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July 18, 2023

## ***VIA ELECTRONIC MAIL***

The Honorable Bruce Houdesheldt  
and City Councilmembers  
City of Roseville  
311 Vernon Street  
Roseville, CA 95678

***Re: NRSP PCL WW-40 – Grocery Outlet; File #PL22-0205***

Dear Mayor Houdesheldt and City Councilmembers:

This office represents Protect Roseville Neighborhoods and the Paseo Del Norte Homeowners Association regarding the proposed Grocery Outlet located at 1751 Pleasant Grove Boulevard (File PL#22-0205) (“Project”). Protect Roseville Neighborhoods and Paseo Del Norte Homeowners Association oppose the proposed Project on the grounds that the City of Roseville fails to comply with the requirements of the: 1) California Environmental Quality Act (CEQA), Public Resources Code, section 21000 *et seq.*; 2) the City’s Zoning Ordinance, section 19.768.060(B).

### **A. CEQA REQUIRES WHOLE OF THE ACTION BE REVIEWED**

In an effort to have the proposed project qualify for an infill exemption, the City has “removed” a portion of the development that is before the City Council. The portion removed is identified as Parcel 3. Originally Parcel 3 was designated as a drive through fast food restaurant. However, at the Planning Commission meeting, Associate Planner Sean Morales acknowledged that Parcel 3 will be developed at a future time. (See also May 11, 2023 Staff Report at p. 4.).

CEQA requires that all foreseeable uses of a project, the “whole of the action”, be analyzed in the same environmental review document in order to preclude impermissible “piecemealing” of environmental review. (CEQA Guidelines § 15378; *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 369-370.) Thus, a CEQA project includes “the whole of an action” that has a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and encompasses the activity being approved. (Guidelines, §15378.) A project is not each separate governmental approval when there are several approvals by one agency or review by several agencies. (Guidelines, §15378.) Guidelines section 15126 provides that “[a]ll phases of a project must be considered when evaluating its impact on the environment...”

Thus, CEQA requires that all phases of a project must be considered as the “whole of the action,” so that “environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences.” (*Bozung v. Local Agency Formation Commission of Ventura County* (1975) 13 Cal.3d 263, 283–284, *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577.) It has been a longstanding principle that the project description must include future activities. *Laurel Heights Improvement Association v. Regents of the University of California (Laurel Heights I)* (1988) 47 Cal.3d 376, 399 held that the reasonably foreseeable expansion of a university research facility must be discussed in an EIR, while future activities not currently proposed for approval and not reasonably foreseeable need not be included in the project description or analyzed in the EIR.

In *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 167, the court held that “[t]he division of the shopping center project into two parts constituted an abuse of discretion . . .;” (*See Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577.)

Again, the City staff noted that it is reasonably foreseeable that Parcel 3 would be developed in the future, but elected not to develop that Parcel 3 at this time because the proposed use would require a conditional use permit and thus the remainder of the project would not qualify as an infill exemption. This constitutes a classic example of piecemealing of environmental review. Thus, the City’s approach violates CEQA’s mandate that a large project shall not be divided into little ones because such division can improperly submerge the aggregate environmental considerations of the total project. (*See Bozung v. Local Agency Formation Commission, supra*, 13 Cal.3d at 283-84.)

Additionally, it should be noted that part of the Project also included a tentative map to subdivide the existing parcels into three (3) lots. Thus, Parcel 3 actually remains part of the Project since it is part of the subdivision, yet there is no environmental review for the development of Parcel 3 and the reasonably foreseeable uses for Parcel 3. In support of the fact the it is reasonably foreseeable that Parcel 3 will be developed, the City’s findings for the Tentative Map state that the “the proposed parcels are of sufficient size and shape to accommodate the proposed and future development and are consistent with the applicable zoning and design requirements, as discussed in the Design Review Permit evaluation section of the staff report.” (May 11, 2023 Staff Report at p. 8.)

With regards to Site Planning, the Staff Report states that “Parcel 3 will be developed at a later time.” (*Id.* at 4.) The Staff Report even states “The address for proposed Parcel 3, and building ‘QSR’ on said parcel, shall be addressed 1741 Pleasant Grove Drive.” (*Id.* at 11.) Thus, the Staff Report specifically recognizes that Parcel 3 will be a Quick Service Restaurant (“QSR”). Thus, indicating that it is reasonably

foreseeable that Parcel 3 will be developed as part of the overall project and it will be developed as Quick Service Restaurant.

Also, it should be noted that proposed development for Parcels 1 and 2 involves modifications to the driveways, as well as Pleasant Grove Boulevard and Sun City Boulevard to facilitate eastbound to westbound u-turns on Pleasant Grove Boulevard. (*Id.* at 6.) Additionally, the project included the construction of internal circulation, including 39 parking spaces over the 77 space requirement by code. (*Id.*) Also, these project developments go to support the future development of Parcel 3, furthering the argument that it is reasonably foreseeable that Parcel 3 will be developed.

With respect to Access and Circulation, the Staff Report states that the Design Review Permit evaluation included a short term traffic study for the project and that all recommendations from the report have been incorporated into the project. (*Id.* at 8.) A review of the Fehr & Peers traffic study indicates that the recommendations were based upon a fast-food Restaurant with a drive through window. Thus, the project will already have been developed to accommodate a QSR for the future. (See July 21, 2022 Fehr & Peers' Final Technical Memorandum for Evaluation of Access and On-Site Circulation for Grocery Outlet Retail Center.

Again, the City's purported removal of Parcel 3 from the Project and the acknowledgment that it will be developed in the future constitutes classic piecemealing and violates CEQA's mandate that the whole of the project be reviewed.

**B. THE STAFF REPORT SUPPORTING THE NOTICE OF EXEMPTION CONTAINS AN INCONSISTENT PROJECT DESCRIPTION**

The May 11, 2023 Staff Report and supporting information provides an inconsistent project description regarding Parcel 3. This violates CEQA's mandate that an agency must accurately describe the proposed project. (CEQA Guidelines §15071(a).) "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) CEQA requires a complete project description to ensure that all of the project's environmental impacts are considered. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1450, 1454; see also *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 82.) A curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656; quoting *County of Inyo, supra*, 71 Cal.App.3d at 197-198.) The adequacy of a project description is closely linked to the adequacy of the impact analyses. If the description is inadequate because it fails to discuss an aspect of the project, the environmental analysis will probably reflect the same mistake. (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.3d 713, 722-723.)

While the City states that Parcel 3 has been removed from the Project, the May 11, 2023 Staff Report provides inconsistent statements regarding the Project with respect to Parcel 3. For example, the May 11, 2023 Staff Report identifies the whole area, including Parcel 3 as the “Project site.” (Staff Report, Figures 1 & 2.) Figure 5, however, shows Parcel 3 as a carve-out of the Project. Also, the Staff Report’s proposed findings specifically reference “project site” which in the preceding figures identifies the area that includes Parcel 3 as part of the Project Site.

The Staff Report provides further confusion regarding the Project Description as the Staff Report states “The address for proposed Parcel 3, and building ‘QSR’ on said parcel, shall be addressed 1741 Pleasant Grove Drive.” (*Id.* at 11.) Thus, the Staff Report specifically recognizes that Parcel 3 will be a Quick Service Restaurant (“QSR”).

The Staff Report also identifies the Project Site as approximately 3.1 acres in size. (*Id.* at 1, 10 [total project site is 3.1 acres].) This includes Parcel 3. (*Id.* at 8 [Parcel 1 will be 1.9 gross acres; Parcels 2 and 3 will be each be 0.6 gross acres].) Thus, the Project would be 0.6 acres smaller if Parcel 3 is in fact not part of the Project.

With respect to drainage, the findings state that the project includes the grading and drainage required for development of the parcels. (*Id.*) The Staff Report does not single out Parcels 1 and 2, but states all the parcels. Thus, according to the Staff Report grading and drainage improvements will be made on Parcel 3.

As discussed above, with respect to Access and Circulation, the Staff Report states that the Design Review Permit evaluation included a short term traffic study for the project and ***that all recommendations*** from the report have been incorporated into the project. (*Id.* at 8.) The Fehr & Peers traffic study indicates that the recommendations were based upon a fast-food Restaurant with a drive through window. Thus, the project is to be developed to accommodate a QSR, but the City fails to recognize the QSR as part of this Project. (See July 21, 2022 Fehr & Peers’ Final Technical Memorandum for Evaluation of Access and On-Site Circulation for Grocery Outlet Retail Center.)

As the Staff Report provides confusing and misleading information regarding the Project description approval of the Project at this time would violate CEQA’s mandate that an agency must provide an accurate, stable and finite project description. (*County of Inyo v. City of Los Angeles, supra*, 71 Cal.App.3d at 193.) As discussed above, the uncertainty and ambiguous Project description impacts the City’s environmental analysis. (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra*, 27 Cal.App.3d at 722-723.)

**C. THE PROJECT DOES NOT QUALIFY FOR AN INFILL EXEMPTION UNDER CEQA GUIDELINES SECTION 15332**

Given that the City seeks to piecemeal environmental review and that the Project actually includes the subdivision of Parcel 3 and the preparation for the eventual development of Parcel 3 as a QSR, the Project does not qualify for an infill exemption under CEQA Guidelines section 15332. As such, Protect Roseville Neighborhoods and the Paseo Del Norte Homeowners Association incorporate Protect Roseville Neighborhoods' comments submitted to the Planning Commission.

**D. The Project Does Not Qualify for a Categorical Exemption due to Unusual Circumstances**

CEQA provides that if there is a "reasonable possibility" that an activity will have a significant effect on the environment due to "unusual circumstances," an agency may not find the activity to be categorically exempt from CEQA. (CEQA Guidelines, § 15300.2(c).) The unusual circumstances exception applies when both unusual circumstances and a significant impact as a result of those unusual circumstances are shown. (*Berkeley Hillside Preservation v City of Berkeley* (2015) 60 C4th 1086, 1104.)

In the present case, the unusual circumstances is the placement of a fast-food restaurant adjacent to an existing neighborhood. As discussed above, given the piecemeal environmental review and the ambiguous and uncertain Project description regarding whether a QSR is part of the Project there is "reasonable possibility" that the activity will have a significant effect on the environment due to "unusual circumstances. As such, the City may not find the activity to be categorically exempt from CEQA. Protect Roseville Neighborhoods and the Paseo Del Norte Homeowners Association incorporate Protect Roseville Neighborhoods' comments submitted to the Planning Commission regarding unusual circumstances.

**E. The Project Will Impact an Easement Held by the Nearby Homeowners Association**

The City acknowledges that the HOA possesses an easement across the Project site. According to the Staff Report "it was discovered that there is an access easement that allows residents of Paseo del Norte to use the commercial parcel for ingress and egress." (Staff Report at p. 9.) The easement does not allow ingress and egress of customers from the commercial site onto the private road through Paseo del Norte.

The Project is located on the servient estate. A servient estate is a parcel of land subject to an easement that is and benefits another parcel of land. An easement constitutes a privilege or right of the owner of the dominant easement concerning another parcel of an estate (called a servient estate), and the owner of a servient estate is obligated

not to interfere with that privilege. California property law mandates that servient estate not impact or interfere with the use of the easement on the dominant estate. Thus, the owner of the servient land may make any use of that land that does not unduly interfere with the easement holder's use of the easement.

In approving the Project, the Planning Commission addressed the easement by adopting a condition of approval that provides for speed bumps and signage to prevent store employees and customers from accessing the easement. The Planning Commission also approved an alternative condition of approval that provides for the developer to add bollards to block off vehicular access, except emergency vehicles, between the shopping center and Camino Real Way, so long as the HOA relinquishes its real property rights in the easement. This would replace the condition requiring a speed bump and private road signage. Both conditions, however, unduly interfere with the HOA's property rights.

The speed bump and signage will do little to deter or prevent the businesses' employees (agents) and customers from trespassing on the HOA's easement and entering the HOA's private roads. Moreover, it places the burden on the HOA to enforce its easement against the inevitable vehicle and pedestrian traffic trespass from those seeking an additional ingress or egress from the Project site.

The alternative condition of approval providing for the installation of bollards, however, requires the HOA to relinquish control and rights to the easement. Thus, the Planning Commission has directed that if the bollards are installed, the HOA must relinquish its property rights to the easement in order to address potential impacts from the Project. The result is that the HOA and its members are deprived of their property rights in favor of the development.

Both of these conditions place the burden on the HOA and its members to address Project's impacts with little or no contribution from the developer other than payment for a couple of bollards. As it is the developer's project and it will be the businesses' agents and customers that will be trespassing and violating the easement, it is the developer, as the owner of the servient estate that must take action to prevent the trespass. As proposed by the HOA, the most reasonable and prudent solution is the construction of gate, paid for and maintained by the developer, but controlled by the HOA and its members. The gate would grant ingress and egress to the vehicles owned by the HOA and its members while preventing use by the general public, in particular that by the businesses' agents and employees.

## **F. CONCLUSION**

Based upon the foregoing Protect Roseville Neighborhoods and the Paseo Del Norte Homeowners Association respectfully request that the City Council grant the appeal and reverse the Planning Commission's approval of the Project.

The Honorable Bruce Houdesheldt  
and City Councilmembers  
July 18, 2023  
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Sincerely,

A handwritten signature in blue ink that reads "Donald B. Mooney". The signature is written in a cursive style with a large, looping "D" and "M".

Donald B. Mooney  
Attorney for Protect Our Roseville  
Neighborhoods and Paseo Del Norte  
Homeowners Association

cc: Clients  
City Clerk  
City of Roseville Planning Department