



APPEAL FORM

Name: Protect Our Roseville Neighborhoods Date: 5/17/2023
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Please describe below the action for which this appeal is being filed. (You may attach a separate letter if enough space is not provided.)

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

Protect Our Roseville Neighborhoods hereby appeals the Planning Commission's May 11, 2013 approval of Grocery Outlet located at 1751 Pleasant Grove Boulevard (File PL#22-0205) ("Project"). Protect Our Roseville Neighborhoods opposes the Project on the grounds that the proposed Project 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.

Please see Attached Letter.

Signed: Date: 5/17/23

FOR OFFICE USE ONLY. (Date Stamp Below)
Received by:
Project Being Appealed:
File Number:
Approving Body: Approval Date:

# LAW OFFICE OF DONALD B. MOONEY

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May 17, 2023

## ***VIA ELECTRONIC MAIL***

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***and Facsimile (916) 786-9175***

City Council  
City of Roseville  
311 Vernon Street  
Roseville, CA 95678

***Re: Appeal to the City Council of the Planning Commission's Approval of  
NRSP PCL WW-40 – Grocery Outlet; File #PL22-0205***

Dear Councilmembers:

This office represents Protect Our Roseville Neighborhoods regarding the proposed Grocery Outlet located at 1751 Pleasant Grove Boulevard (File PL#22-0205). Protect Our Roseville Neighborhoods opposes the proposed Project on the grounds that the proposed Project 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. The Project Does Not Qualify for an Infill Exemption Under CEQA Guidelines section 15332***

The proposed Project provides for the construction of a 16,000 square-foot grocery building and a 4,600 square-foot freestanding pad building. The request also includes Tentative Parcel Map to subdivide the existing parcel into three (3) lots.

The City relies upon CEQA Guidelines section 15332, otherwise known as the "infill exemption." Section 15332 states:

Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public

services.

In order for the “infill exemption” to apply, the proposed Project must meet all of the conditions listed in section 15332. As discussed below and in comments submitted by local residents, the proposed Project will result in significant effects to traffic and noise.

First, the Fehr & Peers Traffic Study acknowledges that the grocery store and fast food restaurants were assumed to be standard/typical users and not ultra-popular brands such as In-N-Out Burger, Chick-fil-A, or Trader Joe’s. (Traffic Study at p. 2.) While it is clear that the grocery store will be Grocery Outlet and not Trader Joe’s, nothing in the record indicates that the drive-thru restaurant would not be an ultra-popular brand. Thus, the traffic study essentially acknowledged that it failed to address the possible scenario that would dramatically alter the traffic analysis and traffic impacts. The Traffic Study states that “[t]he findings of this study would not be applicable should users such as these occupy the site.” (*Id.* at 2.) Nothing in the project description, staff report, or conditions of approval limits the development to less-popular brand of fast food. Thus, based upon Fehr & Peers’ study there are potentially significant traffic impacts that were not addressed in the Traffic Study.

CEQA requires that an agency consider the whole of the action. The CEQA Guidelines require that a project description, which is the heart of the EIR, include “*the whole of the action*, which has a potential for resulting in a physical change in the environment, directly or ultimately . . .” (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 369-370 [emphasis added]; CEQA Guidelines, § 15378(a), (c)-(d); *RiverWatch v. Olivenhain Municipal Water District* (2009) 170 Cal.App.4th 1186.) The action reviewed under CEQA is not the approval itself but the development or other activities resulting from the agency’s approval of the project. In preparing an environmental document, an agency may not conceal environmental considerations by focusing on separate parts of the project and ignoring the cumulative effect of the whole action. (*Bozung v. LAFCO* (1975) 13 Cal.3d 268, 283.) Thus, CEQA “cannot be avoided by chopping up proposed projects into bite-sized pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial.” (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1223.) Thus, the Traffic Study needs to address the whole action in terms of a “ultra-popular” fast food restaurant as nothing in the approvals restrict the type of fast-food restaurant that maybe built.

The Traffic Study also recognizes that under the existing plus project vehicle queues in the study area will exceed the available storage. (See Traffic Study at 7 [Table 4].) For the intersections/driveways where the maximum vehicle storage is already exceeded under existing conditions the Project results in additional traffic that only increases the impacts on an already impacted area. (*Id.*)

The Traffic Study also states that additional analysis is needed regarding the long-term feasibility of maintaining the eastbound left/u-turn lane at Driveway 3. (*Id.* at 9.)

The study identifies that the projected increase in traffic on westbound Pleasant Grove Boulevard and expected worsening of operations at the Fiddymment Road/Pleasant Grove intersection. Clearly the present project will contribute to the projected increases and worsening conditions, yet the study fails to provide any further analysis or discussion about the current Project's contributions to these impacts.

With respect to noise impacts the Saxelby Acoustics study fails to adequately address the noise impacts associated with a drive-thru restaurant. The noise study acknowledges is limited to the speaker box, but does not take into consideration noise from the vehicles, including noise from passengers and music or other noise coming from the vehicles. (See Noise Study at 12.)

As for the speaker box, the noise study acknowledges that at nighttime the Project will exceed the City's noise level standards. (*Id.*) To mitigate this impact, the noise study recommends the construction of a 6' sound wall along the western boundary of the quick serve restaurant. A review of the Conditions of Approval indicate that no such sound wall is required.

It should also be noted that the noise study did not address whether an ultra-popular brand of fast food restaurant would result in additional noise. It was clear from the traffic study that an ultra-popular brand would result in a significant increase in traffic. Such an increase in traffic may also result in an increase in noise from additional, cars, passengers, music, etc.

Thus, the City may not rely upon the "infill exemption" under CEQA. Such reliance would violate CEQA and constitute a prejudicial abuse of discretion and be contrary to law. (See Code Civ. Proc. § 1094.5, Pub. Resources Code, § 21168.)

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

CEQA provides that if there is "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 are the placement of a fast-food restaurant adjacent to an existing neighborhood and the potential and as well as the potential prescriptive easement on the property.

When the project presents unusual circumstances, the second question is whether there is "a reasonable possibility of a significant effect on the environment due to "those circumstances." (*Berkeley Hillside, supra*, 60 C4th at 1115.) This question is answered by determining if there is any substantial evidence before the agency would support-a fair argument that a significant impact on the environment may occur. (*Id.*)

The fair argument test requires that an agency “prepare an EIR whenever substantial evidence in the record supports a fair argument that a proposed project may have a significant effect on the environment.” (*Gentry v. City of Murrieta*, (1995) 36 Cal.App.4th 1359, 1399-1400; see *Laurel Heights Improvement Ass’n v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123.) “If there is substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment, an environmental impact report shall be prepared.” (Pub. Resources Code, § 21080(d); § 21151(a. 571.) Thus, an EIR must be prepared “whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact” even if there is substantial evidence to the contrary. (*Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal.App.4th 1333, 1346; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002). Moreover, CEQA requires that “if there is a disagreement among expert opinion supported by facts over the significance of an effect on the environment, [then] the Lead Agency shall treat the effect as significant and shall prepare an EIR.” (CEQA Guidelines, § 15064(b); see *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.Ap.3d 229, 245 (EIR required to resolve conflicting expert testimony).)

As discussed above, the Noise Study did not address whether an ultra-popular brand of fast food restaurant would result in additional noise and it also did not address the noise from passengers and music, etc from the vehicles. Also, it is clear from the Traffic Study that if an ultra-popular brand restaurant is built, there would be in a significant increase in traffic. Given the statements in the traffic study and noise study, a fair argument exists that there are potential impacts associated with the project.

Based upon foregoing, the City’s reliance upon the infill exemption violates CEQA. As such, prior to approving the Project, the City must prepare an environmental document that provides the decision makers and the public with information regarding the Project’s potentially significant environmental impacts.

**C. The Proposed Findings are Not Supported by Substantial Evidence**

Under Finding 2 for the Design Review Permit, the findings ignore the proposed 6’ sound wall for the fast-food restaurant. Given the discussion in the noise study it is quite clear that a sound wall is required to meet the noise standards.

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

The City acknowledges that there exists an easement across the property. 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. The easement does not allow ingress and egress of customers from the commercial site onto the private road through Paseo del Norte.” In approving the Project, the Planning

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Commission addressed the easement by adopting a condition of approval that adds concrete bollards to block off vehicular access, except emergency vehicles, between the shopping center and Camino Real Way instead of adding a speed bump and private road signage. This condition, however, is in exchange for the HOA relinquishing control and rights to the easement. Thus, the Planning Commission has directed that the HOA must give up its property right (an easement is an interest in real property) in order to address potential impacts from the Project. As the Project is located on the servient estate, California property law mandates that servient estate protect the easement and not interfere with the easement on the dominant estate.

Sincerely,

A handwritten signature in blue ink that reads "Donald B. Mooney". The signature is written in a cursive style with a large, looping "y" at the end.

Donald B. Mooney  
Attorney for Protect Our  
Roseville Neighborhoods

cc: Client