA statute, guidelines, and case law also make clear that the scope of review under CEQA is no greater than the scope of the discretionary land use approvals needed for a particular project (Public Resources Code § 21004; CEQA Guidelines § 15040; *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2019) 2018 Cal.App.LEXIS 1233; *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004; *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924; *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259; and *Leach v. City of San Diego* (1990) 220 Cal.App.3d 389, 395.); and

WHEREAS, the Project is a principally permitted use in the controlling Commercial 2 ("C2") zoning district such that the only discretionary land use approval needed from the City for the Project is SPAR approval; and

WHEREAS, Section 24.010 of the Implementing Zoning Ordinance expressly restricts the City Council's discretion during SPAR review to achieving a satisfactory quality of design in the individual building and its site, appropriateness of the building to its intended use, and the harmony of the development with its surroundings; and

WHEREAS, the City's discretion, and thus scope of its CEQA review, is limited to design and related site planning issues; and

WHEREAS, the City has no authority or ability through the SPAR approval to meaningfully address non-design related issues or impacts by imposing conditions of approval or mitigation measures; and

~~WHEREAS, Section 15064, subdivision (c) of the CEQA Guidelines provides that in determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency, and that before requiring the preparation of an EIR, the lead agency must still determine whether environmental change itself might be substantial; and~~

~~WHEREAS, under *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, residents' personal observations of traffic conditions where they live and commute may constitute substantial evidence even if they contradict the conclusions of a traffic study, and therefore, fact-based comments of the community may constitute substantial evidence that a fair argument can be made that the project may potentially result in adverse impacts related to circulation; and~~

~~WHEREAS, in accordance with CEQA, public testimony (or reasonable inferences from it) should be considered to constitute substantial credible evidence supporting a fair argument when the project may have a significant impact (*Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690); and~~

~~WHEREAS, Section 15064, subdivision (t) of the CEQA Guidelines provides that the decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency, and that if the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR, and if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect; and~~

~~WHEREAS, Section 15064, Subdivision (g) of the CEQA Guidelines provides that after application of the principles set forth in Section 15064, Subdivision (t) of the CEQA Guidelines, in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the principle that if there is disagreement among expert opinion supported by facts of the significance of an effect on the environment, the lead agency shall treat the effect as significant and shall prepare an EIR; and~~

~~WHEREAS, the staff report dated December 3, 2018 responded to comments received since publication of the September 17, 2018 staff report and together with findings and analysis contained in the September 17, 2018 staff report addressed the grounds for the appeal and are incorporated herein by reference; and~~

~~WHEREAS, at a noticed public hearing on December 3, 2018, at which time all interested parties had the opportunity to be heard, the City Council considered the Appeal and the information submitted by City staff, the Applicant, the Appellant, interested parties and members of the public concerning the Project and the Appeal, all of which information is hereby incorporated into and made a part of this resolution;~~based on the information and facts before it then and its then-understanding of the law with respect to the scope of CEQA review, adopted Resolution 2018-180 purporting to uphold the Appeal filed by Appellants and ordering the preparation of an EIR

and staying the SPAR approval pending certification of the EIR by the City Council; and

~~**WHEREAS**, following the public hearing held on the Appeal on December 3, 2018 and City Council deliberations regarding the Record on Appeal, the City Council, by a unanimous vote and consistent with staffs oral recommendation at the hearing, adopted Resolution No. 2018-180 entitled:~~

~~RESOLUTION OF THE CITY OF PETALUMA CITY COUNCIL UPHOLDING THE APPEAL FILED BY JOANN MCEACHIN AS TO THE MITIGATED NEGATIVE DECLARATION APPROVED BY THE PETALUMA PLANNING COMMISSION ON JUNE 26, 2018 BY RESOLUTION NO. 2018-21A, ORDERING THE PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT IN ACCORDANCE WITH SECTION 15064, SUBDIVISIONS (C) AND (G) OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES, AND STAYING THE PLANNING COMMISSION'S APPROVAL OF SITE PLAN AND ARCHITECTURAL REVIEW PURSUANT TO RESOLUTION NO. 2018-21 ADOPTED JUNE 26, 2018 FOR THE SAFEWAY FUEL CENTER PROJECT LOCATED AT 335 SOUTH McDOWELL BOULEVARD, ASSESSOR'S PARCEL NO. 007-820-046, FILE NO. PLSR-13-0012 PENDING CERTIFICATION OF THE EIR AND CITY COUNCIL REVIEW OF THE PROJECT SITE PLAN AND ARCHITECTURAL REVIEW APPROVAL; and~~

~~**WHEREAS**, as the title indicates Resolution No. 2018-180 as adopted by the City Council had the effect of upholding the Appeal as to the Project MND, ordering preparation of an EIR regarding Project environmental impacts, and staying the SPAR approved by the Planning Commission on June 26, 2018 pending certification of an EIR for the project and City Council review of the Project SPAR; and~~

WHEREAS, on December 10, 2018 supplemental correspondence was received from Moira Sullivan questioning the analysis of the health risks of the Project; and

WHEREAS, on January 2, 2019, Matthew Francois representing the Applicant submitted to the City correspondence alleging that at the December 3 appeal hearing, the City had violated the Brown Act by: taking action on an item that was not on the published agenda in violation of Government Code Section 54954.2, because none of the agendas that had been prepared concerning the Appeal indicated that the City Council might take any action under CEQA, including would take action to require an EIR, or stay the Planning Commission's SPAR approval; by failing to make available to the public in accordance with Government Code Section 54957.5 ~~the revised resolution ordering preparation of an EIR that staff prepared December 3, 2018, a September 17, 2018 email from project supporters and the December 3 memo from Illingworth and Rodkin~~; and by failing to disclose the existing facts and circumstances giving rise to significant exposure to litigation in accordance with Government Code Sections 54954(c) and 54956.9 regarding the anticipated litigation items listed on the September 10, 2018 and December 3, 2018 agendas; and

WHEREAS, on January 11, 2019, a public notice of the January 28, 2019 City Council hearing on the Appeal was posted on the Project site in accordance with City Council Resolution No. 2018-107; and

WHEREAS, on January 17, 2019 the City published notice in the Petaluma Argus Courier of

the January 28, 2019 public hearing to cure or correct alleged violations of the Brown Act at the December 3, 2018 hearing on the Appeal and mailed notice of the January 28 hearing to all property owners and occupants within 1,000 feet of the Property, in accordance with the requirements of the City's Implementing Zoning Ordinance and City Council Resolution No. 2018-107, and to all members on the interested parties list for the Project; and

WHEREAS, the City staff issued a staff report on January 22, 2019 for the January 29, 2019 City Council hearing; and

WHEREAS, by letter dated January 22, 2019, the City Attorney responded to Mr. Francois's letter indicating that the City Council would take action to cure and correct the alleged Brown Act violations at a noticed public hearing on January 28, 2019, even though the City contended that it had not violated the Brown Act at the December 3, 2018 hearing on the Appeal; and

WHEREAS, the Applicant submitted a letter on January 24, 2019 outlining multiple factual and legal bases in support of denying the Appeal; and

WHEREAS, by letter dated January 28, 2019, Mr. Francois responded to the City Attorney's January 22, 2019 letter disputing the City's contention that it had not violated the Brown Act at the December 3, 2018 hearing on the Appeal; and

WHEREAS, in a memorandum dated January 28, 2019, Illingworth and Rodkin responded to Ms. Sullivan's December 10, 2018 letter; and

~~WHEREAS, the January 22 correspondence indicated that the City did not violate the Brown Act at the December 3 appeal hearing because: the agenda description for the December 3 Appeal hearing specified that the City Council would consider resolutions for Council action on both Planning Commission approvals on appeal, the MND and SPAR, in accordance with Section 54954.2 requirements; the revised resolution upholding the appeal and ordering an EIR was shared with the applicant's and appellants' representatives as soon as possible at the December 3 hearing, the same time it was first presented to the City Council, in accordance with Section 54957.5, and the September 17 email from Project supporters and the Illingworth and Rodkin December 3 memo were not distributed to the Council members less than 72 hours before the December 3 hearing, and were therefore not covered by Section 54957.5; and because the December 3 closed session on the Appeal was based on Mr. Francois' public remarks at the June 26, 2018 Planning Commission hearing, and therefore the December 3 closed session description satisfied Brown Act closed session description requirements in accordance with Section 54956.9(e)(4); and~~

~~WHEREAS, the January 22 correspondence from the City attorney indicated that the City would cure or correct Brown Act violations alleged by Safeway by: indicating in the agenda description for the January 28 cure and correct hearing that one of the resolutions offered for City Council consideration and possible adoption would order the preparation of an EIR and stay the Planning Commission's SPAR approval; including as exhibits to an updated version of the resolution revised on December 3 to be offered to the Council for action on January 28 and distributed as part of the agenda the September 17 email from Project supporters and the December 3 Illingworth and Rodkin memo; and that a closed session agenda item will be included on the January 28 City Council agenda that will disclose the fact that the closed session is being held based on remarks of Mr. Francois representing Safeway at the June 26 Planning Commission hearing and the January 2 cure and correct demand Mr. Francois submitted to the City; and~~

~~WHEREAS, on January 17, 2019 the City published notice in the Petaluma Argus Courier of a January 28, 2019 public hearing to cure or correct alleged violations of the Brown Act at the December 3, 2018 hearing on the Appeal and mailed notice of the January 28 hearing to all property owners and occupants within 1,000 feet of the Property, in accordance with the requirements of the City's IZO and City Council Resolution No. 2018-107, and to all members on the interested parties list for the Project; and~~

WHEREAS, at the noticed public hearing on January 28, 2018, at which time all interested parties had the opportunity to be heard, the City Council considered the Appeal and the information submitted by City staff, the Applicant, the Appellants, interested parties and members of the public concerning the Project and the Appeal at both the December 3, 2018 and January 28, 2019 public hearings on the Appeal (~~"Record on Appeal"~~), all of which information comprising the Record on Appeal is hereby incorporated into and made a part of this resolution;

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Petaluma as follows:

1. The above recitals are hereby declared to be true and correct and are incorporated into this resolution ~~-as findings -of the City Council.~~
2. Resolution ~~N~~no. 2018-180 adopted by the City Council on December 3, 2018, is hereby rescinded in its entirety and is longer in effect.

On January 28, 2019 the City Council fully considered all evidence presented before ~~it and at the duly noticed public hearings on December 3, 2018 and on January 28, 2019~~ regarding the Appeal of the Planning Commission's approval of ~~a Mitigated Declaration pursuant to Resolution No. 2018-21A and Site Plan and Architectural Review pursuant to Resolution No. 2018-21B for the Safeway Fuel Station Project and comprising the Record on Appeal, including evidence that was untimely, inadmissible or irrelevant given the Appellants' failure to timely appeal and/or legally challenge the Planning Commission's adoption of the MND as well as the limited scope of review that applies to CEQA review of SPAR matters,~~ and on the basis of the staff report, testimony and other evidence, and the record of proceedings herein, including the views held by members of the public and all interested parties~~in all areas affected as expressed in the whole Record on Appeal,~~ the City Council hereby denies the ~~appeal~~ Appeal of ~~JoAnn McEachin~~ Appellants filed with the City Clerk on July 9, 2018 on behalf of ~~JoAnn McEachin and Friends of McDowell Elementary School, Little League Children and East Petaluma Residents~~ as to the Mitigated Negative Declaration approved by the Petaluma Planning Commission on June 26, 2017 by Resolution No. 2018-21A, and as to the Site Plan and Architectural Review approval of the Petaluma Planning Commission on June 26, 2018 by Resolution No. 2018-21B, in accordance with the following findings for denial of the appeal, as supported by the record of proceedings:

CEQA

A. No appeal of the Planning Commission's approval of the MND was timely

filed to the City Council within fourteen (14) days of the Planning Commission's determination to approve the MND as required by the City's Implementing Zoning Ordinance and Environmental Review Guidelines. Since no appeal of the MND was filed within these time limits, the Planning Commission's approval of the MND is final and the City Council has no jurisdiction to consider any purported appeal of it now. Further, no lawsuit was filed within thirty (30) days of the filing and posting of the NOD to challenge the MND as required by Public Resources Code Section 21167. As no one filed a legal challenge to the validity of the Planning Commission's approval of the MND within that timeframe, it is now conclusively presumed adequate for purposes of CEQA. (Pub. Res. Code § 21167.2).

~~A.~~

- B. The City Council further affirmatively finds that: (1) the MND remains relevant, (2) there are no substantial changes in the Project or the circumstances in which the Project will be undertaken that require major revisions of the MND —due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (3) no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the MND was adopted, shows any of the following: (a) the Project will have one or more significant effects not discussed in the MND, (b) significant effects previously examined will be substantially more severe than shown in the MND; (c) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the Project proponents decline to adopt the mitigation measures or alternatives, or (d) mitigation measures or alternatives which are considerably different from those analyzed in the MND would substantially reduce one or more significant effects on the environment, but the Project proponents decline to adopt the mitigation measures or alternatives.
- C. Based on its review of the entire record of proceedings herein, including the MND, ~~Mitigated Negative Declaration, the Initial Study,~~ Response to Comments, all supporting, referenced and incorporated documents and all comments received, the City Council finds that there is no substantial evidence of a fair argument that the Project may ~~will~~ have a significant effect on the environment due to aesthetics (the only topic over which the City Council may lawfully impose mitigation assuming a timely appeal of the MND had been filed to it) or any other environmental topic over which it is has no regulatory jurisdiction to impose mitigation (including, but not limited to, pedestrian safety and health risk), that the ~~Mitigated Negative Declaration~~ MND reflects the City's independent judgment and analysis, and that the ~~Mitigated Negative Declaration~~ MND, ~~Initial Study~~ and supporting documents provide an adequate description of the impacts of the Project and comply with CEQA, the State CEQA Guidelines and the City of Petaluma Environmental Review Guidelines, as outlined in the record. The comments received into the Project record regarding potentially significant impacts resulting from the Project either address

potential impacts already satisfactorily analyzed in accordance with CEQA requirements as described in the staff report accompanying this resolution and the Project record, and/or the comments received constitute argument, speculation, unsubstantiated opinion or narrative, generalized concerns or fears, or evidence that is clearly erroneous or inaccurate, and thus does not constitute substantial evidence supporting a fair argument that the Project may result in significant environmental impacts.

General Plan

- D. The proposed construction of the Safeway Fuel Station project at 335 South McDowell Boulevard is, for the reasons discussed in the May 8, 2018 Planning Commission staff report, consistent with the following Petaluma General Plan policies: Policy 1-P-2 (Promote infill development), Policy 1-P-6 (mixed-use development) 1-P-11 (Land use intensification at strategic locations), Policy 1-P-14 (street trees), Policy 2-P-5 (Strengthen the visual and aesthetic character of major arterials), Policy 4-P-10 (Electric Charging stations), Policy 5-P-42 (expand bus transit), Policy 6-P-29 (Integrate A1i), Policy 10-P-3 (Protect Public Health and Welfare), and Policy 10-P-4 (Transport of Hazardous Materials).
- E. The Project is consistent with the "Community Commercial" General Plan land use designation because the project contributes to the variety of commercial services provided to the larger the region from this area of Community Commercial property.

Implementing -Zoning Ordinance

- F. The Project is consistent with all development standards of the C2 Zoning District including, but not limited to, those pertaining to building height, setbacks and off- street parking requirements.
- G. All the required findings for Site Plan and Architectural Review approval found at Implementing Zoning Ordinance Section§ 24.010. ~~(G)(1)~~ can be made, as follows:
 - i. The Project includes the use of quality materials and is in harmony with and in proportion with the overall design through its use of single-story architecture with building articulation that employs varying depths and balances solid and transparent facade materials in the form of stucco and concrete masonry unit walls stucco, and glass windows with metal aluminum trim; the use of metal, stone, and concrete finishes; added accent to the main entrance; metallic awnings; and consistent detailing for the proposed canopy. Articulation is applied on all building elevations appropriately.
 - ii. The Project's building form, materials and architectural ~~-~~style is appropriate for ~~-the~~ Project and compatible with the overall character

of the area. The proposed facades include varying depths and materials divided into low, mid, and upper level strata to provide visual variety. Architectural detailing is carried through to all structures. The area features similar, rectilinear, simplistic commercial structures oriented to passing vehicle traffic on South McDowell Boulevard and Maria Drive and pedestrian on-site.

- iii. The proposed site design frames the interior of the lot and more clearly defines the boundaries of the site than current development, particularly along the southern property line adjacent to Maria Drive. Positioning the structure approximately five-feet (5 ft.) from the property line at this location establishes a pedestrian friendly building edge along the street. Further, the building is designed with an entry to the kiosk from Maria Drive that orients the building for customers walking on the sidewalk. The location of the canopy and the kiosk are located at approximately the same depth as the adjacent building along South McDowell Boulevard. This positioning enhances the streetscape because it maintains consistent siting of structures on the east side of the South McDowell Boulevard.
- iv. The project identifies new building signage consisting of two new signs on the convenience store and on the canopy. The project also includes a price sign elevation. However, this signage is representative only and is not proposed as part of the application. An application will be submitted in the future for signage on the north and south elevations of the convenience store, on the east and west edge of the fueling canopy, and for a monument signage on the site. Proposed signs generally fit within the area of the canopy and the kiosk. Additionally, signage is generally consistent with location, number and size requirements of the sign code and sign program, although staff will ensure that any future application for project specific signage will be consistent with the sign code and sign program.
- v. The project identifies new building signage consisting of two new signs on the convenience store and on the canopy. The project also includes a price sign elevation. However, this signage is representative only and is not proposed as part of the application. An application will be submitted in the future for signage on the north and south elevations of the convenience store, on the east and west edge of the fueling canopy, and for a monument signage on the site.
- vi. The project is harmonious with adjacent structures in terms of bulk, height, and color. The architecture is, like adjacent buildings, simple in form and design. Immediately north of the site is a bank and commercial retail store that is approximately one-and-a-half-

to two stories in height. This building is comprised of rectilinear features with strong square cut elements. Similar bulky square cut features that are simple in design and form are used in the canopy over the fuel pumps and portions of the facade of the kiosk. To the west of the site, across South McDowell Boulevard are single story single family homes. The convenience store bulk, at 697 square feet, is similar in size to the single family homes, and the earth tone color scheme of the homes compliments the beige and taupe color scheme of the project. Similar to other structures, the single story nature, architectural expression and color scheme of the project compliment the structure to the south because the structure to the south is a single story building, with a rectilinear form, and earth tone color scheme. East of the project is the Safeway grocery store. The color scheme of the project matches the color scheme of the Safeway grocery store, with each being comprised of beige and taupe tones. Similarly, the vertical bands that extend up the face of the fuel canopy and the convenience store are also found on the grocery store. Additionally, the proposed trash enclosure employs the same materials (concrete masonry unit walls and standing seam metal roof, and metal doors) color scheme, and resembles a similar square bulk as the proposed convenience store and canopy and is therefore consistent with other existing structures in the immediate neighborhood of the project site. For these reasons the project is harmonious with the bulk, height, and color schemes of other structures in the immediate neighborhood.

- vii. Proposed landscaping serves three functions: to screen structures on the lot and soften views from Maria Drive and South McDowell Boulevard, and to provide stormwater retention on-site. Denser landscaping is proposed along the west and south property boundaries to increase screening, particularly with respect to the queueing lane for the proposed trash enclosure. The project also includes landscaping along Maria Drive, along the back of the proposed improved bus turnout. This landscaping will provide a buffer between the bus turnout and the parking lot for the shopping center. Further, the project preserves key street trees at the corner of South McDowell Boulevard and Maria Drive, and the trees along Maria Drive as well. The project would remove two street trees to accommodate the improved transit facility but proposes two new 24-inch box red maples behind the bus stop.
- viii. Circulation patterns will not be substantially altered by the project. A new accessible pedestrian path is proposed to connect the convenience store to the existing sidewalk on Maria Drive, with bicycle parking positioned at a logical location - at the terminus of the pathway at the building. Vehicle access follows the predominant current pattern. New access is provided to the site from the east.

This area will allow for queuing of vehicles so as to not impede the drive aisle on the adjacent property. The project also provides a new egress to the north to facilitate internal circulation in the shopping center.

3. This resolution shall take immediate effect upon its adoption.
4. Should any portion of this resolution be held to be invalid by a court of competent jurisdiction, the remaining portions of this resolution shall be unaffected and remain in full force and effect. The City Council hereby declares that it would have adopted this resolution notwithstanding some portions being held invalid, and that such invalid portions of this resolution are severable.

EXHIBIT B

ILLINGWORTH & RODKIN, INC.
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M E M O

Date: January 28, 2019

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

From: James A. Reyff
Illingworth & Rodkin, Inc.
429 E. Cotati Ave
Cotati, CA 94931

RE: Safeway Fuel Center CEQA document - Petaluma, CA

**SUBJECT: Safeway Fuel Center Health Risk Assessment - Response to 12/10/2018
Submittal from Moira Sullivan, M.S. - Job#13-205**

This memo is Illingworth & Rodkin, Inc.'s (I&R) response to a letter from Moira Sullivan, M.S., dated December 10, 2018. Ms. Sullivan is an associate toxicologist that works with the California Office of Environmental Health Hazards Assessment (OEHHA), however her communication is made as a resident of Petaluma and not in her professional capacity. Our responses pertain to the air quality health risk assessment.

1. In terms of experience, I&R has been conducting air quality studies since 1995, which is longer than Ms. Sullivan's 20+-year career. This is James Reyff's 31st year working in this field and William Popenuck has almost 40 years' experience. I&R conducts approximately 50 to 100 air quality assessments each year. In Petaluma, I&R has conducted the air quality assessments for the Brody Ranch residential project, the Riverfront development, Marina apartments, Deer Park, and several others. The City's Planning Staff is quite familiar with I&R's experience conducting air quality studies and health risk assessments. Major projects recently in the Bay Area include the redevelopment of the Vallco Shopping Center Redevelopment in Cupertino, San Francisco Giants Mission Rock Redevelopment in San Francisco, and Forest City's Pier 70 Development in San Francisco. I&R's clients include private entities, Cities, Counties (including Sonoma County), and Caltrans. It appears Ms. Sullivan is unfamiliar with I&R's extensive experience in conducting air quality assessments. I&R is considered an expert in this field.

2. As a preliminary matter, Ms. Sullivan's claims that the proposed station does not meet any regulatory agency setback recommendations is inaccurate because there are no regulatory agency setback regulations. Further, her assertion that the gas station avoids federal and state regulatory agency recommendations is flatly incorrect. The HRA was prepared in accordance with all regulatory guidance and recommendations and has been accepted as adequate by BAAQMD, the regulatory agency with primary jurisdiction over the matter. Moreover, the gas station will operate in accordance with all local, state, and federal laws and standards.
3. As an associate toxicologist with OEHHA and 20+ years of experience, we believe Ms. Sullivan should be aware that OEHHA develops guidance for risk assessments that air districts use to develop their risk policy. After reviewing these data, BAAQMD uses a threshold of 10 chances per million based on 9-year exposures for school children and 30 years for residential exposures. This is also their recommendation for evaluating community risk assessments, per their CEQA Air Quality Guidelines. The District's New Source Review Rules makes the exception for the use of a 70-year risk assessment for gasoline dispensing facilities only, but that with the use of less protective exposure parameters that include lower breathing rates and results in a lower overall predicted cancer risk for lifetime exposures of 70 years, as compared with 30-year exposures that use the newer, more restrictive, exposure parameters.
4. I&R's response to the use of meteorological data and the ISCST3 model vs. the AERMOD model is documented in our responses dated October 10, 2018 and December 3, 2018. In summary, I&R followed BAAQMD's guidance and used meteorological data measured at Petaluma Airport and provided by BAAQMD along with the ISCST3 model. This was the method recommended by BAAQMD for use in Petaluma and used by BAAQMD in 2018 for permitting of other facilities in Petaluma, including the Valero Gas Station at 910 Baywood Drive in Petaluma.. The City's planning staff also accepted this type of analysis on several other projects. Subsequent to the project analysis, U.S. EPA approved methods that use numerical weather models to develop meteorological datasets that use forensic analysis to develop meteorological data sets for use with the AERMOD dispersion model. Both results were provided. Citing the Fox/Kapahi HRA, Ms. Sullivan claims that "using the correct air model/air model inputs," results in "harrowing" and "egregiously high cancer risk results." As shown by I&R's October 10, 2018 Fox/Kapahi did not use the correct air model/air model inputs. Instead they improperly rely on Santa Rosa wind data and use artificially inflated and overblown assumptions regarding Project diesel and benzene emissions. In a November 8, 2018 letter, BAAQMD concurred citing "several key concerns" with the Fox/Kapahi study. Her assertions that the Fox/Kapahi results are somehow valid and show "harrowing" and "egregiously high cancer risks" are incorrect as well as unscientific and hyperbolic.
5. Further, by substituting wind data designed to be used with the ISCST3 model into the completely distinct AERMOD model, such as that done by Fox and Kapahi in their November 30, 2018 supplemental health risk report, yields modeling conditions that do not occur in nature and could not even be imagined for science fiction. Atmospheric stability, which is related to vertical dispersion, is a key meteorological variable in dispersion of contaminants. By combining wind data for one station with another for

completely different time periods, one creates artificial, inaccurate, and unreliable meteorological data, such as high winds under very stable conditions, or vice versa.

6. There are other faulty assumptions that Fox & Kapahi used in their assessment that result in much higher impacts. For example, they overestimated diesel exhaust emissions considerably, used erroneous residential risk exposure parameters (pointed out by BAAQMD) and used erroneous benzene emission factors that they developed (also pointed out as erroneous by BAAQMD).
7. Ms. Sullivan references studies conducted outside of California and the U.S. that do not reflect the design of fueling stations in California that meet new stringent standards to control all aspects of emissions from gasoline fueling stations, including the control of vent pipe emissions. The guidelines that Ms. Sullivan points out with respect to California and U.S. EPA are with respect to siting new sensitive receptors near EXISTING fueling stations and not new fueling stations that meet the latest Statewide standards.
8. As noted in our September 4, 2018 response to Ms. Sullivan, California likely has the most extensive control requirements for gasoline emissions in the world. These requirements are developed and enforced by the California Air Resources Board (CARB) and BAAQMD permitting requirements. The evaporative emissions from volatile organic compounds from gasoline, which include benzene, have been greatly reduced over the past two decades. CARB has adopted a number of significant advancements as part of the Enhanced Vapor Recovery (EVR) program to reduce these emissions. Phase I EVR, which addresses transfer of bulk fuel from delivery trucks to the underground storage tanks, requires more durable and leak-tight components, along with an increased collection efficiency of vapors to be 98 percent. Phase II EVR, which addresses fueling of vehicles that purchase gasoline and the transfer of vapors back into the underground storage tanks, includes three major advancements: (1) dispensing nozzles with less spillage and required compatibility with onboard refueling vapor recovery (ORVR) vehicles, (2) a processor to control the static pressure of the ullage, or vapor space, in the underground storage tank, and (3) an in-station diagnostic system that provides warning alarms to alert the facility operators of potential vapor recovery system malfunctions. Phase I EVR was fully implemented in 2005. Phase II EVR was fully implemented between 2009 and 2011. **Attachment 1** includes a summary of the mandatory emission controls implemented at gas stations in California.
9. Note that new fueling stations, including this project, include Vacuum, Pressure, and Hydrostatic (VPH) monitoring that were not required for existing gas stations. VHP is a continuous monitoring of the secondary containment of the tanks, piping and sumps using either vacuum, pressure or hydrostatic methods. Tanks installed before July 1, 2004 are exempt from VPH monitoring. Safeway would have continuous VPH monitoring, whereas it is believed not all Petaluma gas stations have upgraded since 2004. As a result of new stringent regulations and fueling station design, emissions of hydrocarbons, which contain toxic air contaminants, have been reduced by about 99 percent, compared to dispensing facilities with Standard Vapor Recovery and non-ORVR vehicles.

10. As also noted in our September 4, 2018 response to Ms. Sullivan, as a result of the improvements described above in addition to the reformulation of gasoline that occurred in the late 1990s, emissions of benzene and other TACs from gasoline have decreased substantially in the last 10 to 20 years. A report recently released by OEHHA in 2018¹ describes the trend in exposure and health risk to TACs from gasoline (the press release for this study is included as **Attachment 2**). In this report, emissions of benzene statewide are described as being reduced by 70 percent since 1996 as reflected in ambient statewide benzene concentrations that decreased at or greater than that rate. The report describes the primary source of benzene emissions as from on-road mobile sources, where gasoline production and distribution make up a small fraction of the overall emissions. Benzene concentrations in the air are primarily the result of emissions from traffic. While the report addresses California as a whole, monitoring data in the Bay Area support these conclusions.²

¹ OEHHA. 2018. *Gasoline-Related Air Pollutants in California - Trends in Exposure and Health Risk, 1996 to 2014*. January

² Measured benzene levels in San Francisco are reported at this CARB website. Within the Bay Area, benzene is only monitored in San Francisco. Note that levels in Petaluma are expected to be lower due to the less intensive urban environment. <https://www.arb.ca.gov/adam/toxics/sitepages/benzsfo.html>. Accessed August 28, 2018.

Attachment 1

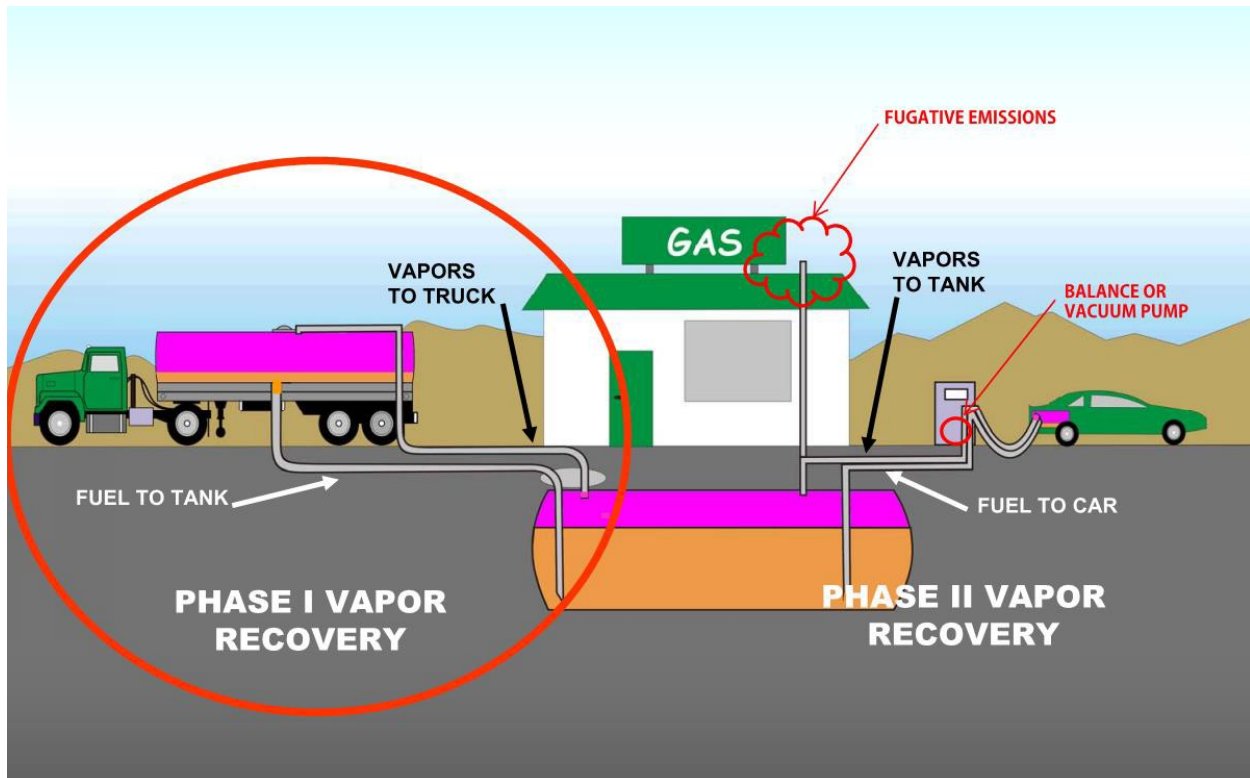
Vapor Recovery Summary

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

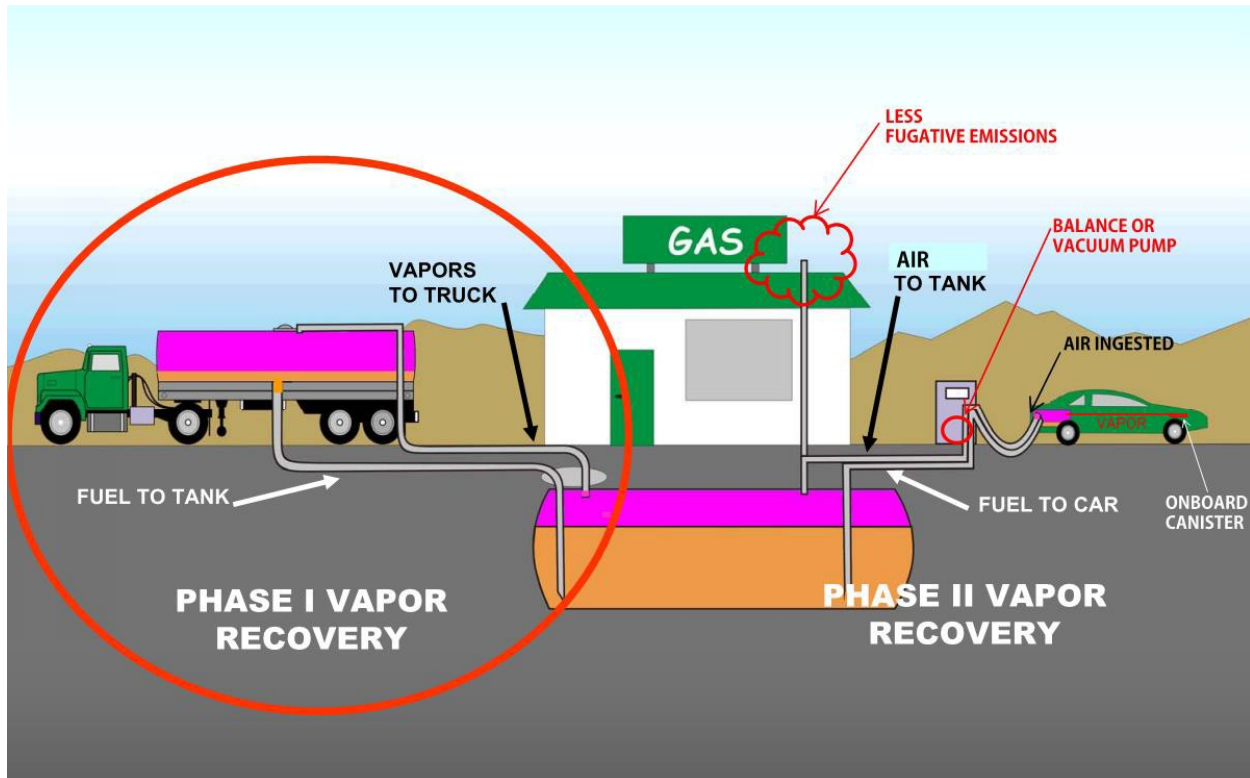
Phase I vapor recovery is the reclaim of vapors from a storage tank back into the truck that is delivering fuel. As the tank is filled, a second hose is connected to the tank. As the tanks fill, the vapors are pushed through the hose back into the delivery truck.

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

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



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



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

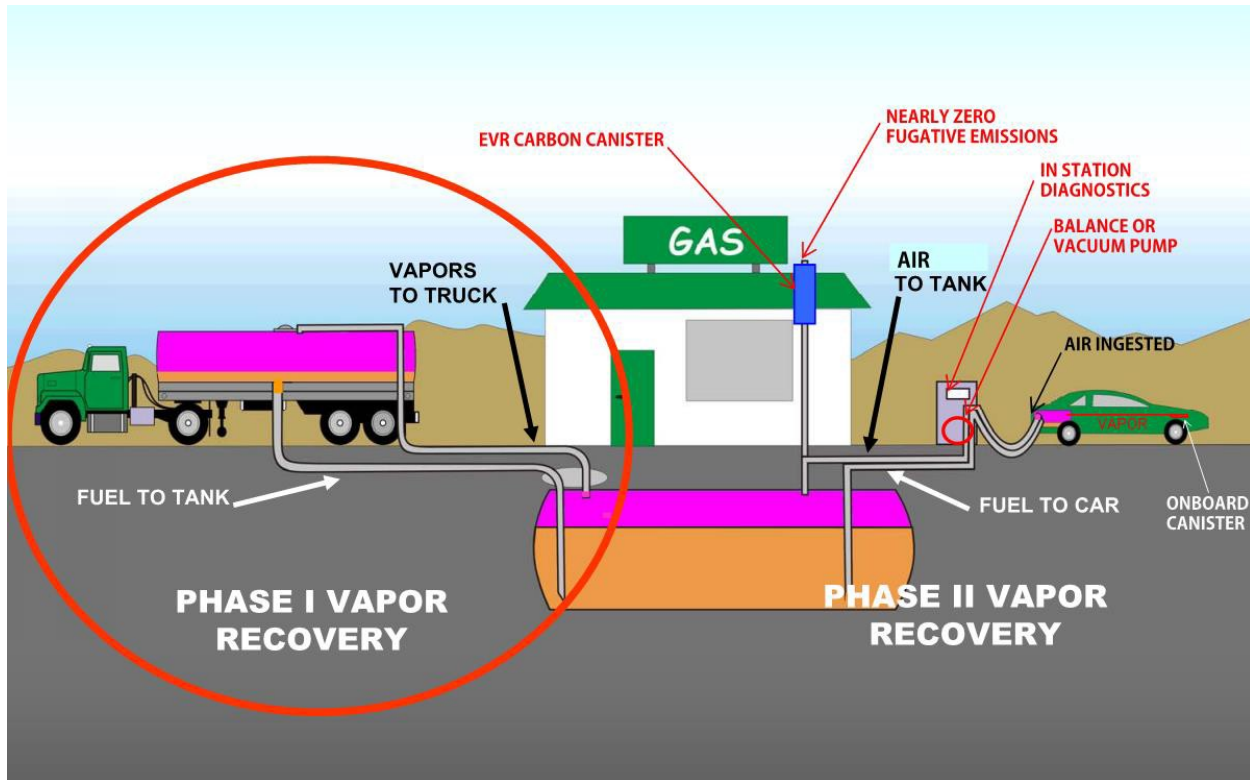
A Veeder Root carbon canister captures vapors in a carbon filter. The carbon is refreshed as the storage tank returns to normal pressure and clean air is pulled through the carbon canister.

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

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

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

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



GDF Vapor Recovery Benefits

- 16 billion gallons/year CA gasoline sales
- Uncontrolled emissions of 8.4 lbs of gasoline vapor for each 1000 gallons gasoline transferred
- 347 tons/day vapor recovery emission reductions from pre-EVR Phase I and Phase II systems
- 25 additional tons/day from Enhanced Vapor Recovery systems
- 372 tons/day of VOC emissions prevented statewide once EVR is fully implemented

Press Release

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

For Immediate Release:
January 24, 2018

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

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

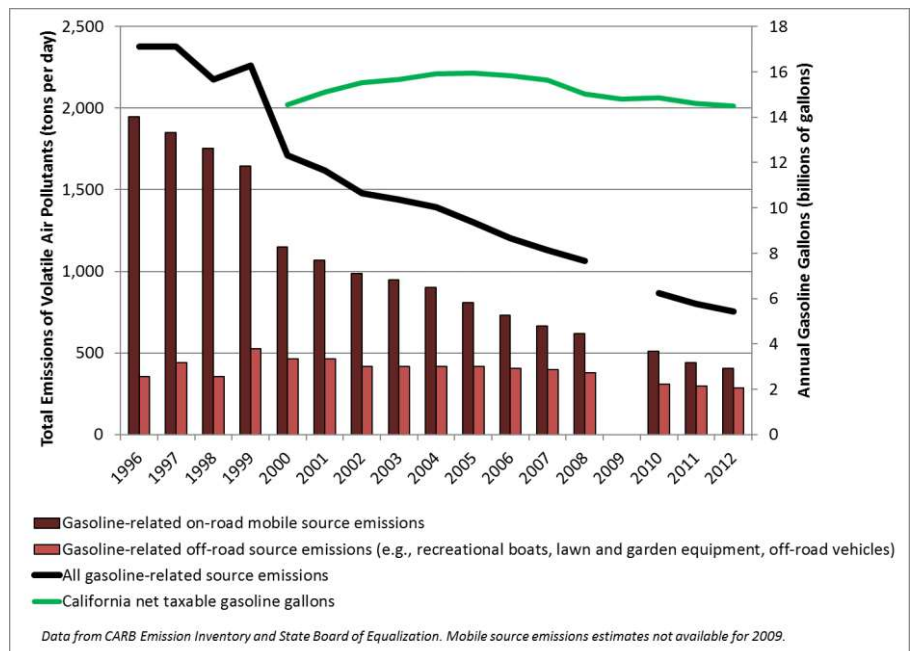
Gasoline-related pollutants associated with health concerns steadily declining

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

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

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

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



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

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

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

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

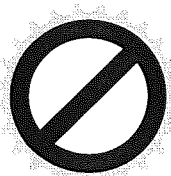
Researchers recommend a future study focused specifically on exposures in high traffic areas, especially in disadvantaged communities. Recently enacted legislation, AB 617 (C. Garcia, Chapter 136, Statutes of 2017), aims to reduce air pollution exposure in California's most burdened communities. CARB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

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

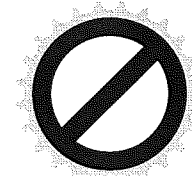
OEHHA is the primary state entity for the assessment of risks posed by chemical contaminants in the environment. Its mission is to protect and enhance public health and the environment by scientific evaluation of risks posed by hazardous substances.

###

EXHIBIT C



To: Natalie Mattei <Natalie.Mattei@albertsons.com>; Francois, Matthew <MFrancois@rutan.com>
Subject: EXTERNAL: FW: Petaluma Safeway Gas Station



From: Moira Sullivan <msullivan64@hotmail.com>
Sent: Thursday, August 23, 2018 10:09 AM
To: Aneesh Rana
Subject: Re: Petaluma Safeway Gas Station

Many thanks Aneesh! Cheers, Moira

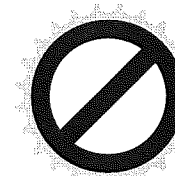
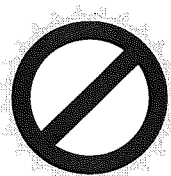
From: Aneesh Rana <arana@baaqmd.gov>
Sent: Thursday, August 23, 2018 10:09 AM
To: Moira Sullivan
Subject: RE: Petaluma Safeway Gas Station

Hi Moira,

Thank you for sharing. I will share this information with the team we have set up to review this case. Bernie has shared with me the date of the City Council meeting and we are working to prepare our response. I will share their findings with you all as soon as they have concluded their review.

<image002.jpg>

Aneesh Rana
Public Information Officer
Community Health Protection Office
Bay Area Air Quality Management District
375 Beale Street | San Francisco, CA 94105
Office: 415.749.4914 | Mobile: 510.599-7668 |
arana@baaqmd.gov | www.baaqmd.gov



From: Moira Sullivan <msullivan64@hotmail.com>

Sent: Thursday, August 23, 2018 9:48 AM

To: Aneesh Rana <arana@baaqmd.gov>

Subject: Re: Petaluma Safeway Gas Station

Hi Aneesh, I checked with colleagues of mine at the Office of Environmental Health Hazard Assessment (OEHHA) who have backgrounds in industry (Cardno/Chemrisk) and developed modeling software for HRAs.

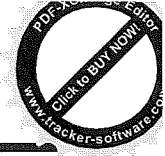
- Safeway did not adequately characterize exposure to the the sensitive receptors (i.e., Safeway used sensitive points as opposed to a ***cartesian grid*** - which much more accurately weights exposures). ***A cartesian grid approach should be used.***
- Safeway's Health Risk Assessment (HRA) did not properly characterize wind (direction, calm, etc). In their HRA, Safeway just said wind was "variable" and/or 2.2. Please ask Safeway to do a **wind rose (this software is free)**
- Also of note, when the cars turn on Maria Drive (a residential street and class III bike lane) to access the primary route of ingress to the fuel station (and Safeway's grocery store), those cars will be right next to the preschools - ***far less than 60 feet in distance***. **Safeway has said there will be 216 peak hour am trips and 276 peak hour pm trips on week-days, and 376 peak hour trips on week-ends.** These are just the peak hour trips. The station will be open for 17 hrs (6 am- 11 pm) and all these vehicles - accessing the main ingress/egress on Maria Dr - will be RIGHT next to the preschools. These represents a massive tailpipe emissions exposure for these tiny (babies to age 4) children. The exposure will be right in their breathing zone.

The children at these 2 preschools 60 feet away, the children at the playing fields at a 60 foot distance, and the numerous residents at 80 feet, not to mention the elementary school at 150 feet, deserve much better consideration than this. Thank you kindly for asking that the HRA be reevaluated doing a much more in-depth evaluation - and accurately characterizing the real risk to these sensitive receptors.

Sincerely, Moira Sullivan, M.S.

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EXHIBIT D



Je, Samantha

From: Brown, John
Sent: Thursday, October 11, 2018 3:59 PM
To: Chris Albertson
Subject: FW: Gas Station

OK, maybe you aren't the only one who got pissed off before he sent send. You could probably tell from the tone of the rest of the email, the word "Not" was missing in the second sentence in my original response to you, which should have read: "The need for delay is NOT being caused by the planners, or the city attorney's office, and both Safeway and the opponents have known that October 15th is not a decision making date for at least a week, if not two. Our people are not to blame for the delay, but I am responsible for moving the date to 12/3, because I understand the council wants 11/19 to remain light. Over and out.

From: Brown, John
Sent: Thursday, October 11, 2018 3:53 PM
To: 'Chris Albertson'
Subject: RE: Gas Station

Chris, we got the document Safeway has been promising us, last night, after hours. The need for delay is being caused by the planners, or the city attorney's office, and both Safeway and the opponents have known that October 15th is not a decision making date for at least a week, if not two. The only issue that remains is the date continuation goes to, as I described to you in an early email. I also described the reasons for December 3rd and not November 19th.

Anyone who wants to be pissed off about this delay, or criticize the process is entitled to their feelings. I'm following what I believe to be Council wishes regarding agenda management, but more to the point, we are doing good staff work here that brings the most finished product we can to the council for decision making.



From: Chris Albertson [mailto:councilman.albertson@gmail.com]
Sent: Thursday, October 11, 2018 3:21 PM
To: Brown, John
Subject: Gas Station

Hey John --

How's your day going? Well, here is another "gas station related" question :

Why is this discussion being bumped out another (almost) 2 months?? The topic was on the agenda in September and it was bumped then. People showed up ready with their signs and red tee-shirts. Now, we plan to bump the topic out AGAIN?? Why?? Hopefully, this delay is not the making of our legal or planning offices. I F we received a large "document dump" from one side or the other at this late hour, not allowing any reasonable amount of time for council to review the documents, then any delay is on them. That being said, when people arrive and hear of another delay, the pro & con parties to this discussion will not be there to accept blame the City Council will get hammered for a delay they did not cause.

This is no way to run a railroad !! For the record, I could say that I'm pissed about this situation and I will say that I am disappointed about this situation.



From: "Danly, Eric" <edanly@ci.petaluma.ca.us>

Subject: FW: Safeway Gas Station Appeal

Date: October 3, 2018 at 5:45:13 PM PDT

To: 'Janice Cader Thompson' <janicecaderthompson@icloud.com>

Cc: "Brown, John" <JBROWN@ci.petaluma.ca.us>, "Cooper, Claire" <ccooper@ci.petaluma.ca.us>, "Hines, H" <HHines@m-group.us>

Dear Janice,

City Manager John Brown has forwarded me your correspondence, attached, for a reply.

We are aware of no requirement that the materials and presentations regarding the Safeway Fuel Station SPAR Approval Appeal be translated. It appears that the applicant and appellants, as well as supporters and opponents of both have been able to fully participate in the proceedings without translation. Also, I don't believe any materials have been submitted requiring translation.

Thank you.

Eric W. Danly

City Attorney, City of Petaluma

11 English Street, Petaluma, CA 94952

Phone: (707) 778-4362 Facsimile: (707) 206-6040

City Business Hours: M-Th 8am-5pm, closed Fridays

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

From: Cader-Thompson Janice [<mailto:janicecader@gmail.com>]

Sent: Wednesday, October 03, 2018 10:29 AM

To: Brown, John; Glass Dave; CityCouncil; - City Clerk

Cc: Cader Thompson Janice; mbaddeley@petk12.org; schlebowski@petk12.org; pellis@petk12.org;

flynych@petk12.org; lhirasa@petk12.org; ewebster@petk12.org; cathomas@petk12.org;

lhirasa@petk12.org; Mattei Natalie; Adriann Saslow; McEachin Joann; yousef.baig@arguscourier.com;

Sweeney Jim

Subject: Re: Safeway Gas Station Appeal

Please see the attachment

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.

Pascoe, Samantha

From: Bill Wolpert <wolpert@sonic.net>
Sent: Friday, August 10, 2018 4:58 PM
To: 'Bernie Album'; 'tonya parnak'
Subject: RE: Scope of Appeal

Bernie and Tonya-

Sorry, I have looked through all of my reference material and I do not have the previous General Plan. The closest I came was finding some committee submittals for the Historic Districts to be included in the 2008 GP update.

Good luck with the appeal.

-Bill



GREEN BUILDING ARCHITECTS

William B. Wolpert, Architect
7 Fourth Street, Studio 61
Petaluma, CA 94952
707.789.0822

GreenBuildingArchitects.com
Check out our new website!

From: Bernie Album <allbernie5@gmail.com>
Sent: Friday, August 10, 2018 3:02 PM
To: tonya parnak <tonyaparnak@yahoo.com>
Cc: William Wolpert <wolpert@sonic.net>
Subject: Re: Scope of Appeal

Yes for Bill Wolpert. We know each other well. I am very connected with Teresa Barret but not permitted to contact her with anything to do with the 16-pumps because of my being a party of the appeal to come before City Council 9/17. Bill is looking for information we need from the 2013 Petaluma General Plan.

Bernie

On Fri, Aug 10, 2018 at 12:09 PM, tonya parnak <tonyaparnak@yahoo.com> wrote:

But not in touch with Teresa Barrett, correct? Are you in touch with Bill Wolpert and his architect friend, just out of curiosity?? Tonya

On Fri, 8/10/18, Bernie Album <allbernie5@gmail.com> wrote:

Subject: Re: Scope of Appeal
To: "tonya parnak" <tonyaparnak@yahoo.com>
Date: Friday, August 10, 2018, 11:46 AM

Got

It. I am in touch with everyone you noted. We will continue

focused on our goal using as much as we can to stop the 16 pump monster. Thanks, Bernie

On Fri, Aug 10, 2018 at 11:33 AM, tonya parnak <tonyaparnak@yahoo.com> wrote:
Hi
Bernie,

We all only have so much focus - I find myself making typos and reversals so easily! (I have to remind myself to proofread and not be in a hurry, but that's so time consuming.) What you're doing, reading through the documents, is the "deepest weeds" I can think of when you're not familiar with the terminology and haven't done it as a career, etc.. Ranks as one of my least favorite things to do!!

Unfortunately, I don't have any contacts with BAAQMD. The CA state guidelines for new schools that I read through and sent potential sections for followup to JoAnn were from my contact with Bill Wolpert, a 350Petaluma member and one of the Planning Commissioners who voted against approval at the Planning Commission meeting. When I asked, he emailed to one of his fellow architects who works on school plans, who then emailed me the link to the CA state guidelines for new schools. Just as info, not worth much, I do know that Teresa Barrett has been on the "stationary" sources of poor air quality, on the BAAQMD, but then she's currently on the City Council and running for mayor, which makes her verboten/forbidden as a contact. It's the staff at the BAAQMD that would do the research anyway, not a member of the board.

cheers and onward,

Tonya

On Fri, 8/10/18, Bernie Album <allbernie5@gmail.com> wrote:

Subject: Re: Scope of Appeal

To: "tonya parnak" <tonyaparnak@yahoo.com>

Cc: "Adriann Saslow" <madamesaslow@gmail.com>,
"Frances Frazier" <ffrazier@petk12.org>,
"Glenn Rubenstein" <glenn.rubenstein@gmail.com>,
"JoAnn McEachin" <joannmceachin@gmail.com>,
"Richard Sachen" <richard@rsachen.net>,
"Vicki Mayster" <vmayster2@gmail.com>

Date: Friday, August 10, 2018, 10:42 AM

Tonya, Yikes, I just noted I

reversed EIR (Google for
definition) to REI on my reply to

Glenn. So far I may be the only one losing it from
reading

all the documents. We are managing to review the
materials

we have and figuring out what we need for our
presentation

to our city council. Thanks for making
suggestions

and reading the emails. Our most important need

that you may be able to help with,
is getting the BAAQMD to

review the document(s) they provided Safeway in 2013
and

provide us with new document(s) based on their
updated

2017 standards. You already did that with your BAAQMD

contacts but it would be good for us to know what, if

anything, they are in the process of doing. I only had
one

reply from Arneesh two weeks ago that their engineers were

researching the 2013 documents. Can you find out what is

happening?Bernie

On Thu, Aug 9, 2018 at 6:42

PM, tonya parnak <tonyaparnak@yahoo.com>

wrote:

Hi

Bernie,

I have a lot of sympathy with how mind-boggling it is to

read through all the material! It was hard for me to get

through the Ca state new school guidelines! I don't

know if you saw my suggestion to divide it up and have

different people take on a section? Or did you try that

and get no volunteers?

I'm in support, but don't have enough time to

volunteer while I'm focusing on the 350 S.F. March on

Sept. 8th.

Onward,

Tonya

On Thu, 8/9/18, Bernie Album <allbernie5@gmail.com>

wrote:

Subject: Re: Scope of Appeal

To: "Glenn Rubenstein" <glenn.rubenstein@gmail.com>

Cc: "Adriann Saslow" <madamesaslow@gmail.com>,

"Frances Frazier" <ffrazier@petk12.org>,

"JoAnn McEachin" <joahnmceachin@gmail.com>,

"Maira Sullivan" <msullivan64@hotmail.com>,

"Richard Sachen" <richard@rsachen.net>,

"Tonya Parnak" <tonyaparnak@yahoo.com>,

"Vicki Mayster" <vmayster2@gmail.com>

Date: Thursday, August 9, 2018, 4:43 PM

Glenn, It is not an ERI which is an

outside environment agency

that does the study for a lot

of money. What the city has here is a checklist
completed

by

the city and is not acceptable as a substitute for an

official, legally defined EIR. I can get a

professional

opinion for us after we do a Google search for REI

definition, if we still need one. FYI & Scott

Alfonso, The act of the city reaching out to

Safeway constituted the act

called collusion. Not colluding

would have been the city employing it's own attorney

for

unbiased legal advise instead of the biased legal

opinions

of a biased attorney employed by Safeway. An EIR cost

\$1000s

and Safeway didn't want to spend the

money.Scott needs to look up the definition for

collusion. The City and

Safeway worked together to change

the zoning code, illegally in my opinion, and design

mitigations to get around numerous other code

requirements

too numerous for me to decipher. That is why we would need

a

lawyer should need to go to court. Good that you

are reading through all

this material. It has become mind

boggling for me as well as very disturbing. I wonder
how

far

will will get with this considering who we are up
against.

Discussion Tuesday needed for all of us to

agree. Bernie

On Thu, Aug 9, 2018 at 3:56

PM, Glenn Rubenstein <glenn.rubenstein@gmail.com>

wrote:

What

is the difference between an Environmental Impact Report

and

the 53 pages of "Effects of Environmental Impacts"

that

the City of Petaluma put together earlier this year in

their

Safeway Fuel Center report?

<http://cityofpetaluma.net/cdd/>

pdf/temp/SafewayFuelCenterDraftIS-MND.

pdf

There are

other appendixes here, including the Health Risk Assessment,

but no dedicated EIR:

<http://cityofpetaluma.net/>

[cdd/major-projects.html](#)

Scott Alonso did say there was no

collusion risk we reached out to the City Attorney
for

legal

clarification and guidance on the scope of our
appeal.

Sent

from my iPhone

On Aug 7, 2018, at

2:17 PM, Bernie Album <allbernie5@gmail.com>

wrote:

I sent this earlier with

attachments as a Google link. Here it is so it can be read

without a Google link. Bernie

After reviewing the

recent documents from the 6/26/18 Petaluma Planning

Commission Meeting the following appeal points occurred

to

me: (see attachments A,C,D below)

1. The city did not legally change the 2013 Zoning

Code to include a fueling/gas/service Station.

*there is a code for a fueling station

in a commercial zone directly next to Safeway and in

the

same

mall (Washington Square Plaza). The are
currently

two

fueling station in that

zone,

The project application is in a commercial zone
that

does not include a fueling station and

should

have been denied 2013 and should be denied today
in

2018.

The Safeway project is not compatible

with other uses in the zone because it is listed

as as allowed in another zone.

(Application filed July 25,2018)

2. An EIR is required and there is no evidence

that one has ever been

completed.3. BAAQMD report does not clearly

show that the

project gas station meets

CEQA 2018

standards so as not to cause adverse impacts
on

the

environment hazardous air emissions

of the Health San Code Section 42301.6(a)

and Section 44303

Public notice

in 2013 was inadequate Attachment_C_-_
Project_Plans.

pdf

and not current in 2018.

Shall include written prior

notice

30 days Final Action. Public Notice to

parents,school children,residence and businesses

20184. The

City improperly collated with

Safeway in 2013 to amend a

commercial zoning with no fueling station to

include a fueling/gas/service

station.

5. The City failed to show that the economic

impact of other related business would not

be

negatively impacted. The mitigations listed in the

event

this occurs to monitor, are not

enforceable with consequences. Cal Code

Reg. &15064 and 15131

6. The Petaluma City Schools did not clearly

sign-off or approve the Safeway Gas Station to be
next

to

McDowell Elementary School.

QUESTION TO

ASK:1. Is it

permissible to change the zoning code after an
application

for a project is submitted?

2. Is it legal to provisionally approve a permit for

a fueling station when the provision process takes
over

4

and

the effected parents,students,residents and

businesses could be or are different?

OPPOSE SAFEWAY GAS PLANNING COMMITTEE CAN

DO: Educate

the public that starting in 2013 the Petaluma City

Council

and Planning Commission voted

to collude with Safeway to amend the 2013 zoning

Code with no fueling station, to include a
fueling/gas

service station in order to allow the Petaluma City

Council

to approve a 16 pump fueling station in the McDowell

Elementary School and Little League location. It
should

also

be noted that the City approved building permits for
a

large

PDU (Artisan Homes) complex and additional apartments
to

the

same neighborhood 2015-2018 increasing significant

residential homes and traffic in the Maria Dr. &

McDowell intersection with the future Safeway Fuel



Center

project. The cost for possible cheaper gas is not worth

the

cost for the safety and health of our children and the

increased traffic congestion in this area of Petaluma.



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

From: Bernie Album <allbernie5@gmail.com>
Subject: Re: Safeway Gas Station
Date: July 7, 2018 at 3:49:14 PM PDT
To: Teresa barrett <teresabarrett@comcast.net>

Teresa,

FYI I am meeting with 2 others today and have had email contact with another activist parent resident representing a few others. We are meeting SUNDAY noon at Peete's (Wash.Sq. Plaza) to finalize a letter

and collect \$ for the fee to submit an appeal on Monday. My decision is based on the belief that it is better to file an appeal then not. We realize what the issues are and how expensive this can become for Petaluma but believe this is the good fight and should be taken on. Mike Healy will have to be convinced cheap gas should not win over our children's safety and health. Safeway would be responsible for our having to use local tax funds to fight them in protracted litigation. The public will know and there will be wide negative publicity for Safeway. City Council will not be the blame, Safeway will be. This is not like other controversial projects that the City approved to avoid expensive litigation or Shollenber Ranch. Of course your attendance would be welcome but understand may not be politically permitted or advisable.

Bernie



Heather Hines

From: Dan Goalwin <dgoalwin@barghausen.com>
Sent: Saturday, July 07, 2018 7:42 AM
To: Hines, Heather; Ed Hale
Cc: Josh Harlan; Mark Peterson; Marc Strauch
Subject: RE: ARCO Preliminary Review Comments -- PLPR 18-0003 BCE #18042

Importance: High

Thanks Heather. We will look at those videos.

Is it possible for us to access the file for the Chevron across Petaluma Blvd Land Use approvals on line? We would like to look at those before our meeting if possible.

Daniel B. Goalwin
Director of Architectural Services
Barghausen Consulting Engineers, Inc
18215 72nd Ave South
Kent, WA 98032
Phone 425-656-7441
Cell 206-396-8589

From: Hines, Heather <HHINES@ci.petaluma.ca.us>
Sent: Friday, July 06, 2018 4:03 PM
To: Ed Hale <ehale@barghausen.com>
Cc: Josh Harlan <jharlan@barghausen.com>; Dan Goalwin <dgoalwin@barghausen.com>; Mark Peterson <mpeterson@barghausen.com>; Marc Strauch <Marc.s@strauchco.com>
Subject: ARCO Preliminary Review Comments -- PLPR 18-0003

Ed,

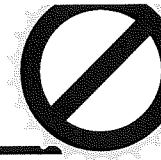
Attached please find the City's preliminary review comments for the proposed ARCO gas station, including convenience store and carwash on Industrial Avenue.

I look forward to meeting with you next week to follow up on any questions you may have about the points touched on in the letter.

I would encourage you and your team to review videos of the recent public hearings for the Safeway Fuel Center that was before the Planning Commission in May and July.
There was considerable concerns about the conflict between a new gas station and an adjacent school that you should closely consider given the proximity of your project site to a school.

Have a great weekend.

Heather



Joe, Samantha

From: Heather Hines <hhines@m-group.us>
Sent: Wednesday, June 27, 2018 7:41 AM
To: Brown, John
Subject: Checking in

John,

Sorry our paths didn't cross this week.

week.

However, I am available this morning if there is anything that we need to discuss.

Additionally, I will be checking email the remainder of the week if there is anything that comes up.

I returned our edits to the PSA for your consideration.

If you would like me to review the staff report itself please let me know.

I will also be working on outlining a staff report for the Water Street Public Art item and will have that to you by Monday morning for coordination on that front.

Safeway Fuel Center was approved last night. It was a long and extremely painful hearing.

Altura Apartment Trees Enforcement is being issued by Joe Garcia today.

Adobe Road Winery was deemed complete and we are working toward a Planning Commission workshop on July 24th.

Eric seems to have a good handle on the Silkmill documents that need signed.

The 76 gas station fees are in your email box for signature.

You are in good hands with Milan to discuss the VMT item for the July 9th PC/CC workshop.

Anything I am forgetting?

Heather

HEATHER HINES | PRINCIPAL

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Safeway gas station may be fast-tracked

JANELLE WETZSTEIN,
ARGUS-COURIER STAFF | January 27, 2014



A proposed 16-pump Safeway gas station in the Washington Square shopping center, which drew sharp criticism from several neighbors and businesses, may not require the city's approval since the property's zoning allows for gas stations to be built at that location.

City officials and local gas station owners first raised concerns over Safeway's plans to build the fueling station in town at an August city council meeting. The main concerns included the impact on traffic that a discount gas station could bring to the already busy South McDowell Boulevard and East Washington Street intersection, and the potential that Safeway could take business from other fuel stations by offering gas at below-market rates. But unlike other developments in town that required general plan amendments, environmental impact studies and other reports to the city council, Safeway's property is already designated as commercial land, meaning a gas stations is a permitted use.

Mayor David Glass said that the city's zoning ordinances are crafted in a way that doesn't allow the council to review new development projects if they comply with zoning and land use laws.

"Our city laws have been written under the guise of being 'business friendly,' but what it really means is that we don't review projects that are permitted by the zoning ordinance of any given property," said Glass. "So we may not have discretionary power this time around."

City staff said they are reviewing Safeway's application to make sure it is complete. Senior Planner Heather Hines said that the project will be at the planning commission's discretion, but only in terms of the site's plan and architectural review.

Developer Fulcrum Property has not renewed a handful of tenant leases to vacate space for the planned gas station. While proprietors of the shuttered Petaluma diner Pepper's Restaurant recently chastised Fulcrum for evicting them in order to build the gas station, not all the affected businesses agreed.

Washington Square Veterinary Clinic owner Sharon Johnson said after Fulcrum told her she had to relocate her office because Safeway planned to put a gas station in the plaza, they made the move as easy as possible.

"When I first heard that I had to move and Fulcrum said they would arrange a space in the center of equal size, I never thought it would work out," said Johnson. "But, knock on wood, everything has gone well so far."

Fulcrum built Johnson a new space, only asking her to pay for upgrades and any extra amenities she requested in her new location. Johnson said she plans to open her new office sometime next month near Peet's Coffee - Tea.

Several other businesses have relocated as well. Sonoma Travel has relocated to a new off-site location at 725 E. Washington St., while Curves gym has leased space at 2000 Lakeville Highway. Optometrist Richard Aston has been unable to find a new spot, but said he is pursuing options in the city.

(Contact Janelle Wetzstein at janelle.wetzstein@arguscourier.com)

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Gas station ignites public controversy

JANELLE WETZSTEIN,
ARGUS-COURIER STAFF | August 29, 2013



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For most drivers, cheaper gas is a welcome offer. But city officials and local gas station owners have raised concerns about a 16-pump Safeway gas station and convenience store proposed where Pepper's Restaurant is located on South McDowell Boulevard.

After several local station owners brought up the matter at a recent City Council meeting, council members discussed the potential for added traffic congestion that could come with the project.

Traffic on South McDowell Boulevard has become increasingly heavy over the past few years. The newly opened East Washington Place Shopping Center has likely contributed to longer commutes in the area. And the soon-to-open Deer Creek Shopping Center just up the road on North McDowell Boulevard is sure to add to the congestion.

On top of the commercial developments, the Petaluma Planning Commission recently recommended approving a 144-unit apartment complex on Maria Drive — just minutes from the proposed Washington Square Shopping Center gas station. Safeway has not yet submitted a traffic study, but several City Council members and station owners worried about the effects on the area.

"You already have people who are so frustrated with the gridlock going on (Maria Drive)," said City Councilwoman Teresa Barrett. "Each effect is cumulative and together, it makes an already bad situation worse."

Safeway, which is currently working on the traffic study, did not respond to several requests for comment.

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As a county representative on the Bay Area Air Quality Management District Board, Barrett also worried about potential greenhouse gas emissions in an area with a nearby school, day care center and little league ball fields.

"There's a similar station in Novato that I recently visited after hearing of this project," she said. "There were cars at every single pump, plus two additional cars idling and waiting to get in. We have a ban on drive-through businesses in our general plan and this business model certainly seems to have a drive-through quality. It's really not what we've intended for our city."

Barrett wasn't the only council member who had looked into Novato's Safeway gas station. Councilmember Mike Healy said he has spoken with Novato's city staff, who he said had some regrets over allowing Safeway to open a gas station in their city.

"Their feeling was that they hadn't adequately estimated the traffic that would be going through it," said Healy. "They said it's always crowded and that major tanker trucks are always there."

Healy added that he's heard from Petaluma city staff that the traffic concerns may not be a major issue, but that more details will be known after the pending traffic study is complete.

Petaluma attorney Jim Dombroski is watching this proposed station with particular interest. A longtime anti-trust litigator, he has been suing Safeway since 2009 over what he calls the company's unfair business practices of selling gas below market cost.

"We've been able to show lots of gas stations that went out of business because of a nearby Safeway station in Dixon, Concord, Livermore and San Jose," said Dombroski. "Once they've run competitors out of business, then they can up the price."

Dombroski said that in his opinion, there's no question that a Safeway gas station in Petaluma would force several other stations out of business. Local station owners agreed.

"What this really means is that four small gas station will close completely," said Petaluma

According to Gutzman, Safeway is expecting to sell 700,000 gallons of gas per month. Since many of Petaluma's existing 16 gas stations only sell about 100,000 gallons of gasoline each month, Safeway's proposal means a large portion of Petaluma's gas needs could be met with at this one particular station — potentially putting several others out of business through lower prices, Gutzman said.

Baywood Drive Valero station owner Bert Lathrop said that he understands customers wanting cheaper gas.

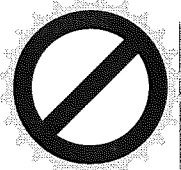
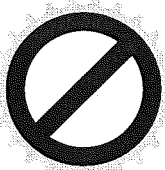
"I get that completely," Lathrop said. "But ultimately we need to look at the long-term effects on Petaluma's lifestyle and the benefits for the community in general."

City staff said that once the traffic study has been completed, the project application will go before the Planning Commission, most likely later this year or early in 2014.

(Contact Janelle Wetzstein at janelle.wetzstein@arguscourier.com)

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Heather Hines

From: Hines, Heather
Sent: Wednesday, May 29, 2013 6:06 PM
To: Arash Salkhi; 'Steve von Raesfeld'
Subject: RE: Discussion re Safeway Gas Station

How about the following Wednesday, June 19th, same time?

From: Arash Salkhi [mailto:asalkhi@hotmail.com]
Sent: Tuesday, May 28, 2013 9:26 PM
To: Hines, Heather; 'Steve von Raesfeld'
Subject: RE: Discussion re Safeway Gas Station

Heather - That day I will be out of town. Can we make it for the following week, I will be available to meet anytime?

Thanks,

Arash

From: Hines, Heather [mailto:HHINES@ci.petaluma.ca.us]
Sent: Tuesday, May 28, 2013 1:12 PM
To: Steve von Raesfeld; asalkhi@hotmail.com
Subject: Discussion re Safeway Gas Station

Arash,

Does 3:00 p.m. on Wednesday, June 12th work to discuss potential impacts of a Safeway gas station?

Let me know.

Heather

HEATHER HINES
Planning Manager
T: 707.778.4316
E: hhines@ci.petaluma.ca.us

City of Petaluma
Community Development - Planning Division
11 English St
Petaluma, CA 94952

For faster response to planning and zoning questions, please e-mail us at petalumaplanning@ci.petaluma.ca.us

EXHIBIT E



Fremont City California

Planning Commission Report 3438

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.

Information

Department:
Category:

Planning
Conditional Use Permit

Sponsors:

Attachments

[Printout](#)
[Exhibit A - Project Plans](#)
[Exhibit B - Findings and Conditions](#)
[Informational 1 - Site Information](#)
[Informational 2 - HARB Minutes](#)
[Informational 3 - Traffic Impact Analysis](#)

Item Discussion

Location: 38010 Mission Boulevard in the Niles Community Plan Area; APN 507-0645-021-00

Area: 1.4-acre lot

People: Alan and Gary Laabs, BLT, LLC, Property Owner
Jim Rubnitz, Applicant
Muthana Ibrahim, MI Architects, Architect
Fareed Siddiqui, Stukam Consulting Engineers, Civil Engineer
Joel Pullen, Staff Planner, (510) 494-4436, jpullen@fremont.gov

General Plan: General Commercial

Zoning: C-G(HOD)(H-I), General Commercial with Historical Overlay and Hillside Combining Districts

Body

EXECUTIVE SUMMARY

The applicant is proposing development of a new 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 located on a currently vacant site at

38010 Mission Boulevard. The proposed development required review by the Niles Canyon Scenic Corridor Liaison Committee on January 8, 2018, because the property is located adjacent to Niles Canyon Road/CA-84, which is a scenic highway, and also required review by the Historical Architectural Review Board (HARB) on March 14, 2018, because the property is located within the Niles Historic Overlay District (HOD). The proposed project requires Planning Commission review and approval of a Conditional Use Permit and Discretionary Design Review Permit. Staff has reviewed the proposed project for conformance with all regulations, and recommends approval as shown in Exhibit "A," based upon the findings and subject to the conditions of approval contained in Exhibit "B."

BACKGROUND AND PREVIOUS ACTIONS

The 1.36-acre property at the eastern corner of Mission Boulevard and Niles Canyon Road is currently vacant. It was most recently developed with a burger and barbeque restaurant—"Big Daddy"—within a non-descript one-story building that was demolished in the 1990s. A previous application for a gas station with a faux old western theme (multiple structures with false wooden storefronts, etc.) was denied by the City in 1991, and the site has remained vacant since closure of Big Daddy. See Informational Enclosure 1, for information about the property location and setting.

Previous Hearings

On January 8, 2018, the Niles Canyon Scenic Corridor Liaison Committee reviewed the proposed project at a noticed meeting. The Committee discussed issues such as fuel tank safety, sustainability, site design and traffic, and appropriateness with respect to the gateway location. After discussion, the Committee recommended that the project move forward as designed.

On March 14, 2018, HARB held a public hearing to consider the project and voted 4-0-1 (one Board Member absent) to recommend approval to Planning Commission. At the hearing, members of the public raised issues related to compatibility of the use on the site, traffic concerns, use of brick and architectural design, and safety of fuel tanks. In their recommendation, HARB asked that the project incorporate design elements that connect to the historical use of brick and tile in Niles, and to Jose de Jesus de Vallejo, who was important in the history of Niles, and owned a mill whose foundation remains nearby in the area near the railroad bridge over Mission Boulevard. See minutes of the HARB meeting attached as Informational Item 2.

PROCEDURE FOR TONIGHT'S HEARING

The Planning Commission is charged with considering the following:

1. A finding that no further environmental review is required to meet the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15183 as the project is consistent with the development intensity established in the General Plan for which a Final Environmental Impact Report (SCH#2010082060) was previously prepared and certified.
2. Approval of a Conditional Use Permit to allow development of a gasoline service station and car wash facility as shown in Exhibit "A," based on findings specified in Fremont Municipal Code (FMC) Sections 18.230.060, and subject to conditions in Exhibit "B."
3. Approval of a Discretionary Design Review Permit for the project based upon findings specified in FMC Section 18.235.060, and subject to conditions in Exhibit "B."

PROJECT DESCRIPTION

The project proposes development of a gasoline service station and car wash at 38010 Mission Boulevard. A new 4,000-square-foot building with a convenience store and a retail suite would be located adjacent to the intersection of Mission Boulevard and Niles Canyon Road. Behind the corner building, a new canopy would cover six double-sided pumps. Two new automated car wash tunnels (attached side-by-side) would be located near the northerly corner of the site.

The new retail and car wash structures would be primarily clad in brick. Storefront window systems underneath trellises would be recessed within individual bays between brick-clad columns. The exterior wall would have a mixture of parapet walls of modest height and a hipped roof with clay tiles. A rhythm of

tile insets and reveals would adorn certain recessed cement plaster areas. The pump island canopy would be supported by brick-clad columns matching the proposed building. See Informational Enclosure 2—Architectural Narrative, for a description of the design choices for the project.

Vehicular access would be provided by way of three new driveways, one on Mission Boulevard and two on Niles Canyon Road. The driveway located on Mission Boulevard would be at the most southerly feasible location and the driveway on Niles Canyon Road nearest Mission Boulevard would allow right turns only in and out. The second driveway on Niles Canyon Road at northerly extent of the site near the car wash would have full access. A median would be installed within existing available space in the Niles Canyon Road right-of-way to enforce adherence to current traffic restrictions.

The site would be landscaped heavily, with an overall 30 percent landscape coverage. New street trees would be provided along both frontages, and additional trees would be planted both within the site and along the wall to be installed on the eastern perimeter of the site.

See Exhibit "A" for the site improvements.

PROJECT ANALYSIS

General Plan Conformance

The General Plan land use designation for the project site is General Commercial, which applies to low-scale commercial, service and office uses located along the City's arterials and collector streets. As described in the General Plan, typical service commercial uses include gas stations. The following General Plan policies are applicable to the proposed project:

Community Character Policy 4-1.9: City and Neighborhood Gateways – Improve entryways into Fremont, and into its individual neighborhoods and districts, to achieve a sense of transition and arrival.

Analysis: The project site is located on a Landscape Corridor (Mission Boulevard and Niles Canyon Road) at a gateway location, and would enliven a long-vacant site with a site plan and architectural style compatible with Niles. A gateway sign and median would strengthen the sense of arrival in Fremont from Niles Canyon Road.

Community Character Policy 4-3.2:

Architecture and Identity – Use architecture to

reinforce desirable design characteristics of an area, consistent with its heritage and the vision for its future as defined in the General Plan or in an area plan. Use architecture and public space to establish defining qualities when an area does not have a clear identity or urban form.

Analysis: The proposed project has been designed with a site plan and architecture that would function well in relationship to the site location on a prominent corner and evoke Niles' architecture and materials. Primary structures would be placed up against the street and clad in brick, while not creating a false sense of history where the immediate surroundings do not provide a replicable and desirable urban form.

Community Character Policy 4-3.4:

Drive-through and Gasoline Station Design – Where

allowed, design drive-through restaurants and gasoline stations so that they will not interfere with vehicular and pedestrian circulation and adjacent uses. When reviewing proposals for future or altered drive-through uses, special attention should be given to landscaping, buffering of abutting residential uses, lighting and signage, and screening of utilities and mechanical equipment.

Analysis: Gas stations and car washes are service uses envisioned in the General Plan for sites designated General Commercial. The gas station site plan and building layout were reconfigured and refined in coordination with planning staff following the initial application in order to accomplish the following objectives:

- To optimize vehicular and pedestrian circulation by placing driveways further from the street corner
- To add a more usable public sidewalk with street trees in grates on the frontage for improved connectivity on Niles Canyon Road
- To provide landscaping in excess of the City standard
- To add a wall buffering site activities as well as existing road noise from the neighborhood to the southeast

- Generally, to balance providing a needed service in the neighborhood that would be compatible with the adjacent use patterns and available for passers-by to use while commuting.

Lighting and signage would be subject to review to prevent offsite glare while providing safety.

Community Character Policy 4-3.5: Franchise Architecture – Require the architectural character of drive-through businesses, fast-food restaurants, chain stores, gas stations, and similar franchise businesses to be designed with sensitivity toward context, particularly in Town Centers and other areas with historic character. The materials, color treatment, roof lines, building mass and configuration, and other design elements should avoid corporate or formulaic architecture.

Analysis: As noted, the proposed architectural materials (heavy use of brick, inclusion of recessed bays and projecting trellises, and tile insets combined with systems of reveals) and building placement (at the street) would be evocative of Niles' design styles while not creating a false sense of historic character in a location that is somewhat disconnected from the core of the Niles Town Center. While the intended user is a gas station with very functional purposes and with a common brand, the architecture has been carefully tailored to the site rather than the applicant using an off-the-shelf building and applying falsely-applied materials to attempt to blend in.

Community Character Policy 4-6.2: Construction and Alteration within Historic Areas – Require new construction . . . located within a designated HOD to be subject to review and approval by the Historic Architectural Review Board (HARB).

Community Character Policy 4-6.5: Design Compatibility – Preserve the architectural continuity and design integrity of historic districts and other areas of strong architectural character. New development in such areas does not need to replicate prevailing architectural styles exactly but should be complimentary in form, height, and bulk.

Analysis: The project site is located within the Niles HOD, but is outside of the Niles Commercial Core Area. The design would be complimentary to the prevailing architectural style and materials, but does not attempt to replicate it. HARB reviewed the proposed project and recommended approval to the Planning Commission on March 14, 2018.

Zoning Regulations

The subject site is located within a General Commercial (C-G) zoning district, within which gasoline service stations and car washes are both conditionally permitted uses subject to Planning Commission review and approval. The table below outlines the project's consistency with applicable development standards in the C-G zoning district.

<i>Development Standard</i>	<i>C-G District Requirements</i>	<i>Proposed Project</i>	<i>Complies? Yes/No</i>
Floor Area Ratio (FAR)	0.3	0.185	Yes
Yard Widths			
Front	0	0	Yes
Interior Sides/Rear	10 feet	15 feet	Yes
Building Height	35 feet maximum	25 feet, 9 inches	Yes

Parking: Per FMC Chapter 18.183, commercial uses require 3.3 parking spaces per 1,000 square feet of commercial space, or 13 spaces for the 4,000 square feet of convenience store and retail space. A gas station requires five parking spaces, and a car wash requires 2.5 parking spaces per bay, for a total of 10 additional parking spaces. The total required parking would, therefore, be 23 parking spaces. The proposed site plan includes 33 parking spaces, including 18 standard spaces, 12 fueling spaces, which count toward meeting the parking requirement, and miscellaneous accessible parking and electric vehicle charging spaces. The proposed parking would be in excess of standard parking requirements.

Gasoline Service Station Regulations: In accordance with FMC Section 18.190.190, applications for gasoline service stations are required to meet additional development criteria applicable to this specific use. In addition to requiring that the use be permitted based upon underlying zoning, certain locational, minimum site area, and operational standards apply as follows:

- The site must not be immediately adjacent to public or quasi-public uses such as schools, childcare facilities, religious facilities, parks and libraries.
- Minimum lot area is 22,000 square feet, with 120 feet of roadway frontage on at least one street.
- Driveways must be coordinated as part of the total circulation system for the area.
- Gas stations at street intersections may be required to install call detectors for vehicles exiting the establishment.
- Landscaping is required to cover at least 20 percent of the site.
- A masonry wall and six feet of landscaping is required when adjacent to residential uses.
- Auto service uses are required to be within a building.
- No exterior sales are allowed.
- Siting and architectural character is required to be compatible with the visual character of the surrounding area in terms of material and color treatment, roofline, building mass and configuration, and other elements so the architectural continuity is achieved.
- A Master Sign Program is required.
- Other uses, which may include car washes, convenience and food stores, equipment rentals, and towing services must be compatible and specifically listed.

The proposed gasoline service station and car wash, which are conditionally permitted uses in the underlying zoning, would comply in all respects with the above use-specific standards. At 1.36 acres, the proposed gas station site is approximately three times larger than the minimum site area. The site is not immediately adjacent to any public or quasi-public uses, and, while across the highway from a park, the service station canopy would be located at the rear of the site and at a lower height than the primary building. Driveways have been strategically located at the furthest extent from the street corner. The applicant has proposed to cover 30 percent of the site with landscaping, which would be well in excess of the 20 percent minimum standard. A masonry wall with perimeter landscaping in excess of six feet is proposed along the rear property line adjacent to residential uses. No onsite auto services are proposed, and a tow truck parking space is therefore not necessary. In addition to the gasoline service station, car wash and convenience store, the applicant proposes to permit commercial uses that are otherwise allowable in the G-C zoning district as long as their parking requirement is less than the available parking, which is planned at an average of five parking spaces per 1,000 square feet of building area. This may include certain banks and personal services in addition to retail shops. A Master Sign Program would be required prior to establishment of the facility. Architectural style and site design is further described below.

Design Analysis

The proposed project site is located within the Niles HOD. Per Fremont Municipal Code Section 18.135.050(a), new development within the HOD is subject to prior review and recommendation by HARB using generally applicable design guidelines and the specific *Niles Design Guidelines and Regulations* under FMC Section 18.135.080. The *Niles Design Guidelines and Regulations* govern in case of conflict with general guidelines. Therefore, the Discretionary Design Review Permit for this project uniquely relies on both the *Citywide Design Guidelines* and the *Niles Design Guidelines and Regulations*. It should be noted that the *Niles Design Guidelines and Regulations* explicitly apply to the "commercial properties within the core area of the Niles Historic Overlay District." The subject property is located well outside of the Commercial Core Area at the easternmost edge of the HOD and, thus, the guidelines are not applicable to the project site. Nevertheless, the *Niles Design Guidelines and Regulations* provide suggestions for new construction outside the Commercial Core Area but within the HOD and are intended "to assist in conservation and revitalization of commercial properties located in the HOD." The discussion below addresses both the *Citywide Design Guidelines* and *Niles Design Guidelines and Regulations*.

Site Development: The *Citywide Design Guidelines* require commercial space to be located to provide continuity of the commercial presence along a street frontage and to be oriented towards the street and major pedestrian or plaza areas. Additionally, parking areas should not be the dominant visual element of the site or streetscape. In response to this, the proposed development would locate the retail and convenience store component of the project along the frontage of Niles Canyon Road and Mission Boulevard creating a pedestrian oriented human scale environment along the street with access from the sidewalk to the retail spaces. The parking area as well as the fueling canopy would be located behind the building away from public views to minimize the prominence of the auto uses in the design. The site design features described herein would also be consistent with *Niles Design Guidelines* relating to front setbacks, which are encouraged to be located at the front property line, and location of parking, which is encouraged behind businesses so as not to intrude upon the historic townscape and pedestrian character of the HOD.

Building Design, Architectural Design, Materials, and Color: The three structures, which would be within the maximum height and within the setbacks prescribed by the C-G zoning district, would be oriented according to their purposes and appearance. The primary building would hold the street corner with a minimum setback, helping to screen the more functional fuel station canopy to the rear. The car wash would be set back and angled due to the necessity for vehicles to exit the site. All structures would contain similar design elements and would be sized according to their purposes.

Use of brick, roof and wall tile, cement plaster, and window systems are well-thought out, with materials changing at logical corners and wall planes. Niles' heritage includes a history of brickmaking and use of decorative tile. The proposed brick color would be reviewed by staff to ensure that it is consistent with rich local brick colors specified in the *Niles Design Guidelines* and found within Niles. The generous use of appropriate brick on corner buildings would be consistent with the guidelines, as would be the decorative use of tile within lightly troweled cement plaster, and substantial aluminum windows and doors.

Landscape: Walkways have been well-designed to allow convenient passage of foot traffic throughout the site and to the street. A variety of trees, understory planting, and appropriate fencing would make the site aesthetically pleasing to the eye. Screening and softening of buildings would be accomplished by use of trellises on the wall over shrubs at the base. Gooseneck lighting on the buildings would provide charm and function, while the vehicular circulation areas would be sufficiently lit for a balance of safety and code conformance.

The intent of the *Niles Design Guidelines* with respect to landscaping primarily is to retain existing mature trees and encourage consistent plantings, including specimen trees to define edges and focal areas. The project site does not have mature trees to preserve, though new street trees chosen for adaptability to tree grates, appropriate size, and maintainability have been included. Within the site, the landscape plan is conceptual in nature, and staff would continue to work with the developer to encourage a balance of water conservation and appropriate tree and plant selection.

Context and Character: Overall, the *Niles Design Guidelines* call for contextual design, taking into account both their immediate and larger context. As noted above, the site upon which this development is proposed is located outside of the Commercial Core Area, in an area which does not contain structures worthy of emulating. Instead, the general guidelines have been used to inform architecture and site planning of this functional use that is evocative of Niles and complementary, while not attempting to convey a false sense of history.

The *Niles Design Guidelines* outline major characteristics of the HOD, which include a variety of building types, distinctive roofline profiles, unified commercial frontage, and contextual design that provides for one-of-kind styles for corner buildings. The project site, while outside of the Commercial Core Area, provides an opportunity for a distinctive, unique, signature building that would improve the aesthetics at this corner. As an individual building within an island of C-G-zoning, there is no "unified commercial frontage" to create or tie into and, thusly, it is appropriate to design it alone in space with compatible architectural style to Niles proper.

Outdoor Areas: The intent of the outdoor vision for Niles includes retaining panoramic views to the hills, and encouragement of outdoor dining. The proposed use would be located on a high-traffic street corner not conducive to outdoor dining, though dining could be located on interior walkways, depending upon future uses. Defensible space would be included via eyes on activity areas within the site, both from the canopy to the building entries, and from the street frontage to the building edges.

Parking Facilities: The *Niles Design Guidelines* call for safe, clean, and adequate parking and also require generally that parking areas be located behind businesses. The project site is not within the Niles parking district and, thus, is required to provide its own parking, which it would do as required in a configuration primarily to the rear of the primary buildings on the site. Recycling containers are also encouraged in parking areas in addition to garbage containers. In addition, lights on buildings (gooseneck lights) and parking lot lights (decorative lamps compatible with the streetscape) would be included.

Areas for Service, Loading, and Mechanical Equipment: There are no loading or service areas that would have an objectionable design within the project site. Consistent with *Citywide Design Guidelines*, loading, storage and service facilities must be consistent in design with the architecture of the main building. Delivery would be from the internal parking area on the site. A landscape area within the site would contain various service equipment, including the trash enclosure, a propane tank to its rear, and an

air/water and vacuum station and parking area for tire pressure, emergency fluid needs, and vehicle cleaning purposes.

Design Styles: The intent of the design styles outlined in the *Niles Design Guidelines* is the identification, retention, and preservation of historic buildings, but not necessarily the repetition or reproduction of these styles outside of the Commercial Core Area. The guidelines note that building widths of the Commercial Core Area were dictated by narrow parcel sizes and the eclectic design styles were dictated by date of construction. These commercial building design styles range from mid-block commercial, false-front stand-alone, commercial block corner buildings, to low stucco vernacular buildings and small-scale industrial buildings. The corner location is not within the Commercial Core Area and it would, therefore, not be historically correct to create an artificial narrow block pattern within the site or to create an architectural style that attempts to forcefully recreate or mimic a style that is not in context with surrounding development at the subject site. Instead, the corner building would be responsive to its own site, but would adapt the franchise to the context and utilize a combination of complementary materials, including brick, tile inset into cement plaster, and recessed bays, that have been used on multiple sites within the Commercial Core Area over many decades of changing styles.

Building Form and Height: While the intent of the *Niles Design Guidelines* is to retain existing building form and height relationships, and the profile along the street front, the site in question is not on that main street in the Commercial Core Area. Nevertheless, the buildings would contain a variety of interesting roof forms, with a parapet, sloped roof, and small tower on the corner building. At 25 feet maximum, the building would provide enough bulk to make a statement and hold the corner at a height similar to those found in Niles, while not being uniquely larger than is typical for a commercial building in the HOD. The roof design breaks would relate to the individual commercial suites and to the car wash tunnels, with the distinction that the corner roofline would be relatively lower than the sides in order to prioritize architectural character and visual prominence of the building from the most common and longer-duration views toward the site from the street sides, and to emphasize and maintain visibility to Niles Canyon beyond when arriving at the intersection. Walls would be well-decorated and visually interesting. Standard City regulations would require roof-top screening of any mechanical equipment.

Facades and Storefronts: The *Niles Design Guidelines* for storefronts primarily dictate blending of new and existing storefronts, which would not apply in this case except that, within the project, the variety of forms would be harmonious. Storefront height would be appropriate. Storefronts would be recessed and indirect lighting in the form of goosenecks would be provided. Because the primary use of the property would be a gasoline service station and car wash, the primary entries would be located internally to the site rather than to require the primary demographic served—passenger vehicles to walk around the building to access services from entries facing the two adjacent streets. Nevertheless, the corner design is preferable to setting the building back off the street and creating an entry that would be viewed across the parking lot. In addition to the functional reason for the proposed building access, the site would also not be conducive to having a primarily pedestrian orientation due to its relative isolation from residential uses. This is also reflected in the relatively contemporary window systems that would serve the use in proximity to the glare and noise of the two state highways that traverse the site frontage. However, the inset combined with the softening effect of the trellises would reduce the importance of the windows and emphasize the brick surfaces.

Awnings: The generous trellis work that is proposed within inset bays and along the corner radius would provide an appropriate alternative to mimicking awning styles in the Commercial Core Area, and would be a valid expression of more contemporary architecture, while being compatible with other materials in use within the design.

Commercial Signs and Lighting: The City requires all new gasoline service stations and multi-tenant buildings to acquire a Master Sign Program subject to review for conformance with applicable standards. In this case, a Master Sign Program for the site, including sign lighting proposals, would be subsequently reviewed. Any signs shown on the plans at this time should be considered diagrammatic in nature and subject to separate review.

Circulation: The project would take access from three proposed driveways—two on Mission Boulevard, and one on Niles Canyon Road. Staff worked with the applicant to push these driveways away from the street corner in order to discourage cut-through traffic and to improve safety with respect to existing traffic patterns. Within the site, a system of driveways properly connects prospective patrons among the various uses and back to the public street. Because left turns would not be prudent in proximity to the left turn

lane on westbound Niles Canyon Road, reinforcement of the existing traffic pattern is proposed in the form of a new median coordinated extensively with Caltrans personnel.

FINDINGS FOR APPROVAL

Conditional Use Permit Findings

Pursuant to FMC Section 18.230.060, in order to approve a Conditional Use Permit, the Planning Commission must make the following findings:

(a) *The proposed use is consistent with the general plan and any applicable community or specific plan;*

Analysis: The existing land use designation for the property is General Commercial and the zoning is General Commercial within the Hillside and Historical Overlay Districts, which would allow the proposed service uses subject to approval of a Conditional Use Permit and Discretionary Design Review Permit as discussed herein. In addition, the site and building design is in conformance with General Plan goals and policies related to avoidance of franchise architecture, treatment of gateway, and other design policies as enumerated within the staff report.

(b) *The site is physically suitable for the type and density or intensity, as applicable, of the proposed use;*

Analysis: The site is physically suitable to the proposed use given that it would be located at the intersection of two major roadways in an area underserved by the proposed commercial use. Furthermore, the proposed project would meet development regulations as described in the staff report.

(c) *The design, location, size, and operating characteristics of the proposed use are compatible with development in the vicinity and in the zoning district; and*

Analysis: As enumerated in the staff report, the site design, architecture, and operation of the development of this corner site that would be separated from its neighbors with respect to access and buffered adequately, would be appropriate for the vicinity and the zoning district.

(d) *The proposed use would not be detrimental to the public health, safety, or welfare of persons or property in the vicinity or the zoning district in which the use would be located.*

Analysis: A gas station on a corner site designed and developed in accordance with the Zoning Ordinance requirements and consistent with all other applicable regulations would not be detrimental to public health, safety, or the welfare of persons or property in the vicinity, or the C-G zoning district because, as described in the staff report, it has been well-designed, it will be required to comply with applicable design regulations for gas station tanks, the use is of an appropriate balance of intensity, and would be adequately buffered from neighboring properties.

Discretionary Design Review Findings

Pursuant to FMC Section 18.235.060, in order to approve a Discretionary Design Review Permit, the Planning Commission must make the following findings:

(a) *The proposed project is consistent with the general plan, any applicable community or specific plan, planning and zoning regulations, and any adopted design rules and guidelines.*

Analysis: The proposed project would be consistent with the General Plan, zoning regulations, and design rules and guidelines as enumerated within the staff report.

(b) *The project's architectural, site, and landscape design will not unreasonably interfere with the use and enjoyment of adjacent development nor be detrimental to the public health, safety, or welfare.*

Analysis: The proposed commercial facility with a gas station and car wash would be designed with due regard to the public health, safety, and welfare, and has been designed so as not to interfere with adjacent development in that the commercial uses are buffered adequately from residential uses to the southeast, safely provide connectivity to adjacent streets, and development would be required to follow established building and safety regulations.

CITY FEES

Development Impact Fees will be required for the project, and would be collected at the fee rates in effect at the time of building permit issuance. The project would be eligible for an impact fee credit for structures existing onsite after the implementation of the City's Impact Fee Ordinance effective May 1991.

ENVIRONMENTAL REVIEW

This project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15332, Infill Development Projects, which exempts in-fill development when the project would be consistent with the General Plan and Zoning Ordinance; proposed development would occur on a site no greater than five acres substantially surrounded by urban uses; the site has no habitat value for endangered, rare or threatened species; approval would not result in significant effects relating to traffic, noise, air quality and water quality; and the site is adequately served by utilities and public services.

As documented in the staff report, the project would be consistent with the General Plan and Zoning Ordinance. The 1.36-acre site is surrounded by existing public streets and urban development, and does not provide habitat for endangered, rare or threatened species. Standard development requirements for resource protection contained in FMC Section 18.218.050(b) (Biology, Special-Status Species) would be included as conditions of approval and implemented with project development. These standard requirements would ensure that there would be no impacts to burrowing owls and nesting birds. The proposed project would not have significant effects relating to traffic. Likewise, given the small size of the project at only 4,000 square feet of commercial use, two wash bays, and six double-sided gas pumps, the nature of the project and similar characteristics to the range of urban development permitted through the zoning, the project would not have noise, air quality or water quality impacts. Hours of construction would be regulated per FMC Section 18.160.010 to address short-term noise during construction, the standard development requirements contained in FMC Section 18.218.050(a) (Air Quality) would be included as conditions of approval and implemented during project construction to address short-term air quality impacts. The project would implement the City's stormwater runoff requirements. Finally, there are existing utilities and public services available to serve the site, including but not limited to: water, sanitary sewer, storm water facilities, electricity, natural gas, roadways, and transit

Traffic Impact Analysis

During project review, staff identified the need for the applicant to demonstrate that traffic associated with the proposed use would be consistent with the assumptions of the General Plan. A qualified traffic consultant (Hexagon Traffic Consultants) prepared a Traffic Impact Assessment (TIA) (See Informational Enclosure 3) that counted existing trips in the vicinity of the site, analyzed the General Plan traffic assumptions for the site and vicinity, and modeled the impact of the proposed project on nearby roadways compared to what the General Plan assumed. The TIA identified a significant project impact at the intersection of Mission Boulevard and Niles Canyon Road under Cumulative with Project Conditions, similar to the General Plan FEIR. The significant and unavoidable cumulative impact identified in the FEIR is for the same horizon year (2035) as analyzed in the TIA report. The TIA actually shows lower average vehicle delay than the General Plan FEIR, demonstrating that the project would not cause an impact not modeled and accepted. The TIA volumes for the 2035 Cumulative No Project conditions are identical to the 2035 General Plan FEIR volumes. However, the analysis in the General Plan FEIR did not include the westbound right-turn phase overlap that currently exists at the intersection while the TIA does include the overlap. That fact largely explains why the intersection actually shows less average vehicle delay in the TIA when compared to the FEIR. The project's traffic impact would be consistent with the General Plan FEIR.

PUBLIC NOTICE AND COMMENT

Public hearing notification is applicable. A total of 62 notices were mailed to owners and occupants of property within 300 feet of the site on April 13, 2018. A Public Hearing Notice was also published by the

Tri-City Voice on April 10, 2018.

RECOMMENDATION

1. Hold public hearing.
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15332, Infill Development Projects, because the project would be consistent with the General Plan and Zoning Ordinance; proposed development would occur on a site no greater than five acres substantially surrounded by urban uses; the site has no habitat value for endangered, rare or threatened species; approval would not result in significant effects relating to traffic, noise, air quality and water quality; and the site is adequately served by utilities and public services. Additionally, for reasons stated in the staff report, there are no anticipated project-specific significant effects which are peculiar to the project or its site.
3. Approve the Conditional Use Permit PLN2016-00262 as shown in Exhibit "A," based upon the findings and subject to the conditions in Exhibit "B."
4. Approve the Discretionary Design Review Permit PLN2016-00262 as shown in Exhibit "A," based upon the findings and subject to the conditions in Exhibit "B."

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**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF APRIL 26, 2018**

CALL TO ORDER: Chairperson Dorsey called the meeting to order at 7:00 p.m.

PRESENT: Chairperson Dorsey, Commissioners Cavette, Karipineni, Leung, McDonald, Reed, Steckler

ABSENT: None

STAFF PRESENT: Wayne Morris, Assistant Planning Manager
Erik Ramakrishnan, Deputy City Attorney
Joel Pullen, Senior Planner
Bill Roth, Associate Planner
Kim Salazar, Recording Clerk
Chavez Company, Remote Stenocaptioning
Napoleon Batalao, Video Technician

APPROVAL OF MINUTES: **Commissioner Leung** moved to approve minutes for the regular meetings of March 22 and April 12, 2018 and **Commissioner McDonald** seconded. Motion carried unanimously with Vice Chairperson Karipineni abstaining, due to her absence from both meetings.

DISCLOSURES: **Commissioner Cavette** drove around the sites of Items 1 and 2.
Commissioner Leung drove around the sites of Item 1 and 2.
Commissioner McDonald drove around the sites of Items 1 and 2, and met with the applicant of Item 1.
Vice Chairperson Karipineni drove the sites of Items 1 and 2
Commissioner Steckler walked the properties of Items 1 and 2.
Chairperson Dorsey drove by Items 1 and 2, and met with the applicant of Item 1.

Timestamps from the video webcast are listed below each Public Hearing Item Number and are in hours format, as follows: (hours:minutes:seconds). Video webcasts of Planning Commission meetings can be found at: <https://fremontca.viebit.com/#>

CONSENT CALENDAR None

**PUBLIC/ORAL
COMMUNICATIONS** None

PUBLIC HEARING ITEMS

- Item 1. **MISSION CHEVRON – 38010 Mission Boulevard - PLN2016-00262** – To
(00:05:12) 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.

Assistant Planning Manager Wayne Morris introduced the item.

Senior Planner Joel Pullen gave a brief presentation and responded to questions from the Commission. **Noe Veloso**, Principal Transportation Engineer for the City of Fremont, responded to questions related to traffic in proximity to the project.

Jim Rubnitz, representing the applicant/business owner, spoke briefly to the project, in addition to the following individuals:

- **Brett Walinski**, Principal with Hexagon Transportation Consultants, Inc.
- **Muthana Ibrahim**, President and CEO of MI Architects, Inc.

Chairperson Dorsey opened the public hearing.

Joe Johnston, Fremont resident, asked about the sound wall and the hopeful removal of an existing tree, adjacent to his property on Sycamore Street.

Jim Rubnitz responded that the sound wall would be a six-foot concrete masonry unit (CMU), and that the dryers for the carwash would be at least 15 feet from the sound wall. He assured Mr. Johnston that they would adhere to the City's requirement with regards to decibel levels and would try to accommodate his request in the removal of the adjacent tree.

Chairperson Dorsey closed the public hearing.

Commissioner Cavette expressed concern over the proximity of the building to the corner of Mission Boulevard and Niles Canyon Road, saying she would prefer that the building be set back farther from Mission Boulevard.

Commissioner Reed moved to approve staff recommendation, including the Gold Sheet (attached), and encourage the applicant to include a second electric vehicle charging station and to explore the possibility of repositioning the commercial/retail building farther back. **Commissioner Steckler** seconded.

Commissioner Cavette asked if Commissioner Reed would accept a friendly amendment, requiring Caltrans to approve the two left turn lanes on the north side of the property (one exiting the property and the other allowing entrance onto the property) prior to the issuing of a building permit. **Commissioner Reed** declined, saying he was loath to make it a condition of approval, as the applicant indicated that Caltrans would not commit to the reconfiguration of lanes prior to approval of the plans.

IT WAS MOVED (REED/STECKLER) AND CARRIED BY THE FOLLOWING VOTE (6-1-0-0-0) THE PLANNING COMMISSION – HELD PUBLIC HEARING;

AND

FOUND THAT THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PER CEQA GUIDELINES SECTION 15332, INFILL DEVELOPMENT PROJECTS, BECAUSE THE PROJECT WOULD BE CONSISTENT WITH THE GENERAL PLAN AND ZONING ORDINANCE; PROPOSED DEVELOPMENT WOULD OCCUR ON A SITE NO GREATER THAN FIVE ACRES SUBSTANTIALLY SURROUNDED BY URBAN USES; THE SITE HAS NO HABITAT VALUE FOR ENDANGERED, RARE OR THREATENED SPECIES; APPROVAL WOULD NOT RESULT IN SIGNIFICANT EFFECTS RELATING TO TRAFFIC, NOISE, AIR QUALITY AND WATER QUALITY; AND THE SITE IS ADEQUATELY SERVED BY UTILITIES AND PUBLIC SERVICES. ADDITIONALLY, FOR REASONS STATED IN THE STAFF REPORT, THERE ARE NO ANTICIPATED PROJECT-SPECIFIC SIGNIFICANT EFFECTS WHICH ARE PECULIAR TO THE PROJECT OR ITS SITE;

AND

APPROVED THE CONDITIONAL USE PERMIT PLN2016-00262 AS SHOWN IN EXHIBIT “A,” BASED UPON THE FINDINGS AND SUBJECT TO THE CONDITIONS IN EXHIBIT “B;”

AND

APPROVED THE DISCRETIONARY DESIGN REVIEW PERMIT PLN2016-00262 AS SHOWN IN EXHIBIT “A,” BASED UPON THE FINDINGS AND SUBJECT TO THE CONDITIONS IN EXHIBIT “B.”

The motion carried by the following vote:

AYES: 6 – Dorsey, Karipineni, Leung, McDonald, Reed, Steckler

NOES: 1 – Cavette

ABSTAIN: 0

ABSENT: 0

RECUSE: 0

Chairperson Dorsey called for a brief recess at 8:30 p.m. and reconvened the meeting at 8:37 p.m.

- Item 2. **BEARD COMMON – 33650 Beard Court - PLN2016-00392** - To consider a
(01:37:25) 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.

Assistant Planning Manager Wayne Morris introduced the item.

Associate Planner Bill Roth gave a brief presentation and responded to questions from the Commission.

Commissioner McDonald expressed concern over the proximity of Interstate 880 to the project site and its effects on air quality.

Arvind Goel, applicant, gave a brief presentation and spoke specifically to the history of the project site.

Chairperson Dorsey opened and closed the public hearing, as there were no requests from the public to speak.

Commissioner Leung moved to approve staff recommendation and **Commissioner Karipineni** seconded. Motion carried.

IT WAS MOVED (LEUNG/KARIPINENI) AND CARRIED BY THE FOLLOWING VOTE (6-1-0-0-0) THE PLANNING COMMISSION – HELD PUBLIC HEARING;

AND

RECOMMENDED THAT THE CITY COUNCIL:

FIND THE PROJECT IS CATEGORICALLY EXEMPTED FROM THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PER CEQA GUIDELINES SECTION 15332, INFILL DEVELOPMENT PROJECTS;

AND

DETERMINE THAT WHILE AN OUTDOOR LDN OF 60 DB(A) OR LOWER IN THE ACTIVE RECREATION AREAS AT THE REAR OR SIDE YARDS OF THE NEW HOUSES CANNOT BE ACHIEVED AFTER THE APPLICATION OF APPROPRIATE MITIGATIONS, AN LDN OF 65 DB(A) IS PERMITTED FOR THESE AREAS FOR THE REASONS DESCRIBED IN THE STAFF REPORT;

AND

INTRODUCE AN ORDINANCE AMENDING PLANNED DISTRICT P-78-3 TO ALLOW THE DEVELOPMENT OF FIVE SINGLE-FAMILY DETACHED HOUSES ON SEPARATE LOTS WITHIN THE 0.6-GROSS-ACRE PROJECT SITE, AS DEPICTED ON ENCLOSURE EXHIBIT “A” (PLANNED DISTRICT AMENDMENT MAP), BASED UPON THE FINDINGS AND SUBJECT TO CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT “D;”

AND

APPROVE VESTING TENTATIVE TRACT MAP NO. 8333 AND PRIVATE STREET AS SHOWN IN EXHIBIT “C,” BASED ON THE FINDINGS AND

SUBJECT TO THE CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT "D;"

AND

APPROVE THE PROPOSED REMOVAL AND MITIGATION FOR SIX PROTECTED TREES PURSUANT TO THE CITY'S TREE PRESERVATION ORDINANCE, BASED UPON FINDINGS AND CONDITIONS SET FORTH IN EXHIBIT "D;"

AND

DIRECT STAFF TO PREPARE AND THE CITY CLERK TO PUBLISH A SUMMARY OF THE ORDINANCE.

The motion carried by the following vote:

AYES: 6 – Dorsey, Cavette, Karipineni, Leung, Reed, Steckler
NOES: 1 – McDonald
ABSTAIN: 0
ABSENT: 0
RECUSE: 0

DISCUSSION ITEMS

MISCELLANEOUS ITEMS

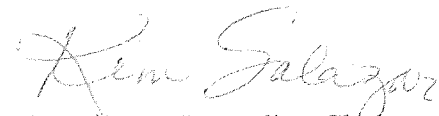
Information from Commission and Staff:

- Information from staff: **Assistant Planning Manager Wayne Morris** stated that the next Planning Commission meeting was scheduled for May 10, 2018.
- Actions from City Council Regular Meetings: None
- Information from Commission: **Chairperson Dorsey** expressed appreciation to the staff for providing hardcopies of the PowerPoint presentations and requested that to continue.

ADJOURNMENT

Meeting adjourned at 9:15 p.m.

SUBMITTED and APPROVED BY:



Kim Salazar, Recording Clerk
Planning Commission



Wayne Morris, Secretary
Planning Commission



NOTES/CORRECTIONS for the April 26, 2018
PLANNING COMMISSION MEETING

**Modifications appear in italics, new text is underlined, and deleted text appears as ~~strikethrough~~.*

Item 1. MISSION CHEVRON – 38010 MISSION BLVD - (PLN2016-00262)

Staff requests that the following inadvertently omitted technical conditions be incorporated into the Conditions of Approval:

Conditions of Approval:

Conditions to be satisfied prior to Building Permit issuance:

1. **Improvement Agreement:** The public improvements conditioned as part of this entitlement requires the execution of an Improvement Agreement that guarantees the completion of the public street improvements to the satisfaction of the Director of Public Works. The Improvement Agreement shall be fully executed prior to issuance of Building Permit. This agreement includes engineered plans prepared by the applicant's consultant, reviewed and approved by the City, surety (Faithful Performance, Labor and Material and Warranty) and insurance. A separate encroachment permit is required for all work in the public right of way.
2. **Street Improvements either to be constructed or included with the Improvement Agreement:**
 - a. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works. Improvements shall include but are not limited to the following: curb & gutter, sidewalk, asphalt pavement, streetlights, fire hydrants, street trees, water, sewer and storm drainage facilities, joint trench facilities, signing and striping, and accessible ramps.
 - b. Developer shall install median on Niles Canyon Road to the satisfaction of Caltrans and the Director of Public Works.
 - c. Developer shall be responsible to remove and replace curb, gutter, and sidewalk damaged prior to or during construction of the proposed project.
 - d. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the approved street improvement plans.
3. **Right-of-Way Dedication:** Developer shall dedicate the right-of-way needed to accommodate the ultimate street configuration along the project frontages on Mission Boulevard and Niles Canyon Road to the satisfaction of the Director of Public Works.
4. **Caltrans Encroachment Permit:** The developer shall apply for and obtain a Caltrans (State) encroachment permit for all improvements within the State right-of-way.

5. **Public Service Easement.** Developer shall dedicate a public service easement on Mission Boulevard and Niles Canyon Road to the satisfaction of the Director of Public Works. Project entry and monument signs, bioretention areas, and walls shall not be located within the easement.
6. **Fire Hydrants:** Along the Mission Blvd & Niles Canyon R.O.W., fire hydrant(s) shall be spaced at 300 feet intervals. The distance is measured as the fire engine travels on all-weather surfaces. Fire hydrant head assemblies shall be a Clow Model 860 or equivalent and painted Kelly Moore, Kelguard Safety Yellow.
7. **Grading and Geology:**
 - a. **Coverage Under Statewide Construction General Permit:** Projects involving land disturbance of one acre or more are required to obtain coverage under the “Construction General Permit” (NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities). The applicant must file a Notice of Intent (NOI) to the State Water Resources Control Board (SWRCB), prepare and submit a Storm Water Pollution Prevention Plan (SWPPP), and obtain a Waste Discharge Identification number (WDID). A copy of the NOI must be submitted to the City’s Project Engineer prior to issuance of development permits (including demolition, grading, and building permits).
 - b. **Erosion and Sediment Control Plan:** The project plan set must include an Erosion and Sediment Control Plan (ESCP) sheet showing the Best Management Practices (BMPs) to be implemented to minimize pollutant discharges related to construction activity. The ESCP must show the development site at the stage of maximum land disturbance. A copy of the ESCP and/or SWPPP Plan must be maintained on the project site at all times throughout the demolition/grading/construction process; the ESCP and/or SWPPP must be updated as necessary to show adequate BMPs appropriate for the current stage of the project.
 - c. **The Project site is within the State of California Seismic Hazard Zone for Earthquake Induced Liquefaction.** A geotechnical investigation report addressing the potential hazard shall be submitted and approved by the City’s peer review consultant prior to issuance of the Building Permit. The investigation shall be consistent with the guidelines published by the State of California (CGS Special Publication 117A). Plans shall be designed in conformance with the report.
8. **Stormwater Treatment and Flow Control Facilities:** The Project is required to implement post-construction measures to minimize stormwater pollutant discharges and increases in peak flows in accordance with the requirements of the Municipal Regional Permit (MRP). The Preliminary Stormwater Control Plan provided by the developer as shown in Exhibit A is approved in concept only; the Final Stormwater Management Plan must contain/address all elements of the Final Stormwater Management Plan Checklist (available at www.fremont.gov/swmp). Developer is required to submit engineered plans, details and calculations that demonstrate compliance with Provision C.3 of the Municipal Regional Permit.
9. **Stormwater Treatment Measures Maintenance Agreement:** The project is required to submit a Stormwater Treatment Measures Maintenance Agreement (aka O&M Agreement) for review and approval concurrent with the application for building permits. Template documents and instructions for completing the O&M Agreement may be found at <http://fremont.gov/stormwaterdevelopment>. Submittal of an approved, executed O&M Agreement is required prior to building permit issuance.
10. **Storm:** Developer is required to submit a hydrology map and hydraulic calculations prepared, stamped, and signed by a licensed California Civil Engineer using a design storm of 15-year recurrence interval for primary facilities and 10-year recurrence interval for secondary facilities in accordance with the Alameda County Public Works Agency Hydrology and Hydraulics Criteria to ensure adequate conveyance of storm

run-off from the project site. Off-site construction of storm drainage facilities to mitigate projected flows may be required.

11. **Referrals:** Prior to issuance of the Building Permit the developer shall refer the project to the following agencies for approvals: Alameda County Water District (ACWD); Union Sanitation District (USD); and Caltrans.
12. **Traffic Study:** As required by the Director of Public Works Department, the applicant shall implement recommendations identified in the traffic study dated September 26, 2016, including measures to reduce likelihood of cut-through traffic.
13. **Signing and Striping Plan:** On-site and off-site signing and striping plans shall be approved by the Director of Public Works prior to issuance of building permits. The signing and striping plans must include a general note stating that all signing and striping shall conform to the latest CA MUTCD, Caltrans Standard Plans and Specifications and City of Fremont Standard Details.
14. **Site Distance:** Intersection and driveway design must satisfy adequate sight distances.

RESPECTFULLY SUBMITTED,



WAYNE MORRIS, SECRETARY
PLANNING COMMISSION

Gridley City Council – Regular City Council Meeting Minutes

Tuesday, January 16, 2018; 6:00 pm
Gridley City Hall, 685 Kentucky Street, Gridley, CA 95948

Approved as submitted

"Our purpose is to continuously enhance our community's vitality and overall quality of life. We are committed to providing high quality, cost-effective municipal services and forming productive partnerships with our residents and regional organizations. We collectively develop, share, and are guided by a clear vision, values, and meaningful objectives."

CALL TO ORDER

Mayor Hall called the meeting to order at 6:02 p.m.

ROLL CALL

Councilmembers

Present: Borges, Johnson, Hall
Absent: Davidson, Williams
Arriving post roll call: None

Staff present:

Paul Eckert, City Administrator
Tony Galyean, City Attorney
Juan Solis, Finance Director
Daryl Dye, Public Works/Electric Superintendent
Dean Price, Police Chief
Ross Pippitt, Public Works Supervisor
Trin Campos, City Engineer
Donna Decker, Planning Consultant
Jamie Norton, Division Chief

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hall

INVOCATION

The invocation was provided by Pastor Bill Hammond of the Lighthouse Tabernacle

PROCLAMATIONS - None

COMMUNITY PARTICIPATION FORUM

Mayor Hall opened the forum and seeing no one present wishing to speak, the forum was closed.

ANNOUNCEMENT OF NEW EMPLOYEES AND PROMOTIONS

- a. Introduction of Gridley CalFire Fire Chief Jamie Norton
Retired Division Chief Chris Haile introduced Gridley's new Division Chief to be working with Gridley, Jamie Norton.
Administrator Eckert presented Chief Haile with a plaque of appreciation upon his retirement.
- b. Introduction of new Finance Director Juan Solis

Administrator Eckert gave a brief bio of and introduced new Finance Director, Juan Solis.

c. Oath of Office Finance Director Juan Solis

Mayor Hall administered the Oath of Office to Juan Solis.

d. Introduction of new Police Dispatcher and Police Officer

Lieutenant Smallwood gave a brief bio and introduced new Officer Jared Cooley and new Dispatcher Jazzmine Espitia, administering the Oath of Office to both.

e. Announcement of Police Lt. Promotion Scott Smallwood

Chief Price announced the promotion of Scott Smallwood to Lieutenant and administered the Oath of Office.

Council took a brief refreshment break before re-adjourning and taking up the Consent Agenda.

CONSENT AGENDA

1. City Services Update
2. City Council minutes dated December 18, 2017
3. Resolution No. 2018-R-002 Appointing Primary and Alternate Representative to Northern California Cities Self Insurance Fund Board of Directors
4. Resolution No. 2018-R-001: A Resolution to Enter an Agreement with the State of California Department of Transportation for the Maintenance of Frontage Improvements, Lighting, Landscaping, Irrigation and any other Components within the State Right-Of-Way for the Parcel Located at 1513 Highway 99 (APN 010-200-050) and to Authorize the City Administrator to Execute the Agreement on Behalf of the City Council.

Motion to approve the consent agenda by Vice Mayor Johnson, seconded by Councilmember Borges.

Motion passed, all in favor

PUBLIC HEARING

5. Appeal of Site Development Plan Review No. 4-17, AM/PM, 1646 Hwy 99

Planning Consultant Donna Decker addressed Council, giving a history of the project to this point. She stated the approval issued by the Planning Commission is being appealed tonight, so the approval of the project is now the responsibility of the City Council. A review of the project was given and the items stated in the appeal were addressed. Staff recommended denying the appeal due to among other things, the proposed project has no conflict with its zoning land use designation or the Gridley Municipal Code.

Many proponents for the appeal were in attendance and stood to speak supporting it. These included Gordon Jones, Judy Johnson-Pruitt, Butch Maciel, Kal Bhullar, Colleen Bowden, Jeff Palmer, Steven Lally, Chad Morgan, Lynn Spencer, Jaswinder Kaur, Ricky Donahoe, and Zachary Torres. There were a few opposing the appeal that included Jack Bequette, JT Kullar and Ken Wold.

The Mayor closed the public hearing. After brief comments from Councilmember Borges and Vice Mayor Johnson, motion to determine the project is categorically exempt per the California

Environmental Quality Act as an Infill Development Project and to deny the appeal and approve Site Development Plan Review 4-17 made by Vice Mayor Johnson, seconded by Councilmember Borges.

ROLL CALL VOTE

Ayes: Borges, Hall, Johnson

Motion passed, 3-0

CITY STAFF AND COUNCIL COMMITTEE REPORTS

Vice Mayor Johnson reported on his meeting at the Butte County Mosquito and Vector Control District

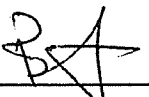
POTENTIAL FUTURE CITY COUNCIL ITEMS - (Appearing on the Agenda within 30-90 days):

Annual Audit Report	2/20/2018
Sewer Pond Improvements and Policies	2/20/2018
General Fund fee study work session	3/5/2018
Mid-Year Budget Update	3/5/2018

CLOSED SESSION - None

ADJOURNMENT

With no further items for discussion, the Council adjourned at 7:55 to the next regular meeting on February 5, 2018



Paul Eckert, City Clerk

EXHIBIT F

Pascoe, Samantha

From: Bill Wolpert <wolpert@sonic.net>
Sent: Tuesday, June 26, 2018 2:51 PM
To: 'Kallen, Christian'
Subject: RE: Sonoma Safeway

Thanks, Christian.

-Bill



GREEN BUILDING ARCHITECTS

William B. Wolpert, Architect
7 Fourth Street, Studio 61
Petaluma, CA 94952
707.789.0822

GreenBuildingArchitects.com
Check out our new website!

From: Kallen, Christian <christian.kallen@sonomanews.com>
Sent: Tuesday, June 26, 2018 2:48 PM
To: Bill Wolpert <wolpert@sonic.net>
Subject: RE: Sonoma Safeway

Hi Bill

Safeway didn't overtly pursue the proposed expansion, but I don't know that they dropped it either. It wasn't well-received.... They may have something cooking still, there was talk that the corner lot might not be a viable location given the public opposition – but the store is on a large property, they may well be looking at another corner of it.

Christian

From: Bill Wolpert [<mailto:wolpert@sonic.net>]
Sent: Tuesday, June 26, 2018 2:43 PM
To: Kallen, Christian <christian.kallen@sonomanews.com>
Subject: Sonoma Safeway

I read your article from August 22, 2016 regarding Safeway's proposed expansion with a 16 pump gas station. Was there a follow-up to that story? Did the project happen?

A similar proposal is pending in Petaluma.

-Bill



GREEN BUILDING ARCHITECTS

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