EXHIBIT F

FRONTIER
610 Newport Center Drive, Suite 1520
Newport Beach, CA 92660

August 5, 2019

Mr. Christopher Koontz
Planning Bureau Manager
411 W. Ocean Blvd., 3rd Floor
Long Beach, CA 90802

RE: SWC Paramount Blvd. and E. Artesia Blvd., Long Beach, CA

Dear Mr. Koontz:

Frontier Real Estate Investments, LLC is developing the NEC of Atlantic and Artesia which is approximately 1.5 miles west of the proposed project at the SWC of Paramount Blvd. and E. Artesia Blvd. Our retail project is years in the making and we are excited to be part of the many positive things now occurring in North Long Beach. Furthermore, I sit on the board of the Uptown Business Improvement District and was on the UPLAN Taskforce.

We have reviewed the plans submitted by Bridge Development Partners for the SWC of Paramount Blvd. and Artesia Blvd. We are writing this letter to express our support of the project. This development will clean up a blighted corner by replacing a 75-year-old oil refinery with a new and attractive looking building. It will also create hundreds of new jobs for the local community. This will be a benefit to our project and to the overall community as a whole.

We hope that the Planning Commission approves this project.

Please let me know if you have any questions.

Tom Carpenter
949-303-0853

WESTLAND
Real Estate Group
INVEST ▸ DEVELOP ▸ MANAGE

August 8, 2019

Mr. Cristopher Koontz
Planning Bureau Manager
411 W. Ocean Blvd., 3rd Floor
Long Beach, CA. 90802

RE: SWC Paramount Blvd. and E. Artesia Blvd., Long Beach, CA.

Dear Mr. Koontz:

Westland Real Estate Group is developing the location of development which is approximately 2 miles west of the proposed project at the SWC of Paramount Blvd. and E. Artesia Blvd. Our retail project is years in the making and we are excited to be part of the many positive things now occurring in North Long Beach.

We have reviewed the plans submitted by Bridge Development Partners for the SWC of Paramount Blvd. and Artesia Blvd. We are writing this letter to express our support for the project. This development will clean up a blighted corner by replacing a 75-year-old oil refinery with a new and attractive looking building. It will also create hundreds of new jobs for the local community. This will be a benefit to our project and to all the overall community as a whole.

We hope that the Planning Commission approves this project.

Please let me know if you have any questions.

Sincerely,

Yanki Greenspan

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VIA EMAIL AND HAND DELIVERY

September 5, 2019

Richard Lewis, Chair
Mark Christoffels, Vice Chair
Commissioner Ron Cruz
Commissioner Josh LaFarga,
Commissioner Andy Perez,
Commissioner Jane Templin,
Commissioner Erick Verduzco-Vega
Dionne Bearden, Secretary
Planning Commission
City of Long Beach
411 W. Ocean Blvd., Third Floor
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Amy Harbin, Planner
Long Beach Development Services
411 W. Ocean Blvd., 3rd Floor
Long Beach, CA 90802
Amy.Harbin@longbeach.gov

RE: Comment on the Bridge Development Warehouse Project at 2400 E. Artesia Blvd., Long Beach, CA (SPR19-020)

Dear Chair Lewis and Honorable Commissioners:

I am writing on behalf of the Supporters Alliance for Environmental Responsibility ("SAFER") and its members living or working in and around the City of Long Beach concerning the Bridge Development Warehouse Project located at 2400 E. Artesia Boulevard, ("Project") and the Site Review Process. SAFER is a California nonprofit public benefit corporation whose purposes include contributing to the preservation and enhancement of the environment and advocating for programs, policies, and development projects that promote not only good jobs but also a healthy natural environmental and working environment.

After examining the project description, the City of Long Beach's ("City") municipal code, and the California Environmental Quality Act ("CEQA"), Pub. Res. Code section 21000, *et seq*., it is clear that it is premature for the Planning Commission to approve the Project. The City must first undergo the CEQA review process because the site plan review is discretionary, not ministerial, as the City appears to believe. Moreover, because there is substantial evidence that the Project will have a significant environmental effect, the City must prepare an EIR for the Project. Until the City analyzes, discloses, and mitigates the Project's environmental effects, it cannot approve the site plan review.

I. PROJECT DESCRIPTION

Herdman Architecture and Design, on behalf of Bridge Development, submitted an application for the development of a warehouse to the City. The Project proposes to construct a new 415,592 square footage, tilt-up industrial warehouse building including 21,000 square feet of office space, approximately 48 feet in height on a 17.22 acre lot with 433 on-site, at-grade parking stalls, 42 overhead dock doors, and approximately 60,981 square feet of landscaping throughout the site within the General Industrial (IG) Zoning District. As part of the Project, the existing refinery would be decommissioned and removed pursuant to requirements of the Long Beach Fire Department and Regional Water Quality Board.

According to the Notice of Public Hearing, the City is planning to approve the Project without review under CEQA based on the assertion that the project is permitted as a matter of right within the IG Zoning District. As discussed below, the City's determination is incorrect, and the City must conduct CEQA review for this Project.

II. LEGAL STANDARD

A. Ministerial and Discretionary Projects Under CEQA

CEQA only applies to "discretionary projects" unless they are specifically exempted. (Pub. Res. Code §21080(a).) Discretionary projects are those that "require[] the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations." (14 C.C.R. § 15357 ["CEQA Guidelines"]. Ministerial projects, on the other hand, are those in which "decision[s] involving little or no personal judgement by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision." (CEQA Guidelines § 15369.) Unlike discretionary projects, ministerial projects are exempt from CEQA. (Pub. Res. Code §21080(b)(1).) If a project's approval involves both discretionary and ministerial acts, the project is subject to CEQA review. (CEQA Guidelines § 15258(d).)

A project only qualifies as ministerial "when a private party can legally compel approval without any changes in the design of its project which might alleviate adverse environmental consequences." (*Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 267; accord *Miller v. City of Hermosa Beach* (1993) 13 Cal.App.4th 1118, 1141-1142.) Conversely, "where the agency possesses enough authority (that is, discretion) to deny or modify the proposed project on the basis of environment consequences the EIR might conceivably uncover, the permit process is 'discretionary' within the meaning of CEQA." (*Friends of Westwood*, 191 Cal.App.3d at 272.) For example, a decision is discretionary when it involves "relatively personal decisions addressed to the sound judgment and enlightened choice of the administrator." (*People v. Department of Housing & Community Dev.* (1975) 45 Cal.App.3d 185, 193.) But review is ministerial where the reviewing body "accomplished its review by

completing a checklist of about 125 yes-or-no questions." (*Health First v. March Joint Powers Authority* (2009) 174 Cal.App.4th 1135, 1144.) Perhaps most critically in this case, a decision is not ministerial if a "city used its discretion to avoid approval processes which would have required compliance with CEQA." (*Friends of Westwood,* 191 Cal.App.3d at 275-76.)

In *Friends of Westwood Inc., v. City of Los Angeles*, the Court of Appeal described and adopted a "functional distinction" between discretionary and ministerial acts:

> [T]he question here is whether the city had the power to deny or condition this building permit or otherwise modify this project in ways which would have mitigated environmental problems an EIR might conceivably have identified. If not, the building permit process indeed is 'ministerial' within the meaning of CEQA. If it could, the process is 'discretionary.' . . . It is enough the city possesses discretion to require changes which would mitigate in whole or in part one or more of the environmental consequences an EIR might conceivably uncover.

(*Friends of Westwood, Inc.*, 191 Cal.App.3d at 273.) This distinction between ministerial and discretionary decisions described in *Friends of Westwood, Inc.* is known as the "functional test." (*Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 302 (*Juana Briones House*).) The California Supreme Court has embraced the ministerial versus discretionary distinction, very much focusing on the practical: "The statutory distinction between discretionary and purely ministerial projects implicitly recognizes that unless a public agency can shape the project in a way that would respond to concerns raised in an EIR, or its functional equivalent, environmental review would be a meaningless exercise." (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 117; accord *Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 302 [distinction is based on "whether the agency has the power to shape the project in ways that are responsive to environmental concerns"].) Projects that are partially ministerial and partially discretionary are treated as discretionary. (CEQA Guidelines §15268(d).)

B. An EIR is Required If a Project Will Have a Significant Effect on the Environment

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 ("*Bakersfield Citizens*"); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.) The EIR is an "environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return." (*Bakersfield Citizens*, 124 Cal.App.4th at 1220.) The EIR also functions as a "document of accountability," intended to "demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." *(Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) The EIR process "protects not only the environment but also informed self-government." (*Pocket Protectors*, 124 Cal.App.4th at 927.)

An EIR is required 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." (Pub. Res. Code § 21080(d); see also *Pocket Protectors*, 124 Cal.App.4th at 927.)

III. DISCUSSION

A. CEQA Review is Required for the Project Because the Decision to Approve the Site Plan Review is Discretionary – Not Ministerial.

The City requires industrial projects with over five thousand square feet of new construction to undergo site plan review. (Long Beach Mun. Code, § 21.25.502, subd. (A)(3).) In the review process, the Site Plan Review Committee ("Committee") not only considers applications for site plan review, but also has the authority to "approve, conditionally approve or deny" site plan applications. (*Id.* § 21.25.503, subd. (A).) Within its authority to conditionally approve a site plan, the Committee can require reasonable conditions on a site plan, specifically "[a]ny other changes or additions the committee or commission feels are necessary to further the goals of the site plan review process." (*Id.* § 21.25.505, subd. (K).) The purpose of the site plan review process is to "meet certain community goals" which include "ensur[ing] the maintenance, restoration, enhancement and protection of the environment." (*Id.* § 21.25.501.)

A discretionary agency action occurs under CEQA when an agency has "the ability and authority to 'mitigate … environmental damage' to some degree." (*Sierra Club v. Sonoma* (2017) 11 Cal.App.5th 11, 23 (quoting *San Diego Navy Broadway Complex Coal. v. San Diego* (2010) 185 Cal.App.4th 924, 934).) Ministerial agency actions are exempt from CEQA because CEQA review would be a waste of time if the decision makers lack discretion to deny or shape a project through conditions to address environmental concerns. (*Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 267.)

Here, the City has discretion to shape the Project in order to mitigate environmental harm, and indeed has exercised its discretion to do so. The Staff Report for the Project explains that:

> In assessing the redevelopment of the site and proposed use, staff considered technical reports related to: 1) traffic; 2) air quality, 2) [sic] health (Mobile Health Risk Assessment and Human Health Risk Assessment); 3) Greenhouse Gas; 4) noise; 4) [sic] an environmental sit assessment (Phase One) (EXHIBIT C – Technical Reports). In response to the technical reports, ***staff has include conditions of approval which not only improve the project, but also the surrounding area***.

(Sept. 5, 2019 Planning Commission Staff Report, p. 3 [emph. added].)

The Staff Report goes on to explain that some of the conditions of approval for the Project "address noise from trucks and construction activities on nearby residences, improved landscaping throughout the site to assist with site drainage, soil management and fugitive dust containment during construction to reduce impacts on adjacent properties, and treatment of archaeological resources unearthed by construction activities to preserve Native American

artifacts." (*Id*. at 3-4.) In fact, the Conditions of Approval, attached as Exhibit D to the Staff Report, include 32 "Special Conditions" meant to shape the Project. Further, Condition of Approval No. 32 provides 25 additional "sub" conditions (conditions 32(a)-(y)) which the developer must provide "to the satisfaction of the Director of Public Works." (*Id.*)

These conditions are precisely the type of project modifications that render the City's approval discretionary, not ministerial. As was the case in *Miller v. Hermosa Beach*, the conditions of approval "address many of the anticipated environmental impacts and [ ] propose solutions reflecting the exercise of discretion by City officials." (*Miller v. Hermosa Beach* (1993) 13 Cal.App.4th 1118, 1141.) For example, to mitigate migration of Chemicals of Concern from on-site soil after the refinery is removed, Condition of Approval No. 26 requires a below-slab barrier to be installed. Condition of Approval No. 27 then states that "[r]emedial and/or mitigation activities will be required at the Subject Property until sufficient contaminant mass has been removed to achieve site closure or the site is determined to pose no threat to human health or groundwater."

Since the Committee has the authority to modify the project by requiring reasonable conditions on a site plan for the protection of the environment, the Committee's approval is discretionary, not merely ministerial, because it allows the Committee to make personal judgements that can shape the project in a way to respond to environmental concerns. This discretionary authority triggers CEQA review.

Section 21.25.509 of the Long Beach Municipal Code solidifies the point. It states that "[f]or the purposes of the California Environmental Quality Act, site plan review may be considered a categorically exempt project." Use of the term "may" indicates that this decision on its own is discretionary, thereby rendering CEQA applicable.

B. The Bay Area Air Quality Management District's CEQA Screening Thresholds Provide Evidence of a Fair Argument That the Project Will Have Significant Environmental Impacts, Requiring the Planning Commission to Prepare an EIR and Mitigate the Impacts.

Under CEQA Guidelines, thresholds of significance are an "identifiable quantitative, qualitative or performance level of a particular environmental effect, noncompliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant." (14 CCR § 15064.7. The California Supreme Court made clear the substantial importance that a South Coast Air Quality Management District significance threshold plays in providing substantial evidence of a significant adverse impact. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 ("As the [South Coast Air Quality Management] District's established significance threshold for NO_x is 55 pounds per day, these estimates [of NO_x emissions of 201 to 456 pounds per day] constitute substantial evidence supporting a fair argument for a significant adverse impact").)

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RE: Response to Letter from Supports Alliance for Environmental Responsibility re Bridge Development Project at 2400 E. Artesia Boulevard

Dear Chair Lewis, Vice Chair Christoffels, Long Beach Planning Commissioners Cruz, LaFarga, Perez, Templin, and Verduzco-Vega, and Long Beach Planning Commission Secretary Bearden,

On behalf of Bridge Development Partners, this letter responds to the letter submitted today by Lozeau Drury on behalf of the Supports Alliance for Environmental Responsibility (SAFER). That letter asserts that the City of Long Beach (City) improperly determined that the site plan review for Bridge's proposed warehouse project located at 2400 E. Artesia Boulevard in Long Beach, CA (Project) does not trigger review under the California Environmental Quality Act (CEQA). In fact, new case law not cited by SAFER clearly explains why the City's site plan review does not trigger CEQA and the City's determination is therefore proper.

I. Design Review of By-Right Development Does Not Trigger CEQA.

In a decision published earlier this year, *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 242 Cal.Rptr.3d 379, the First District Court of Appeal held that CEQA review is not required for a by-right development – even if discretionary design review is required. After publication, a petition for review and a request for depublication were filed with the California Supreme Court. Both were denied on April 17, 2019, affirming the First District's holding that discretionary design review of an otherwise permitted use is not subject to CEQA.

In *McCorkle*, the City of St. Helena considered its design review process discretionary, with approval by the Planning Commission at a public hearing and denial of an appeal to the City Council at a second public hearing. (*McCorkle* at 383). The court focused on the scope of

discretion in the St. Helena design review ordinance and included the following quote in its published decision (*McCorkle* at 388-389):

> Under section 17.164.020 of the St. Helena Municipal Code, [t]he purpose of design review is:
>
> A. To promote those qualities in the environment which bring value to the community;
> B. To foster the attractiveness and functional utility of the community as a place to live and work;
> C. To preserve the character and quality of our heritage by maintaining the integrity of those areas which have a discernible character or are of special historic significance;
> D. To protect certain public investments in the area;
> E. To encourage, where appropriate, a mix of uses within permissible use zones;
> F. To raise the level of community expectations for the quality of its environment.
>
> Under section 17.164.030, the Planning Commission (and City Council) should consider the following:
>
> 1. Consistency and compatibility with applicable elements of the general plan;
> 2. Compatibility of design with the immediate environment of the site;
> 3. Relationship of the design to the site;
> 4. Determination that the design is compatible in areas considered by the board as having a unified design or historical character;
> 5. Whether the design promotes harmonious transition in scale and character in areas between different designated land uses;
> 6. Compatibility with future construction both on and off the site;
> 7. Whether the architectural design of structures and their materials and colors are appropriate to the function of the project;
> 8. Whether the planning and siting of the various functions and buildings on the site create an internal sense of order and provide a desirable environment for occupants, visitors and the general community;
> 9. Whether the amount and arrangement of open space and landscaping are appropriate to the design and the function of the structures;
> 10. Whether access to the property and circulation systems are safe and convenient for pedestrians, cyclists and vehicles;
> 11. Whether natural features are appropriately preserved and integrated with the project;

12. Whether the materials, textures, colors and details of construction are an appropriate expression of its design concept and function and whether they are compatible with the adjacent and neighboring structures and functions;
13. Whether the landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors create a desirable and functional environment and whether the landscape concept depicts an appropriate unity with the various buildings on the site;
14. Whether sustainability and climate protection are promoted through the use of green building practices such as appropriate site/architectural design, use of green building materials, energy efficient systems and water efficient landscape materials.

The court upheld St. Helena's findings that "the issues addressed during design review did not require the separate invocation of CEQA," and "the design review ordinances prevented [the City] from disapproving the project for non-design related matters." (*McCorkle* at 388). The court found CEQA review was not required because St. Helena's design review process did not give St. Helena's "the authority to mitigate environmental impacts" and "the discretionary component of the action must give the agency the authority to consider a project's environmental consequences to trigger CEQA." (*McCorkle* at 386, 390).

The *McCorkle* court relied heavily on *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, where the only discretionary approval required for development of a chain bookstore was a site plan and design review. As paraphrased by the court in *McCorkle,* "when use is consistent with local zoning and a use permit either is not required or has been obtained, issuance of building permit is usually ministerial act." (*McCorkle* at 388, citing *Friends of Davis* at 1010-1011).

The court in *McCorkle* also relied on *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924 (which was cited in SAFER's letter). In *San Diego Navy*, the scope of the City of San Diego's discretion was limited to the issue of consistency with the Development Plan and Urban Design Guidelines as set forth in a Development Agreement for redevelopment of the San Diego Navy Complex. The court there held that "CEQA does not apply to an agency decision simply because the agency may exercise some discretion in approving the project or undertaking. Instead, to trigger CEQA compliance, the discretion must be of a certain kind; it must provide the agency with the ability and authority to 'mitigate ... environmental damage' to some degree." (*San Diego Navy* at p. 934, citing a practice guide).

Finally, the *McCorkle* court noted that St. Helena's had taken "quasi-adjudicative notice of case law that has determined that, in situations where an agency's discretion to deny or consider a particular activity is limited (such as the proposed residential land use at the project site) its approval decision is considered ministerial and CEQA does not apply or CEQA review is limited to the extent of the discretion." (*McCorkle* at 384). The unpublished case law St. Helena's had

taken notice of was *Venturans for Responsible Growth v. City of San Buenaventura* (Cal. Ct. App., June 20, 2013, No. 2D CIV. B242008) 2013 WL 3093788 (see Attachment A), which involved a grocery store that was permitted by right and the only discretionary approvals were for cosmetic improvements to the exteriors and a sign variance. The court held that "[b]ecause any permit WINCO might need to operate a 24–hour grocery store would be ministerial, CEQA simply does not apply to the use of the premises for that purpose." (*Venturans* at *3, citing *San Diego Navy* at 940).

As discussed below, like the design review ordinance at issue in *McCorkle*, the City of Long Beach's site plan review process similarly prevents the City from disapproving this by-right Project for non-design matters because it does not give the City the authority to consider environmental consequences of the Project.

II. The Proposed Project Is By-Right and the City's Discretion Under Site Plan Review Is Limited as in *McCorkle*.

The letter from SAFER does not address the City's discretion under its own Municipal Code, which is the key for determining whether the approval of the site plan review is the type of discretion that triggers CEQA.

a. The Proposed Use Is By Right in the General Industrial Zone.

The project site is zoned General Industrial (IG), which is the City's "industrial sanctuary" district for heavy industrial and manufacturing uses. Table 33-1 of the Long Beach Municipal Code (LBMC) lists uses by SIC code and includes SIC 42: "Motor freight transportation and warehousing." SIC code 422 includes warehousing and storage.[1] LBMC Table 33-2 provides whether each use listed in Table 33-1 is allowed or prohibited in the IG zone. Table 33-2 classifies whether uses are permitted by right (Y), not permitted (N) or permitted subject to an administrative permit (AP) or conditional use permit (C). Table 33-2 Section 6 includes SIC code 422 (warehousing and storage), and these uses are permitted by right.

b. Site Plan Review Process Does Not Give the City The Authority To Mitigate Environmental Impacts.

LBMC Section 21.25.502 requires a site plan review process for new industrial projects with 5,000 square feet or more of floor area. The site plan review process can be done by either the Site Plan Committee or the Planning Commission (LBMC 21.25.503). As noted above, the design

[1] United States Department of Labor, Occupational Safety & Health Administration, Major Group 42: Motor Freight Transportation and Warehousing. https://www.osha.gov/pls/imis/sic_manual.display?id=35&tab=group accessed 2/28/19)

review approval in the *McCorkle* case also required a public hearing in front of the Planning Commission.

In the City of Long Beach, the Site Plan Committee's or Planning Commission's site plan review discretion is limited to only the following design and site plan related issues:

- Reduced building height, bulk or mass;
- Increased setbacks;
- Changes in building material;
- Changes in rooflines;
- Increased usable open space;
- Increased screening of garages, trash receptacles, motors or mechanical equipment;
- Increased landscaping;
- Increased framing, molding or other detailing;
- Change in color; or
- Any other changes or additions the committee or commission feels are necessary to further the goals of the site plan review process.

While this last bullet is broad, the court in *McCorkle* found a similarly broad provision did not expand the discretion to include CEQA. St. Helena Municipal Code Section 17.08.060 states "the final decision-making body may require changes to applications and/or impose conditions of approval in order to effect the policies of the general plan and the purpose of this title." The court commented that "Sections 17.08.060, 17.08.180(A) and 17.08.180(H) of the St. Helena Municipal Code did not require the City Council to consider the environmental consequences of a multi-family project in an HR district as appellants suggest." (*McCorkle* at 387).

LBMC Section 21.25.506 requires the Site Plan Committee to make the following findings (emphasis added):

1. The design is harmonious, consistent and complete within itself and is compatible in design, character and scale, with neighboring structures and the community in which it is located;
2. The design conforms to any applicable special design guidelines adopted by the Planning Commission or specific plan requirements;
3. The design will not remove significant mature trees or street trees, unless no alternative design is possible;
4. There is an essential nexus between the public improvement requirements established by this ordinance and the likely impacts of the proposed development;
5. The project conforms with all requirements set forth in Chapter 21.64 (Transportation Demand Management); and
6. The approval is consistent with the green building standards for public and private development.

None of the findings or scope of discretion here allows the City to mitigate or address environmental issues associated with the warehousing use. The finding in item 1 is less broad than the language in St. Helena which states "compatibility of design with the immediate environment of the site." The Transportation Demand Management Development Standards are found in LBMC 21.64.030 and different requirements apply to all buildings of greater than either 25,000 square feet, 50,000 square feet, or 100,000 square feet. They are prescriptive and do not provide for any discretion on the part of the City. The Green Building Standards are found at LBMC Section 21.45.400 and are similarly prescriptive and do not provide for any discretion. Finally, the North Long Beach Design Review Guidelines that may apply to this Project "may encourage more specific design responses within the parameters of the zoning regulations" but do not include any provisions that allow the City to mitigate environmental impacts related to the warehousing use of the Project.[2] For example, for industrial projects, the City may consider the following based on the North Long Beach Design Guidelines:

- Maximum lot coverage
- Overall Site Design
- Compatibility (with adjacent uses and existing structures)
- Site Entry Design
- Vehicular Access
- Pedestrian Circulation
- Usable Open Space
- Loading and Delivery
- Utilities and Mechanical Equipment (screening)
- Trash Enclosures
- Walls and Fences
- Paving
- Site Lighting
- Crime Prevention
- Architectural Style
- Sustainability
- Façade Design
- Primary Building Entries
- Roof Design
- Doors and Windows
- Materials and Color
- Landscaping (setback and parking lots)
- Signs

[2] North Long Beach Design Guidelines, as amended in July 2005, page 1. Available here: http://www.longbeachrda.org/civica/filebank/blobdload.asp?BlobID=2450 (accessed March 1, 2019).

There is therefore nothing in the site plan review process that gives the City any authority to mitigate environmental impacts from this Project's by-right warehousing use. The City's discretion under its site plan review process is the same as the design review discretion at issue in *McCorkle*. Therefore, like in *McCorkle*, the City's scope of discretion does not trigger CEQA review for this by-right Project.

The SAFER letter's only code citation is to LBMC 21.25.509 which states "For the purposes of the California Environmental Quality Act, site plan review may be considered a categorically exempt project." This provision both predates *McCorkle* and indicates that projects subject only to site plan review are likely to be consistent with zoning and therefore exempt. Moreover, as SAFER notes, the use of "may" is permissive and does not indicate a directive that the City shall apply CEQA in a particular manner. Beyond the language of the code, in *McCorkle*, the City had found the project to be discretionary and applied the infill categorical exemption to the project. The Court held "[b]ecause of [St. Helena's] lack of any discretion to address environmental effects, it is unnecessary to rely on the Class 32 exemption." (*McCorkle* at 390).

Thus, whether an exemption applies or not is unrelated to the determination of whether an agency has the type of discretion necessary to trigger CEQA review.

III. SAFER's Discussion of Case Law Prior to McCorkle is Not Applicable.

SAFER primarily relies on a line of cases starting with *Friends of Westwood, Inc. v. City of Los Angeles (1987) 191 Cal.App.3d 259*. This case was addressed by the court in *McCorkle* as it is the same case the petitioners in that case had relied upon:

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

(*McCorkle* at 390 (emphasis added)). Where there is "some discretion" but not "enough discretion" is based on the scope of the agency's permitting authority, which is referred to in *Friends of Westwood* as "Functional Test." The First District summarized *Friends of Westwood* in their recent *Sierra Club v. Sonoma* case:

> "Although the ordinance may allow the Commissioner to exercise discretion when issuing erosion-control permits in some circumstances, petitioners fail to show that the

> Commissioner improperly determined that issuing the Ohlsons' permit was ministerial. Most of the ordinance's provisions that potentially confer discretion did not apply to the Ohlsons' project, and petitioners fail to show that the few that might apply conferred the ability to mitigate potential environmental impacts to any meaningful degree.

(*Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, 16). The court in *Sierra Club* also discussed *San Diego Navy Broadway Complex Coalition*, noting that "'CEQA does not apply to an agency decision simply because the agency may exercise some discretion in approving the project or undertaking. Instead[,] to trigger CEQA compliance, the discretion must be of a certain kind; it must provide the agency with the ability and authority to "mitigate ... environmental damage" to some degree.'" (*Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, 22–23, citing *San Diego Navy Broadway Complex Coalition* at 934 and *Juana Briones House,* 190 Cal.App.4th at 308). The court concluded that **the existence of discretion is irrelevant if it does not confer the ability to mitigate any potential environmental impacts in a meaningful way**." (*Sierra Club v. County of Sonoma* at 28, emphasis added).

There is nothing in the site plan review process that gives the City any authority to mitigate potential environmental impacts from this Project's by-right warehousing use in any meaningful way. Therefore, the City's determination that site plan review does not give it the type of discretion to trigger CEQA for this by-right Project is consistent with all the CEQA case law cited by SAFER, and with the more recent *McCorkle* decision.

IV. Conditions of Approval Do Not Mean CEQA is Triggered.

SAFER points to generic language in the staff report that the City relied on technical analysis to impose conditions that "improve the project" and "also the surrounding area." The Project could be approved without these conditions, and none are required to mitigate environmental impacts. The conditions imposed by the City here are the same as those imposed on the McCorkle project by the City of St. Helena. In *McCorkle*, the St. Helena relied on technical studies, including a Traffic Study and a Biological Assessment, and environmental screening and site assessments to develop numerous conditions of approval that improved the project and also the surrounding area. Like the conditions here, the *McCorkle* conditions also include provisions that are subject to the review and approval of the City Engineer, Director of Public Works, or Fire Chief. Conditions on the McCorkle project included requirements regarding the remediated of contamination and restrictions on noise and water quality.[3]

The conditions did not make the project discretionary for the purposed of CEQA in the *McCorkle* case, and the case cited by SAFER, *Miller v. City of Hermosa Beach (1993) 13 Cal.App.4th 1118,* which was decided 25 years before *McCorkle,* is not on point here. The *Miller* case was discussed in *Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th

[3] See Attachment B for all of the McCorkle conditions of approval, and Attachment C for a discussion of the technical analysis performed for the McCorkle project.

286, 309 (emphasis added) which explained that "***[i]n any event, conditions alone do not render a project discretionary***. That notion was expressed by the director at the administrative hearing, when he observed that "typically the city, when we issue permits, we issue permits with conditions.... Whether that permit is ministerial or discretionary, it has certain actions that are required." The same conclusion is reflected in case law. As stated in the *Court House Plaza* case, "The fact that [an] administrator may impose conditions on the permit does not change the essentially ministerial character of the ... administrator's function." (*Court House Plaza Co. v. City of Palo Alto, supra,* 117 Cal.App.3d at p. 883, 173 Cal.Rptr. 161.)"

As explained in Section II.a. above, Bridge could legally compel approval of this by-right warehousing uses because it is a by-right development. SAFER is therefore wrong that the conditions of approval imposed on this Project means that it is subject to review under CEQA.

V. The Project Will Not Have Significant Air Quality Impacts.

There is no argument that this project, which is not subject to CEQA per the *McCorkle* case discussed above, would have significant environmental impact. The City is not required to prepare an EIR. The only possible environmental impact pointed to by the commenter is an alleged exceedance of an inapplicable air quality threshold. First, this project is within the South Coast Air Quality Management District, and the Bay Area Air Quality Management District (BAAQMD) thresholds to not apply. Second, even if this project were in the Bay Area, there would be no impact. The criteria cited by the commenter related to building size are not thresholds of significance. As explained on page 3-1 in the BAAQMD CEQA Guidelines (May 2017) "The screening criteria identified in this section are **not thresholds of significance**. The Air District developed screening criteria to provide lead agencies and project applicants with a conservative indication of whether the proposed project could result in potentially significant air quality impacts. If all of the screening criteria are met by a proposed project, then the lead agency or applicant would not need to perform a detailed air quality assessment of their project's air pollutant emissions." (emphasis in original). Moreover, the City did evaluate air quality, see Artesia Boulevard Warehouse Air Quality Impact Analysis (May 2019), Tables 3-4 and 3-5, all emissions from construction and operations will be below the applicable regulatory thresholds for NOx and all other all pollutants. In addition, NOx emissions from the Project are significantly less than those of the existing refinery use, as seen in Table 3-6. Therefore, even if the City had the type of discretion over this Project that would trigger CEQA, it would not be required to prepare an EIR.

VI. Conclusion.

SAFER ignored new case law that holds the City's site plan review does not trigger CEQA. The City's determination is therefore proper, and the City is not required to prepare an EIR for the Project. We sincerely appreciate the Planning Commission consideration of this Project, and respectfully request the Commission approve the site plan review (SPR19-020) for the Project.

Sincerely,

MONCHAMP MELDRUM LLP

Amanda Monchamp

Cc: Michael Mais, City Attorney's Office
Rosendo Solis and Heather Crossner, Bridge Long Beach

ATTACHMENT A

2013 WL 3093788
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

Court of Appeal,
Second District, Division 6, California.

VENTURANS FOR RESPONSIBLE GROWTH,
Plaintiff and Appellant,
v.
CITY OF SAN BUENAVENTURA, Defendant and Respondent;
Winco Foods, LLC, Real Party in Interest.

2d Civil No. B242008
|
Filed June 20, 2013

Glen M. Reiser, Judge Superior Court County of Ventura. (Super. Ct. No. 56–2011–00402390–CU–WM–OXN)

Attorneys and Law Firms

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Ariel Pierre Calonne, City Attorney; Jenkins & Hogin, Christi Hogin, Gregg Kovacevich for Defendant and Respondent.

Best Best & Krieger, Sarah E. Owsowitz, Stephanie R. Straka for Real Party in Interest.

Opinion

GILBERT, P.J.

***1** Venturans for Responsible Growth, an unincorporated Association (Venturans) appeal a judgment denying its petition for peremptory and administrative writ of mandate. (Code Civ. Proc., §§ 1085, 1094.5.) Venturans contend that the City of San Buenaventura's (City) design approval for exterior modifications to an existing building and grant of a sign variance violated the California Environmental Quality Act (CEQA; Pub. Resources Code § 21000 et seq.), and county and city codes. We affirm.

FACTS

WINCO Foods, LLC (WINCO) intends to operate a 24–hour grocery store at the Riviera Shopping Center on Telephone Road in the City of Ventura (City). The space in which WINCO intends to operate was occupied by Mervyn's Department Store from 1992 to 2008.

The Riviera Shopping Center was constructed in the early 1980s. An environmental impact report (EIR) for the shopping center project was certified in 1977.

The WINCO property is in the City's commercial planned development (CPD) zone. Grocery stores are a permitted use in the zone. The City's zoning ordinance does not limit operating hours. The only discretionary approvals WINCO needs from the City are for cosmetic improvements to the exterior and a sign variance.

The cosmetic improvements are modifications to the exterior of the existing structure, restriping the parking lot, and removal and replacement of the landscaping. Modifications to the exterior include a tower element at the front of the building. The tower element will increase the height of the building by 22 feet.

The City's current sign ordinance allows signs of 100 square feet. WINCO sought a variance to allow two signs totaling 360.25 square feet.

WINCO applied to the City's design review committee (DRC) for design approval and a sign variance.

Venturans demanded that the City prepare an EIR to study the impacts of the proposed 24–hour grocery store on air quality and traffic. The City conducted an initial study for the project and gave notice that a negative declaration would be prepared. But the City later rescinded the initial study. Instead, the City determined that the project is categorically exempt from CEQA pursuant to Guidelines sections 15301 and 15303.[1]

DISCUSSION

I

Venturans contend CEQA requires a comprehensive review of all environmental impacts.

Unless exempt, all "discretionary projects" proposed to be carried out or approved by a city require environmental review. (Pub. Resources Code, § 21080, subd. (a).) A discretionary project is a project that requires the exercise of judgment or deliberation when a public agency decides to approve or disapprove a particular activity. (Guidelines, § 15357.)

CEQA does not apply to "[m]inisterial projects." (Pub. Resources Code, § 21080, subd. (b)(1).) A ministerial project is a project involving little or no personal judgment by a public official. (Guidelines, § 15369.)

CEQA may require an EIR where the City's approval or denial of a project is a matter of the exercise of its discretion. But even if a project will have significant negative environmental consequences, no EIR is required if the City has no discretion to deny or modify the project. As the court in *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 272, explained: "[F]or truly ministerial permits an EIR is irrelevant. No matter what the EIR might reveal about the terrible environmental consequences of going ahead with a given project the government agency would lack the power (that is, the discretion) to stop or modify it in any relevant way. The agency could not lawfully deny the permit nor condition it in any way which would mitigate the environmental damage in any significant way. The applicant would be able to legally compel issuance of the permit without change. Thus, to require the preparation of an EIR would constitute a useless—and indeed wasteful—gesture."

***2** Venturans claim the project is discretionary. It is only discretionary with regard to the exterior design and signs. But Venturans are complaining about lack of environmental review for impacts on air quality and traffic. Those impacts are not related to exterior design and signs. Those impacts are related to the use of the premises as a 24–hour grocery store. The City has no discretion with regard to WINCO's use of the premises as a 24–hour grocery store. Thus, CEQA does not require and EIR to assess impacts related to such use.

Venturans argue that the City's Municipal Code (SBMC) gives the DRC authority to respond to concerns beyond aesthetics or design. Venturans cite SBMC section 24.545.110. "The decision-making authority, in approving an application for design review, may impose such conditions that it deems necessary or desirable to insure that the project authorized by such design review will be established, operated, and maintained in accordance with the findings required by Section 24.545.100 and all other requirements of this zoning ordinance, this Code, and other provisions of law. The decision-making authority may further require reasonable guarantees and evidence that such conditions are being, or will be, complied with. Such conditions imposed by the decision-making authority may involve any factors affecting the colors, materials, design, landscaping, signs, or other architectural features of a project."

Venturans emphasize "all other requirements of this zoning ordinance, this Code, and other provisions of law." (SBMC, § 24.545.110) Venturans fail to include the final sentence, "Such conditions imposed by the decision-making authority may involve any factors affecting the colors, materials, design, landscaping, signs, or other architectural features of a project." (*Ibid.*)

It would be unreasonable to interpret SBMC section 24.545.110 as giving a design review committee authority to impose conditions involving any and all provisions of the law. Instead, the reasonable interpretation of the section is that the authority to impose conditions is limited to "factors affecting colors, materials, design, landscaping, signs or other architectural features of the project." (*Ibid.*)

If there is any doubt about the DRC's authority over WINCO's use of the premises as a 24–hour grocery store, it is resolved by SBMC section 24.545.040, subdivision A. That subdivision provides: "Neither the design review committee, the historic preservation committee, nor the director shall in the course of the design review process for projects or uses requiring no other discretionary permits or approvals, determine the operation or appropriateness of land uses if such uses of land comply with applicable zoning district regulations."

Because the use of the premises as a 24–hour grocery store complies with applicable zoning district regulations, the DRC has no authority whatsoever over WINCO's use of the premises, Venturans' concerns over air quality and traffic arises from the use of the premises, not its exterior design.

Venturans argue that CEQA does not allow partial environmental review. But nothing in CEQA requires the City to do a useless act. That is why Public Resources Code section 21080, subdivision (b)(1) provides that CEQA does not apply to ministerial projects. Because the City has no authority to prevent or modify WINCO's use of the premises as a 24–hour grocery store, environmental review of the impacts of that use would be worthless. A

statute should be interpreted to avoid an absurd result. (*Cummings v. Stanley* (2009) 177 Cal.App.4th 493, 507–508.)

***3** Venturans' argument was rejected in *San Diego Navy Broadway Complex Coalition v. City of san Diego* (2010) 185 Cal.App.4th 924. There, the city's discretion in approving the project was limited to design review. Opponents of the project argued the EIR should include a study of the project's impacts on global warming. In rejecting the argument, the court noted that the City has no discretion to modify or deny the project based on global warming. The court stated, "[T]here is no basis for requiring the City to conduct an environmental review of an issue as to which it would have no ability to respond." (*Id.* at p. 940.)

II.

Venturans contend the categorical exemption contained in Guidelines section 15301 does not apply.

Guidelines section 15301 provides a categorical exemption from CEQA for projects consisting of "minor alteration of existing ... private structures ... involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination."

It was not necessary for the City to rely on Guidelines section 15301 to exempt the use of the premises as a 24–hour grocery store from CEQA review. Public Resources Code section 21080, subdivision (b)(1) contains its own categorical exemption for "ministerial projects." Because any permit WINCO might need to operate a 24–hour grocery store would be ministerial, CEQA simply does not apply to the use of the premises for that purpose. (See *San Diego Navy Broadway Complex Coalition v. City of San Diego, supra,* 185 Cal.App.4th at p. 940.)

In any event, the City's reliance on Guidelines section 15301 is supported by the evidence. The City bears the burden of demonstrating, based on substantial evidence, that the project falls within the categorical exemption. (*California Unions for Reliable Energy v. Mojave Desert Air Quality Management Dist.* (2009) 178 Cal.App.4th 1225, 1239.) We must determine the scope of the exemption as a matter of law, and then determine whether substantial evidence supports the City's finding that the project falls within the exemption's scope. (*Ibid.*)

Venturans argue adding a tower that increases the building height by 22 feet and a variance allowing 360.25 square feet of signs does not qualify as a "minor alteration." But Guidelines section 15301 gives examples of qualifying projects. One example allows additions to existing structures of up to 10,000 square feet. (Guidelines, § 15301, subd. (e)(2).) If additions of up to 10,000 square feet qualify for the exemption as a "minor alteration," certainly WINCO's cosmetic alterations to the exterior qualify.

Venturans point out the exemption requires a finding that the project involves "negligible or no expansion of use beyond that existing at the time of the lead agency's determination." (Guidelines, § 15301.) Venturans argue that at the time of the lead agency's determination the building had been vacant for three years. Venturans claim that the traffic generated by WINCO's project will exceed even the traffic generated by the building's previous use as a Mervyn's Department Store.

But the only project before the City was WINCO's application to change the building's façade and for a sign variance. The City's approval of the design for the building façade and signs does not involve an expansion of the building's use.

The project is categorically exempt from CEQA review under Guidelines section 15301. We need not determine whether the project is also exempt under Public Resources Code section 21166 or Guidelines section 15303.

***4** Venturans argue that an exception to the categorical exemption applies. Guidelines section 15300.2, subdivision (c) provides: "A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances."

But the only "activity" before the City is the modification of the building's façade. There is no fair argument that such an activity will have a significant effect on the environment or that modification of the building's exterior constitutes any unusual circumstances.

III.

Venturans contend the City violated city and county requirements.

(a)

Venturans argue the project is inconsistent with the general plan. The City found the project is consistent.

Venturans cite Action 7.21 of the Ventura General Plan, Policy 7D. Action 7.21 provides: "Require analysis of individual development projects in accordance with the most current version of the Ventura County Air Pollution Control District Air Quality Assessment Guidelines and, when significant impacts are identified, require implementation of air pollutant mitigation measures determined to be feasible at the time of project approval." But the only "development project[ ]" before the City is WINCO's application to alter the exterior of the building and a sign variance. The City's conclusion that alterations to the exterior of the building and a sign variance complies with the air quality provisions of the general plan is supported by the record. There simply will be no "significant impact[ ]." (*Ibid.*)

(b)

Venturans contend the project conflicts with the county's air quality guidelines and the City's air quality ordinance.

Venturans' contention, like most of its other contentions, is based on the theory that the project includes use of the premises as a grocery store. It does not. The only project before the City is limited to alterations to the building's exterior.

(c)

Venturans contend the project violates conditions of approval.

The conditions of approval for Mervyn's Department Store allowed a maximum of 100 square feet of sign area. WINCO, however, has obtained a variance for 360 square feet of sign. Venturans argue that while a variance may allow a deviation from the municipal code, it does not change the conditions of approval. Venturans cite no authority for the proposition that a variance does not affect the conditions of approval. There appears no valid reason why it does not.

(d)

Venturans contend the grant of the sign variance is not supported by substantial evidence.

SBMC section 24.535.140 provides:

"In order for the design review committee to approve a sign variance, it must make all of the following findings:

"1. The proposed sign is in conformance with the purposes of chapter 24.420; [2]

"2. The proposed sign will enhance the unique character and visual appearance of the city;

"3. The proposed sign is an integral and well-designed portion of the overall building or site;

"4. Strict compliance with the provisions of chapter 24.420 would be detrimental to the design of the sign, architectural characteristics of the building, or design of the site; and

"5. The granting of a sign variance would not constitute the granting of a special privilege to the applicant, nor would it grant an undue advantage to the applicant."

***5** Venturans argue the finding that granting of the sign variance would not constitute the granting of a special privilege or undue advantage to the applicant is not supported by substantial evidence.

But the opinions of planning staff constitute substantial evidence upon which the City may rely to support its findings. (See *City of San Diego v. California Coastal Commission* (1981) 119 Cal.App.3d 228, 232.) Here the DRC staff reported: "In staff's analysis, the proposed sign is significantly larger than allowed by the Zoning Regulations and the existing Mervyns sign (44 sq. ft.). However, as the sign letter heights are consistent with other stores in other shopping centers in the vicinity and reflects Winco's standard corporate sign format, staff determined the sign is consistent in scale with the proposed changes to the façade and recommends the DRC approve the Sign Variance as submitted." That is sufficient to support the DRC's finding.

Venturans cite *Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1166, for the proposition that the DRC's finding of consistency with recently approved signs in the area must be supported by

" 'comparative data.' " Venturans' reliance on *Orinda* is misplaced.

Orinda concerns a variance from a general zoning ordinance, not a sign variance. In granting the variance, the county found that similar variances have been granted on several occasions. In discussing the lack of evidence to support such a finding the court noted that no specific examples are provided, and, in fact, the record indicates that every previous request for a variance had been denied. (*Orinda Assn. v. Bd. of Supervisors, supra,* 182 Cal.App.3d at p. 1166, fn. 11.) The court did not hold that such a finding must be supported by comparative data.

The judgment is affirmed. Costs are awarded to respondents.

We concur:

YEGAN, J.

PERREN, J.

All Citations

Not Reported in Cal.Rptr.3d, 2013 WL 3093788

Footnotes

1 All references to "Guidelines" are to Title 14 of the California Code of Regulations.

2 SBMC chapter 24.420 regulates the use of all signs within the City.

ATTACHMENT B

CITY OF ST. HELENA

RESOLUTION PC2016-047

DEMOLITION PERMIT AND DESIGN REVIEW NO. PL16-007
CITY OF ST. HELENA, STATE OF CALIFORNIA
GRANTED TO 632 McCORKLE AVENUE

PROPERTY OWNER: Joe McGrath **APN:** 009-502-004

Recitals

1. Request by Joe McGrath for Demolition Permit and Design Review approval to demolish an existing single-family home in order to construct an 8 unit multi-family dwelling on the property located at 632 McCorkle Avenue in the HR: High Density Residential district.
2. The Planning Commission of the City of St. Helena, State of California, considered the project, staff report, and all testimony, written and spoken, at a duly noticed public hearing on December 6, 2016.

Resolution

A. In making the findings in this Resolution, the Planning Commission relied upon and hereby incorporates by reference all of the documents referenced in this Resolution and the associated staff reports, City files for this matter, correspondence, presentations and other materials.

B. The Planning Commission hereby finds that the project is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15332, which exempts projects characterized as in-fil development when the project is consistent with the general plan and zoning; occurs within city limits on less than five acres; has no valuable habitat; won't cause any significant environmental effects; and can be served by existing public services.

C. As provided in Municipal Code Section 17.164.050(E), the Planning Commission finds that the demolition permit can be supported based on the following findings:

   1. *That based on the public record and testimony presented at a public hearing, the buildings are determined not to be significant architectural or historical buildings given the age of construction, deteriorated condition of the structures, and lack of inclusion of the City's Historical Resources Master List; and*

   2. *That the demolition does not eliminate elements that are required to maintain the essential character of the neighborhood in that the existing structures are in a dilapidated condition and that the neighborhood is a mix of single-family and multi-family housing units.*

D. In accordance with the design review criteria identified in Municipal Code Section 17.164.030, the Planning Commission finds that the project demonstrates the following:

1. *Consistency and compatibility with applicable elements of the general plan in that a multi-family building is being constructed in the High Density Residential district;*
2. *Compatibility of design with the immediate environment of the site is supported in that modern building materials will be used in project construction typical of newly constructed residential buildings;*
3. *Relationship of the design to the site is found to be consistent in that the project was designed by a licensed architect in consideration of the unique characteristics of the site;*
4. *Determination that the design is compatible in areas considered by the board as having a unified design or historical character is found as a residential structure will be constructed in a residential area and that there are no historic elements of the property or design;*
5. *That the design promotes harmonious transition in scale and character in areas between different designated land use is found in that the project is located in a residentially zoned district with varying densities and scales and that the project is consistent with said district and character;*
6. *Compatibility with future construction both on and off the site is supported as the project is a residential structure in a residential district that will not negatively impact future construction on or off site;*
7. *That the architectural design of structures and their materials and colors are appropriate to the function of the project is supported in that the project will use common construction materials and colors for residential development;*
8. *That the planning and siting of the various functions and buildings on the site create an internal sense of order and provide a desirable environment for occupants, visitors and the general community is found in that the site and buildings were designed to create independent living units with adequate off-street parking; covered garbage enclosures; and common recreation areas.*
9. *That the amount and arrangement of open space and landscaping are appropriate to the design and the function of the structures is found to be appropriate through the common open space and landscaping surrounding the living and parking areas on the property;*
10. *That sufficient ancillary functions are provided to support the main functions of the project and that they are compatible with the project's design concept in that the project provides adequate off-street parking and recreational areas for residents with a design that is fully compatible with the residential structure;*
11. *That access to the property and circulation systems are safe and convenient for pedestrians, cyclists and vehicles is supported based on the existing roadway*

network, proposed access easements, and street frontage improvements including new sidewalks.

12. *That natural features are appropriately preserved and integrated with the project is found in that this is an infill project and all development is in previously developed and/or disturbed areas of the property;*

13. *That the materials, textures, colors and details of construction are an appropriate expression of its design concept and function and that they are compatible with the adjacent and neighboring structure and functions is supported in that the project will use common construction materials and colors for residential development and that the project is compatible with the character of the residential area;*

14. *In areas considered by the board as having a unified design character or historical character, whether the design is compatible with such character is found as a residential structure will be constructed in a residential area and that there are no historic elements of the property or design;*

15. *That the landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors create a desirable and functional environment and that the landscape concept depicts an appropriate unity with the various buildings on the site is found in that a detailed landscaping plan has been prepared and designed to complement the proposed buildings and site in general;*

16. *That plant material is suitable and adaptable to the site, capable of being properly maintained on the site, and is of a variety which is suitable to the climate of St. Helena is supported based on the professionally prepared landscaping plan; and*

17. *That sustainability and climate protection are promoted through the use of green building practices such as appropriate site/architectural design, use of green building materials, energy efficient systems and water efficient landscape materials is found based on the efficiencies gained through the construction of new buildings and infrastructure in compliance with the requirements of the California Building Code and the City of St. Helena Municipal Code.*

Planning Department Conditions of Approval

E. The Planning Commission approves the demolition permit and design review for the above-described project with the following conditions of approval. The conditions noted below are particularly pertinent to this permit and shall not be construed to permit violation of other laws and policies not so listed.

1. The project shall be in conformance with all city ordinances, rules, regulations and policies in effect at the time of issuance of a building permit.

2. These approvals shall be vested within one (1) year from the date of final action. A building permit for the use allowed under this approval shall have been obtained within one (1) year from the effective date of this action or the approval shall expire, provided

however that the approval may be extended for up to two (2) one-year periods pursuant to the St. Helena Municipal Code, Section 17.08.130, Extension of Permits and Approvals. Any request for an extension of this approval shall be justified in writing and received by the Planning Department at least thirty (30) days prior to expiration.

3. The approvals shall not become effective until fourteen (14) calendar days after approval, providing that the action is not appealed by the City Council or any other interested party within that 14-day period.
4. All required fees, including planning fees, development impact fees, residential in-lieu housing fees, building fees, toilet retrofit fees, and St. Helena Unified School District fees shall be paid prior to issuance of a building permit. Fees shall be those in effect at the time of the issuance of the building permit.
5. In any action or proceeding to attack, challenge, invalidate, set aside, void or annul the City's approval of applicant's Project, in whole or in part, applicant shall defend, at its own expense and without any cost to the City, and with counsel acceptable to the City, and shall fully and completely indemnify and hold the City, its agents, officers, and employees harmless from and against any and all claims, causes of action, damages, costs, attorney's fees and liability of any kind, so long as the City reasonably promptly notifies the applicant of any such claim, action, or proceedings and the City cooperates fully in the defense of the action or proceedings.
6. Provided they are in general compliance with this approval, minor modifications may be approved by the Planning Director.
7. Pursuant to St. Helena Municipal Code Section 17.08.110, this permit shall run with the land and shall be binding upon all parties having any right, title or interest in the real property or any part thereof, their heirs, successors and assigns, and shall inure to their benefit and benefit of the City of St. Helena.
8. The primary purpose of this review is for compliance with the General Plan and Zoning Ordinance. The property owners or their designee shall be responsible for meeting with the Building Official, Fire Inspector and or Public Works Department to review compliance with Building Codes, Fire Codes and specific Public Works Standards including fire protection systems and any applicable accessibility standards of Title 24.
9. Construction shall be in compliance with plans submitted and reviewed by the Planning Commission on December 6, 2016, except as modified herein.
10. AS a component of the construction process, the site shall be remediated to the satisfaction of the Napa County Environmental Health Department.
11. During construction, the project site shall be adequately screened and secured to minimize potential impacts to the neighborhood and surrounding community.
12. Exterior lighting shall be directed or shielded to prevent glare onto the public roadway or adjacent properties.
13. Property owners shall recognize that there exists a right to farm properties within the district and in the vicinity of the district. There is a good faith expectation that no

complaints will occur regarding legal, normal agricultural activities on properties in the district or in the vicinity of the district. Such activities may include day or night disbursement of chemicals, and creation of dust, noise, or fumes.

14. To reduce disturbance of residents in the project vicinity, construction activities which generate noise that can be heard at the property line of any parcel of real property within the City limits shall be limited to 8:00 a.m. to 5:00 p.m. Monday through Saturday. Delivery of materials/equipment and cleaning and servicing of machines/equipment shall be limited to 7:00 a.m. to 6:00 p.m. Exceptions to these time restrictions may be granted by the Public Works Director for one of the following reasons: (1) inclement weather affecting work, (2) emergency work, or (3) other work, if work and equipment will not create noise that may be unreasonably offensive to neighbors as to constitute a nuisance. The City Engineer must be notified and give approval in advance of such work. No construction activities shall occur on Sundays or federal or local holidays that generate noise that can be heard at the property line of any parcel of real property within the City limits.

15. The project shall comply with all housing allocation requirements per the City's Growth Management System (GMS) as approved by the City Council. This action allocates four (4) GMS permit allotments from the 2016 permit pool and anticipates the remaining four (4) GMS permit allotments will be drawn from the 2017 allotment pool.

Public Works Department Conditions of Approval

16. Approval of this project shall be subject to the requirements of, and all improvements shall be designed and constructed in accordance with, the most current version at the time of improvement plan submittal, Caltrans Standards and Specifications, the City of St. Helena Municipal Code, the St. Helena Water and Sewer Standards, the St. Helena Street, Storm Drain and Sidewalk Standards, and all current federal, state and county codes governing such improvements.

17. For any improvements outside the existing building envelope, a grading and drainage plan showing topographic data, all easements, infrastructure onsite and directly adjoining, and an erosion control plan shall be submitted for review and approval by the City Engineer prior to the issuance of a building permit. If the project entails more than 50 cubic yards of soil disturbance, 10,000 square feet of disturbance area, a cut or fill of 3 feet or more, or alteration of any drainage pattern, a grading permit shall be required.

18. Drainage needs to be routed to prevent inundation of neighboring properties. Grading and/or site improvement plans shall show how 2-year and 10-year storm flows shall be infiltrated on site and/or diverted at the property lines to prevent inundation of neighboring properties. The applicant shall submit a drainage and hydrology analysis for the project impact, including downstream erosion potential, to the City of St. Helena Public Works Department with the Improvement Plan

submittal in accordance with City of St. Helena, Napa County and State of California codes in effect at the time of improvement plan submittal.

19. Erosion and sediment control plans shall conform to the latest State and City codes at a minimum.

20. The applicant shall incorporate water conservation practices into the proposed project per the Theoretical Water Use Report prepared by Nest Properties, which includes offsite retrofits of the plumbing fixtures at 814 Hunt Street, 812 Chiles Avenue, and 1240-48 Grayson Avenue. Any and all non-conforming appliances and plumbing fixtures shall be removed from the premises. The water conservation requirements shall be replicated in full on the architectural plans.

21. A detailed Post-Construction Stormwater Control Plan (SWCP) that identifies and sizes all permanent post-construction stormwater treatment BMPs shall be prepared and submitted for review approval. The Plan shall be prepared in accordance with the latest edition of the Bay Area Stormwater Management Agencies Association (BASMAA) Post-Construction Manual and the requirements of the State Water Resources Control Board Phase II Municipal Separate Storm Water System (MS4) General Permit (Order 2013-0001 DWQ).

22. A Post Construction Stormwater Operations and Maintenance Plan that provides a color-coded plan sheet showing all storm drain and water quality infrastructure that is to be maintained, along with detailed instructions and schedules for the ongoing maintenance and operation of all post-construction stormwater BMPs shall be submitted for review and approval by the City Engineer. Once approved, the property owner shall enter into an agreement with the City that provides the terms, conditions, and security associated with the ongoing requirements of the Post Construction Stormwater Best Management Practices.

23. Prior to Certificate of Occupancy, the Applicant shall enter into and record a Post-Construction Stormwater Operations and Maintenance Agreement with the City.

24. If the project includes 500 square feet or more of new landscaping and/or 2,500 square feet or more of rehabilitated landscape, the proposed landscaping shall comply with the State's Model Water Efficient Landscape Ordinance (MWELO).

25. A detailed Soils Investigation/Geotechnical Report shall be prepared and submitted for review. The report shall address, at a minimum, potential for liquefaction, R-values, expansive soils and seismic risk. The improvement plans shall incorporate all design and construction criteria recommended in the Geotechnical Report.

26. Prior to demolition, the applicant shall provide an assessment of the existing structures for the presence of asbestos containing materials and lead based paint by a qualified professional.

27. Unless otherwise explicitly permitted, all existing wells, septic tanks/sytems and/or underground fuel storage tanks shall be abandoned under permit and inspection of Napa County Department of Environmental Services or other designated agency. If there are none, the project engineer shall provide a letter describing the scope of the search done to make this determination.

28. Site plan shall show the location of any trees within the project area. Provide a tree protection plan for approval by the Public Works Director prior to approval of the building permit. The plan shall be coordinated with any civil grading/drainage/improvement plans.

29. The Applicant shall keep adjoining public streets free and clean of project dirt, mud, materials, and debris during the construction period, as is found necessary by the City Engineer.

30. Any new and modified existing water laterals, meters and backflow prevention devices shall be required and constructed in accordance with the current requirements of the City of St. Helena's Water Standards and the California Department of Health Standards. Existing meter boxes located within a driveway shall be retrofitted with a traffic-rated box. New laterals shall be located perpendicular to the water main and outside any driveway/drive aisle.

31. Remodels or new construction which require fire sprinklers shall install an appropriately-sized water service with appropriate backflow and meter devices prior to Certificate of Occupancy. Fire system calculations shall be submitted with the Grading and Drainage Plan to verify fire service lateral and meter sizing. Deferred submittals are not accepted.

32. No construction may commence until adequate access to fire water supply is available to building sites as approved by the Fire Chief.

33. The applicant shall apply for annexation to the St. Helena Municipal Sewer District No. 1 prior to issuance of a Building Permit. The application shall be completed in accordance with the City of St. Helena's Sewer Annexation Procedures including all annexation, impact, connection, and sewer fees.

34. The developer shall construct a 6-inch sewer main sloped at a minimum of 1% or an 8-inch sewer main sloped at a minimum of 0.5% in accordance with City Standards. This improvement shall be coordinated with all civil improvement plans.

35. The applicant shall be responsible for the extension of sewer lines to the property.

36. Construct standard frontage and ADA compliant improvements along the property front including driveway, sidewalk, curb, gutter, and any needed pavement widening. The standard frontage improvements cross section shall consist of a 5' landscape area, 5' sidewalk (measured from TC), 8' parking (including gutter pan), and 10'

vehicle lane (in each direction). At such time the City elects to install a bicycle lane along McCorkle Avenue, on-street parking will be eliminated. Any new asphalt shall taper back to the existing edge of pavement. As a component of these frontage improvements, the project shall reconstruct the roadway to the centerline and slurry seal the entire road along the project frontage. A right-of-way dedication shall be provided as necessary for the said improvements, to the centerline of the existing McCorkle Avenue.

37. Trash areas, dumpsters and recycling containers shall be enclosed and roofed per State and County standards to prevent water run-on to the trash area and water runoff from the area, to contain litter and trash so that it is not dispersed by the wind or run-off during waste removal. In the event that wine or food is disposed in these areas, the enclosed trash area shall drain to the sanitary sewer system. An area drain connected to the sanitary sewer shall be installed in the enclosure area and a structural control such as an oil/water separator or sand filter shall be included. No other area shall drain into the trash enclosure. A sign shall be posted prohibiting the dumping of hazardous materials into the sanitary sewer.

38. The applicant shall repair all public improvements that are damaged by the construction process in accordance with the City Water/Sewer/Street/Storm Drain/Sidewalk Standards prior to Certificate of Occupancy.

39. Existing streets being cut by new utility services will require edge grinding and an A.C. overlay per City standards, extent to be determined by the Public Works Department.

40. The applicant shall be required to obtain an encroachment permit for improvements on public right-of-ways prior to receiving a grading or building permit authorizing site work or construction activities on the site.

Building Department Conditions of Approval

41. The applicant will be required to comply with the codes adopted at the time the applicant applies for a building permit. At this time the City of St. Helena utilizes the 2013 Title 24 codes.

42. When submitting plans for a building permit, the plans shall include all documentation listed on the building permit application checklist.

43. The applicant shall provide a construction waste management plan with the building permit application.

44. The plans for construction shall include a checklist for compliance with the California Green Buildings Standards Code, mandatory measures. Provide a reference on the checklist indicating where the mandatory measures can be found on the plans.

45. When submitting plans, the title page shall include all information referenced on the building permit application checklist Title Page requirements.

46. Building Permit application materials and plans shall include any documentation pertaining to special loads applicable to the design and the specified section of the code that addresses the condition; special inspections for any systems or components requiring special inspection; requirements for seismic resistance; and a complete list of deferred submittals at time of application. Any deferral of the required submittal items shall have prior approval of the Building Official however deferral of fire sprinkler design is not allowed.

Fire Department Conditions of Approval

47. Fire sprinklers and fire hydrants shall be installed as required by Fire Code and the Fire Department.

I HEREBY CERTIFY that the foregoing demolition permit and design review was duly and regularly approved by the Planning Commission of the City of St. Helena at a regular meeting of said Planning Commission held on December 6, 2016 by the following roll call vote:

AYES: Commissioner Sweeney and Kistner
NOES: Commissioner Koberstein
ABSENT: None
ABSTAIN: None
RECUSED: Commissioner Parker and Monnette

APPROVED:

Grace Kistner
Chair, Planning Commission

ATTEST:

Noah Housh
Planning Director

ATTACHMENT C

CITY OF ST. HELENA

RESOLUTION NO. 2017-9

DENIAL OF AN APPEAL TO A PLANNING COMMISSION DECISION TO APPROVE A DEMOLITION PERMIT AND DESIGN REVIEW TO DEMOLISH AN EXISTING SINGLE-FAMILY HOME IN ORDER TO CONSTRUCT AN 8 UNIT MULTI-FAMILY DWELLING ON THE PROPERTY LOCATED AT 632 MCCORKLE AVENUE IN THE HR: HIGH DENSITY RESIDENTIAL DISTRICT. (PL16-007) APPROVAL OF DEMOLITION PERMIT AND DESIGN REVIEW. ADOPTION OF FINDINGS IN SUPPORT.

PROPERTY OWNER: Joe McGrath **APN:** 009-502-004

RECITALS

1. The applicant submitted an application for a demolition permit and design review in order to demolish an existing single-family home and construct an 8 unit multi-family dwelling on the property located at 632 McCorkle Avenue in the HR: High Density Residential district.
2. Multiple-family dwellings, apartments and dwelling groups consistent with density requirements are permitted uses in the HR district.
3. At the conclusion of the public hearing on December 6, 2016, having considered the record of the proceedings before it, the written evidence submitted prior to the close of the public hearing, and the testimony and other evidence submitted at the aforementioned public hearing, having deliberated the matter, and having adopted findings in support of its decision, the Planning Commission approved the demolition permit and design review application.
4. The appellants, McCorkle Eastside Neighborhood Group, St. Helena Residents For An Equitable General Plan, and David and Victoria Bradshaw ("Appellants"), filed a timely appeal of the Planning Commission decision to the City Council.
5. The City Council considered the Appellant's appeal at a duly noticed public hearing on January 24, 2017. The City Council, after reviewing the materials, testimony and evidence provided from the Planning Commission Public Hearing, as well as the record of the proceedings before the City Council, the written evidence submitted for the Council Public Hearing, and the testimony and other evidence submitted at the Council Public Hearing, voted to deny Appellants' appeal and thereby uphold the decision of the Planning Commission approving the demolition permit and design review application, including without limitation the Planning Commission resolution and list of standard conditions.

RESOLUTION

The City Council of the City of St. Helena, State of California, hereby denies the appeal of the Planning Commission's decision to approve a Demolition Permit and Design Review

to demolish an existing single-family home in order to construct an 8 unit multi-family dwelling on the property located at 632 McCorkle Avenue in the HR: High Density Residential district on the following basis:

1. Incorporation of Recitals. The foregoing Recitals are true and correct and are incorporated herein and form a part of this Resolution.

2. Compliance with CEQA. The City Council further finds that the project is categorically exempt from CEQA pursuant to Section 15332, which exempts in-fill development projects.

3. Findings.

A. Findings In Support Of Demolition Permit: In approving the demolition permit as provided in St. Helena Municipal Code ("SHMC") Section 17.164.050(E), the City Council finds as follows:

1. *That based on the public record and testimony presented at a public hearing, the buildings proposed for demolition are determined not to be significant architectural or historical buildings given the age of construction, deteriorated condition of the structures, standard design and construction methodology and lack of inclusion of the City's Historical Resources Master List; and the Charter Oaks District within which the project is located has not itself been listed as an area-wide historical resource or comprehensive historical district, nor has the City created a Historic Preservation Overlay Zoning District covering the Charter Oaks District or the project site. And while four homes in the project vicinity have been listed as historical resources, none are adjacent to the project site.*

and

2. *That the demolition of these structures does not eliminate elements that are required to maintain the essential character of the neighborhood in that the existing structures are in a dilapidated condition, do not contribute to the historic character of the neighborhood and that the neighborhood is a mix of single-family and multi-family housing units, and the proposed project incorporates various materials consistent with the pattern and character of many of the City's older and historic homes such as board and batten siding, gabled roof lines and a corrugated metal roof.*

B. Findings In Support Of Design Review: In approving the design review as provided in the design review criteria set forth in SHMC Section 17.164.030, the City Council finds that the project demonstrates the following:

1. *Consistency and compatibility with applicable elements of the general plan in that a multi-family building is being constructed in the High Density Residential district;*
2. *Compatibility of design with the immediate environment of the site is supported in that modern building materials and design features (such as board and batten siding, gabled roof lines and metal roofing), which are consistent with the nearby historic properties and overall Charter Oaks District, will be used in project construction;*

3. *Relationship of the design to the site is found to be consistent in that the project meets all required development criteria (including setbacks, building orientation and height limitations), was designed by an architect and is considerate of the unique characteristics of the site including its location within the Charter Oaks District and in a high-density land use designation across from properties developed with single family homes;*

4. *Determination that the design is compatible in areas considered by the board as having a unified design or historical character is found as the project is a residential structure developed to meet the criteria of the zoning district, incorporates historic elements into the property and design and no specific unifying design elements have been formally identified in this neighborhood; further, while there are four (4) homes on McCorkle Avenue listed on the City's Historic Resources Master List, McCorkle Avenue is a mix of single-family and multi-family homes constructed in a variety of time periods and in various styles and is without a formally identified unified design character. Furthermore, the project site itself in not an identified/listed historic resource and construction and operation of the proposed project will not negatively impact any listed historic properties; Furthermore, the Charter Oaks District within which the project is located has not itself been listed as an area-wide historical resource or comprehensive historical district, nor has the City created a Historic Preservation Overlay Zoning District covering the Charter Oaks District or the project site. And while four (4) homes in the project vicinity have been listed as historical resources, none are adjacent to the project site.*

5. *That the design promotes harmonious transition in scale and character in areas between different designated land use is found in that the project is located in a high density residential zoning district across from a medium density residentially designated properties with varying densities and scales and that the project is consistent with said zoning districts and established neighborhood character in design features and building scale;*

6. *Compatibility with future construction both on and off the site is supported as the project is a residential structure in a residential district, providing all required infrastructure improvements and therefore development will not negatively impact future construction on or off site;*

7. *That the architectural design of structures and their materials and colors are appropriate to the function of the project is found in that the project will use construction materials and colors for residential multi-family development, which are consistent and compatible with the surrounding historic district and neighborhood context;*

8. *That the planning and siting of the various functions and buildings on the site create an internal sense of order and provide a desirable environment for occupants, visitors and the general community is found in that the site and buildings were designed to create independent living units with adequate off-street parking; covered garbage enclosures; and common recreation areas.*

9. *That the amount and arrangement of open space and landscaping are appropriate to the design and the function of the structures is found to be appropriate through the proposed building setbacks, common open space and landscaping surrounding the living and parking areas on the property;*

10. *That sufficient ancillary functions are provided to support the main functions of the project and that they are compatible with the project's design concept in that the project provides adequate off-street parking, landscaping, resident amenities and recreational areas for residents with a design that is fully compatible with the residential structure and use;*

11. *That access to the property and circulation systems are safe and convenient for pedestrians, cyclists and vehicles is supported based on the existing roadway network, proposed access easements, and street frontage improvements including new sidewalks.*

12. *That natural features are appropriately preserved and integrated with the project is found in that this is an infill project preserving as many native oak trees as possible and all development is in previously developed and/or disturbed areas of the property;*

13. *That the materials, textures, colors and details of construction are an appropriate expression of its design concept and function and that they are compatible with the adjacent and neighboring structure and functions is supported in that the project will use construction materials and colors for residential development while also being compatible with the pattern and character of the surrounding Charter Oaks District and immediate residential neighborhood;*

14. *In areas considered by the board as having a unified design character or historical character, whether the design is compatible with such character is found as a residential structure will be constructed in a residentially zoned parcel where the approved use is permitted by-right, and while there are four (4) homes on McCorkle Avenue listed on the City's Historic Resources Master List, McCorkle Avenue is a mix of single-family and multi-family homes constructed in different time periods and in various styles and has not been formally determined to express a unified design character. Furthermore, the project site itself in not an identified listed historic resource and construction and operation of the proposed project will not negatively impact any listed historic properties; Furthermore, the Charter Oaks District within which the project is located has not itself been listed as an area-wide historical resource or comprehensive historical district, nor has the City created a Historic Preservation Overlay Zoning District covering the Charter Oaks District or the project site. And while four homes in the project vicinity have been listed as historical resources, none are adjacent to the project site.*

15. *That the landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors create a desirable and functional environment and that the landscape concept depicts an appropriate unity with the various buildings on the site is found in that a detailed landscaping plan has been prepared, which preserves existing on-site native tress to the extent possible, provides screening and buffers between structures and hardscape and has been designed to complement the proposed buildings, surrounding properties and the site in general;*

16. *That plant material is suitable and adaptable to the site, capable of being properly maintained on the site, and is of a variety which is suitable to the climate of St. Helena is supported based on the professionally prepared landscaping plan meeting all requirements of the Water Efficient Landscape requirements and*

incorporating numerous species found to thrive in Mediterranean Climate types; and

17. *sustainability and climate protection are promoted through the use of green building practices such as appropriate site/architectural design, use of green building materials, energy efficient systems and water efficient landscape materials is found based on the efficiencies gained through the construction of new buildings and infrastructure in compliance with the requirements of the California Building Code and the City of St. Helena Municipal Code, the incorporation of solar panels into the design of the carports and the southern orientation of the buildings, including carports providing expanded shading on proposed hardscape.*

C. Findings In Response To Arguments Raised On Appeal: In denying the appeal and in approving the demolition permit and design review, the City Council further finds as follows:

1. Findings In Response To Appellants' Assertion That The Project Is Inconsistent With The 1993 General Plan.

(a) General Finding: The project's relationship to the City's General Plan was discussed in detail in the staff report presented to the Planning Commission at the December 6, 2016 public hearing and was attached to the staff report for the appeal. As noted in the report, the subject property has a General Plan and Zoning designation of High Density Residential (HR) and multiple-family dwellings and apartments are permitted uses by right in the HR district. In addition, the St. Helena 1993 General Plan and Housing Element Update 2015-2023 Goals, Policies, and Eight-Year Action Plan include the following policies that are applicable to the proposed project:

- 2.6.4 - Permit infill development and higher densities within currently developed areas wherever possible to minimize and postpone the need for expansion of the Urban Service Area.
- 2.6.14 - Encourage a mix of housing types and price ranges to allow choice for current and future generations of St. Helenans.
- HE1.4 - Address workforce housing needs by supporting an improved jobs/housing "match."
- HE1.5 - Encourage innovative housing types and designs.
- HE2.1 - Encourage higher density development where appropriate.
- HE2.2 - Ensure that higher density housing opportunity sites are not lost to lower density uses.
- HE2.5 - Allow conversion of single-family homes to multi-unit dwellings.
- HE2.6 - Promote a balance of types of housing throughout the whole community.

(b) Specific Findings In Response To Appellants' Assertions That The Project Is Inconsistent With The General Plan:

(i) The Project Is Consistent With Safety Element Policy 8.5.2

1. The Council rejects appellant's argument that the Planning Commission gave little or no consideration to the fact that the property in question is contaminated, that contamination may have migrated to adjacent properties and/or entered the ground water, and that the project is inconsistent with General Plan Safety Element Policy 8.5.2.
2. Because the project is a permitted use, the City's sole discretion is under the design review ordinance. The City's design review discretion is limited to design issues stated in the ordinance, and the City thus has no discretion to address use-related issues such as remediation of contamination.
3. The Napa County Environmental Health Department (EHD) serves as the Certified Unified Program Agency (CUPA) for all cities and areas of Napa County and thus is the lead agency for and has both the jurisdiction and expertise to oversee and ensure proper remediation of contaminated properties.
4. Appellants' argument ignores and misreads the purpose of Policy 8.5.2. Policy 8.5.2 is found in a section of the General Plan relating primarily to the circulation of emergency vehicles, and the transportation of hazardous materials in trucks. That section says nothing about land use projects on sites with contamination, nor does it impose on the City any standards for addressing such applications.
5. The argument also disregards the consideration that the staff and the applicant have given to the site's contamination, and to the beneficial effect the project will have on the remediation of the site's contamination. If the project moves forward, the applicant will be required to remediate to the satisfaction of the Napa County Environmental Health Department (EHD).
6. Soil contamination on the subject parcel was discussed extensively in both the December 6, 2016 staff report and at the public hearing on the same day. In relation to Public Health and Safety Element Policy 8.5.2 from the 1993 General Plan, the proposed project will not use, store, manufacture, or transport hazardous materials outside of common products used during project construction. Soil contamination present on the project site is from historical uses on the site and is not the result of any actions taken by the project proponent. Denying the proposed project would not change the existing condition of the project site and could result in the site remaining in its currently contaminated condition.
7. Contrary to the appellants' assertion, there is no evidence that the soil contamination has migrated off of the project site or reached any ground water; rather, the professional characterization of the contamination (accomplished by soil sampling and analysis on the project site) concluded that the contaminants are limited to the shallow subsurface of a discrete area at the project site and do not extend vertically to the soil samples taken 18-24 inches below the surface. Further, contrary to appellants' claim that contaminants from the project site may have migrated to private or public water wells, appellants offer no evidence that Paul Skinner's private well water is contaminated and none of the regular quarterly water quality reports from the City well located approximately 900 yards support this claim.

8. As detailed in the December 6, 2016 staff report and resolution, although the City lacks jurisdiction to impose remediation conditions, the project will remediate any soil contamination on site to the satisfaction of the Napa County Environmental Health Department (EHD) as a component of the development process. This is further supported by the Remediation Action Agreement (RAA) entered into between the applicant and the Napa County EHD in lieu of an enforcement order.

9. In short, remediation of the site is more likely if the project is approved than if it is denied, and will be overseen by EHD. Contrary to the appellants' claim, it is EHD's obligation, as the CUPA for all cities and areas of Napa County, to ensure the site is cleaned up. To his credit, the applicant took measures to characterize the type and extent of the contamination and voluntarily approached EHD and agreed to remediate the project site to EHD's satisfaction. There is nothing in the General Plan or any other law that supports appellants' argument that it is the City's obligation to ensure the site is cleaned up.

10. Finally, the Council finds that the December 19th letter from Paul Skinner (attached to the appeal letter) regarding the meeting Mr. Skinner asserts he had with EHD is misleading in implying that the additional soil testing Mr. Skinner says EHD desires is not currently planned for/required. In fact, the remediation plan dated Oct 28, 2016, required by the RAA between EHD and the applicant, already requires the testing Mr. Skinner alludes to in the confirmation soil sample collection and analysis procedures included in the remediation plan to ensure and demonstrate that all remediation conducted is effective, and that no constituents above the applicable San Francisco Bay Regional Water Quality Control Board's environmental screening levels remain, and that if they do, additional remediation will be required until these standards are achieved.

11. With respect to Mr. Skinner, the Council further disagrees with the appellants' claim that the Planning Commission cut short Mr. Skinner's presentation during the December 6th hearing. In fact, during his oral testimony Mr. Skinner far exceeded the time allotted him and all other speakers. Over the objection of the project applicant, the chair of the Planning Commission respectfully allowed him to continue speaking well beyond the time generally allotted to other speakers.

(ii) The Project Is Consistent With Historic Resources Element Policy 7.5.9.

12. The Council disagrees with the argument that the project violates Policy 7.5.9, for several reasons.

13. The Charter Oaks District within which the project is located has not itself been listed as an area-wide historical resource or comprehensive historical district, nor has the City created a Historic Preservation Overlay District covering the Charter Oaks District or the project site. And while four (4) homes in the project vicinity have been listed as historical resources, none are adjacent to the project site.

14. Appellants' argument under Policy 7.5.9 seizes on but one policy out of many, and asserts that the one Policy 7.5.9 should control to the exclusion of others. The City should and does not apply its General Plan policies in such a narrow manner. Rather, the City's General Plan, like most such plans, contains many different, sometimes competing provisions and policies that the City's decision-makers are to consider, weigh and harmonize, such as the above-referenced policies requiring the City to promote in-fill, innovative design, and higher density development to minimize sprawl and postpone the need to expand the Urban Service Area. The

Council finds that staff has provided the correct and appropriate analysis of these different, competing provisions and policies to the Planning Commission and to the City Council, and the Council adopts that analysis.

15. Appellants' argument incorrectly assumes that the plainly subjective concept of "compatibility of character," as used in Policy 7.5.9, is the same as compatibility of design, and must necessarily be applied to require the project's denial here simply because its design does not repeat or mimic the other historic homes in the vicinity. The Council agrees and finds that Policy 7.5.9 by its terms allows broader flexibility, and that ample evidence supports a finding of compatibility of character here.

16. To the extent it applies the project is consistent with Policy 7.5.9. While there are four (4) homes on McCorkle Avenue listed on the City's Historic Resources Master List, the Charter Oaks District/area is not a listed/ recognized comprehensive historic resource.

17. Indeed, McCorkle Avenue is a mix of single-family and multi-family homes constructed in different time periods and in various styles and has not been identified as having a unified design character by the Planning Commission.

18. Furthermore, neither the project site itself nor any of the adjacent properties are identified or listed historic resources and neither construction nor operation of the proposed project will directly or indirectly negatively impact any of the listed historic properties in the vicinity.

19. Moreover, the project was designed so that it appears from the street/front like a single family home so that its appearance and character are more in line with the single-family homes that predominate in the area, and will incorporate various materials consistent with many of the City's older and historic homes such as board and batten siding, gabled roof lines and a corrugated metal roof.

20. Although the Charter Oaks District discussion was omitted from the staff report presented to the Planning Commission, this information was presented to, and considered by the Planning Commission at the December 6, 2016 public hearing on the project.

(iii) The Project Is Consistent With General Plan Policy 8.5.7.

1. General Plan Policy 8.5.7 states: Ensure all streets and roads are adequate in terms of width, turning radius, and grade to facilitate access by City Firefighting apparatus, and to provide alternative emergency ingress and egress.

2. The Council disagrees with the argument that the project violates Policy 8.5.7 for several reasons.

3. The argument again disregards that because this project is a permitted use, issues of traffic, access etc. are beyond the City's limited design review jurisdiction.

4. Despite the limited scope of the City's design review, the Council finds and agrees with staff that staff nevertheless reviewed the project carefully, and found no deficiencies in the street width, turning radius or grade were found through the review of the proposed project design.

5. In addition to the traffic study prepared for the proposed project (attached to the December 6, 2016 Planning Commission report below), the proposed project was

reviewed by the Public Works Department and Fire Department for compliance with required code and safety requirements and was found to be compliant.

6. While individual parcels may extend to what is the centerline of McCorkle Avenue, the City has right-of-way for the future widening of the street in accordance with the General Plan and McCorkle Avenue is a City maintained street.
7. As development occurs on McCorkle, developers will be required to make improvements in accordance with City standards.
8. Further, the project proposes improvements in accordance with such generally applicable City standards in that it provides all required parking, fire access and turnaround and hydrant facilities and frontage improvements on-site.
9. Similarly, the project proposes that all stormwater will be collected, treated and infiltrated on-site (via roofs, gutters, curbs, permeable paving, vegetated swales and bio-filtration pond).

2. Findings That The Project Is Exempt From CEQA And No EIR Is Required For The Project.

1. Based on the required analysis under the California Environmental Quality Act (CEQA), the Council finds that the project is categorically exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15332.
2. Section 15332's Class 32 exemption applies to in-fill development projects which meet the conditions described below. As demonstrated in the staff report, this project satisfies all of the elements of the Class 32 in-fill exemption and the Planning Commission correctly found that the project met all criteria of the Class 32 Infill exemption and was therefore exempt from CEQA under Section 15332.
3. To qualify for the Class 32 exemption, a project must: (a) be consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
4. The subject property has a General Plan and Zoning designation of High Density Residential (HR). This district provides for single-family and multifamily residential units, group quarters and other compatible uses. Multiple-family dwellings, apartments and dwelling groups consistent with density requirements are permitted uses by right in the HR district, and the proposed project complies with all of the HR district's development standards concerning density, lot coverage, height, setbacks and lot width. Though the appellants claim the project does not meet this element of the exemption, based on their argument that the project is inconsistent with General Plan Safety Element Policies 8.5.2 and 8.5.7 and Historic Resources Element Policy 7.5.9, the Council finds that that argument is incorrect, as the Council previously has found and discussed above. Contrary to appellants' argument, the Council finds the project is consistent with all three policies to the extent they apply here.
5. To qualify for the Class 32 exemption, a project must also: (b) occur within city limits on a project site of no more than five acres substantially surrounded by urban uses.
6. The project satisfies this condition as the project site is approximately ½ acre in size; located within the city limits; surrounded by developed properties; and within

the urban limit line. The appellant does not assert that the project fails to meet this element of the exemption.

7. To qualify for the Class 32 exemption, a project must also: (c) have no value as habitat for endangered, rare or threatened species.

8. As discussed in the supporting Biological Assessment, no such habitat exists on the project site. The appellant does not assert that the project fails to meet this element of the exemption.

9. To qualify for the Class 32 exemption, a project must also: (d) not result in any significant effects relating to traffic, noise, air quality, or water quality.

10. As discussed below and in the supporting Traffic Study and Biological Assessment, the project will not result in any such impacts. Based only on speculation and without providing any substantial evidence, the appellants claim the project will result in significant traffic, noise, air quality and water quality impacts. The Council finds otherwise.

11. As demonstrated in the Traffic Study, all of the study intersections will continue to operate at acceptable levels of service with traffic from the proposed project, and no cumulative traffic impacts will result from the combination of existing traffic, project traffic and traffic from other approved projects (including the Brenkle Court, Redmond Winery and Saint Helena Custom Crush projects).

12. The appellants' alleged circulation impacts on McCorkle are unsupported and without merit as the project is designed to accommodate all temporary construction activity and future resident parking/delivery needs on-site. In addition, this argument again ignores that because this project is a permitted use, the City's discretionary jurisdiction over the project is limited to design-related issues. CEQA does not grant the City authority to exercise discretion over issues beyond those allowed under the City's applicable ordinance(s).

13. To qualify for the Class 32 exemption, a project must also: (e) be adequately served by all required utilities and public services.

14. The project will connect to and be served by existing city services including water, sewer, electricity, garbage, etc.

15. Again, based only on speculation and without providing any substantial evidence, the appellants claim the project will not be adequately served by all required utilities and services. The Council finds otherwise. Staff demonstrated that the project site will connect to and be served by all required utilities and services. Appellants' do not cite any such utility or service that is not currently or will not be provided to the site should the proposed project be approved.

16. In addition, contrary to the appellants' assertions, other than for ingress and egress the project does not propose to use let alone overburden McCorkle Avenue. Rather, as noted above and shown on the proposed plans, the project is designed to accommodate all resident parking/deliveries, fire access/turnaround/hydrant, and stormwater collection/treatment/infiltration on-site.

17. The CEQA exemption determination is also consistent with the City's limited discretion to consider or address potential impacts associated with the project's proposed residential land use. Multi-family residential land uses are permitted by right in the HR District. Thus, in the context of this design review approval, the

Planning Commission's authority/discretion is limited to (design related) concerns stemming from the only discretionary actions required for project approval The City Council's discretion on appeal is similarly limited. Section 17.164.010 of the Zoning Ordinance expressly restricts the Planning Commission's and City Council's discretion during design review to the general form, spatial relationships and appearances of the project's proposed design, and Section 17.164.040C expressly precludes the Planning Commission and City Council from disapproving a proposal for non-design- related reasons.

18. Accordingly, the City's discretion, and thus scope of its CEQA review, is limited to design issues such as scale, orientation, bulk, mass, materials and colors, and it has no authority or ability to meaningfully address non-design related issues or impacts by imposing conditions of approval or mitigation measures. As an example, this limitation excludes issues or impacts related to the presence of the known soil contamination on the project site, from the City's design review discretion and scope of its CEQA review because, under the requested Design Review entitlement, the City has no discretion or authority to address such non-design related issues. The Council takes quasi-adjudicative notice of case law that has determined that, in such situations where an agency's discretion to deny or condition a particular activity is limited (such as the proposed residential land use on the project site) its approval decision is considered ministerial and CEQA does not apply or CEQA review is limited to the extent of the discretion. (See (CEQA Guidelines §§ 15002(i)(1), 15369; (*San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 933-934; *Venturans for Responsible Growth v. City of San Buenaventura* (2013) 2013 WL 3093788.)

19. These CEQA regulations and court decisions focus on whether the agency has the authority under its code to shape the project to address environmental impacts. Here, under the Zoning Ordinance's design review provisions, the Planning Commission and City Council haves no authority to regulate the project's residential land use or (therefore) to address non-design related issues.

20. For this reason, the Council finds and determines that the project is consistent with the Class 32 in-fill exemption and sees no aesthetic issues or impacts stemming from the project's architectural design, the project is exempt from CEQA.

21. The Council further rejects appellants' argument that the City has broader discretion, based on the assertion that the City has imposed numerous mitigation measures and conditions of approval ("COAs") on the project. Staff addressed this argument before the Planning Commission by explaining that the COAs are not conditions derived from or imposed pursuant to the design review approval, but rather simply represent a list of the standard requirements that apply to this project independently of this approval and that the applicant will need to demonstrate compliance with such standard requirements prior to the issuance of a building permit (as is the case for all building permits whether design review is required or not).

22. In addition, the Council finds that even if the CEQA exemption did not apply (as discussed above it does), and some level of CEQA review thus were required, the City would nevertheless be allowed to undertake only limited review based on design-related environmental issues, not the use-related issues asserted by the appellants' argument. The Council finds that City staff has demonstrated that the project will not result in any significant impacts, whether design-related or

otherwise, and the appellants have not provided any substantial evidence to support their claims to the contrary.

3. Findings That McCorkle Avenue Is An Appropriate Location For High Density Housing.

1. The Council rejects appellants' argument that McCorkle Avenue is not appropriate for high density housing.
2. The north side of McCorkle Avenue has been designated for high density residential uses since at least the 1993 General Plan.
3. Furthermore, McCorkle Avenue has access to all city services including water and sewer.
4. City staff has not identified any safety concerns with placing high density housing in the General Plan designated high density residential areas on McCorkle Avenue.
5. Further, based on commitments the City made in its current and past Housing Elements, the proposed residential land use is principally permitted in the High Density Residential zoning district. The City has no discretion to deny the project based on that consideration.

4. Findings In Response To Appellants' Objections To The Appeal Fee And Indemnity Requirement.

1. The decision of whether to charge an appeal fee, and in what amount, is one that has been previously made by the City Council. In making that decision, the City Council considered and weighed the competing policy issues such as whether and to what extent an appeal fee is appropriate to create incentives or disincentives for persons filing such appeals, and whether appellants should be responsible for the costs incurred by the City in processing appeals.
2. The City currently charges a $1000 fee for most appeals. This fee is significantly less than true cost of reviewing an appeal of a Planning Commission action as it only covers a portion of the staff time required to process the appeal.
3. Appeal costs are often intentionally subsidized by governing bodies in an effort to encourage civic participation and this fee is an example of such a subsidy. A typical appeal, depending on the complexity of project, will take approximately 10-20 hours of staff time. This time includes processing the appeal application, reviewing the appeal materials and appellant's justifications, preparation of the staff report and resolution(s), answering questions from the applicant, appellant, and public, as well as preparing and making a presentation to the City Council. The $1000 fee covers approximately 6 ½ hours of staff time at a billing rate of $150/hr which only subsidizes a small portion of the actual staff time required.
4. For these reasons, the Council finds that the appeal fee is reasonable and appropriate here.
5. The Council agrees with staff that the indemnification language on the City's appeal application should not and does not apply to appeals of discretionary approvals.
6. For that reason, indemnity was not required of this appeal.

7. The argument arose out of the fact that "boilerplate" indemnity language was included on the City's older standard appeal form to reflect the requirement that project applicants are generally required to indemnify and defend the City against lawsuits filed in connection with project approvals. Staff intends to remove or alter that language to address this in future appeals.

4. Denial of Appeal and Approval of Demolition Permit and Design Review. Based on the foregoing, the City Council does hereby deny the appeal of the Planning Commission's decision to approve a Demolition Permit and Design Review to demolish an existing single-family home in order to construct an 8 unit multi-family dwelling on the property located at 632 McCorkle Avenue in the HR: High Density Residential district. The Council further upholds and adopts the decision of the Planning Commission, including without limitation the Planning Commission resolution and list of standard conditions, and approves the demolition permit and design review.

Approved at a Regular Meeting of the St. Helena City Council on January 24, 2017, by the following vote:

Mayor Galbraith:	Yes
Vice Mayor White:	Yes
Councilmember Dohring:	Yes
Councilmember Koberstein:	NO
Councilmember Ellsworth:	NO

APPROVED:

Alan Galbraith, Mayor

ATTEST:

Cindy Black, City Clerk

CITY OF ST. HELENA
Incorporated March 24, 1878
Re-incorporated May 14, 1889
STATE OF CALIFORNIA

The Bay Area Air Quality Management District ("BAAQMD") adopted CEQA screening thresholds based on type and size of projects, whereas the South Coast Air Quality Management District has not adopted such a measurement for CEQA significance threshold levels. Although not binding on the City, BAAQMD's screening threshold levels are instructive and provide evidence in determining whether a project may have significant environmental effects, triggering the preparation of an EIR.

Under BAAQMD's CEQA screening thresholds, the significance threshold for construction-related NO_x levels for a warehouse is 259,000 square feet. (*See* Bay Area Air Quality Management District, *CEQA Guidelines: Screening Criteria* (June 2010) p. 3–3.) Here, the Project, at 415,592 square feet, will have a significant environmental effect because it exceeds the 259,000 square foot threshold level. Since the "fair argument" standard requires an EIR be prepared if any substantial evidence in the record indicates that a project may have an adverse environmental effect, and the size of the Project greatly exceeds BAAQMD's screening threshold for NO_x, the City must prepare an EIR for the Project.

CONCLUSION

For the above and other reasons, the Project must undergo CEQA review before the City can approve the Project. Thank you for considering these comments.

Sincerely,

Rebecca L. Davis