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DATE 10/5/2018 BUS 10/9/2018
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October 5, 2018

Board of Supervisors
El Dorado County
330 Fair Lane
Placerville, CA 95667

Re: Saratoga Retail Project Design Review
DR R18-0001
October 9, 2018 Agenda, Items 18-1497 & 18-1498

Dear Members of the Board of Supervisors:

This letter is the applicant's response to the appeals filed in objection to the Planning Commission's unanimous approval of this Design Review application. It is important to note that uses proposed as part of this site plan are allowed uses within the zone district and the General Plan designation of the property. Accordingly, this application is for a simple Design Review pursuant to Ordinance Code Section 130.52.030, which provides in relevant part,

"the approval of a Design Review Permit is a ministerial project pursuant to CEQA, when in compliance with adopted Design Standards. The Design Review process shall be limited to consideration of compliance with established standards, provided that the use proposed for the project site is an allowed use within the zone."

This Ordinance contains two key elements, one is the determination that the design review process is "ministerial" pursuant to CEQA, which essentially means that CEQA is not applicable and, two, the process is limited to a determination as to whether the project is consistent with established standards. Accordingly, the question is not whether a fast food drive-through is allowed on the property, but rather, is the design of the project consistent with applicable standards, such as, parking, signage, setbacks and the like? This Ordinance is consistent with case law on the subject. In *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal App 4th 925, in reviewing the design review of a 3,000,000 square foot office and hotel complex, the court concluded that to the extent there is some discretion associated with a design review approval, it was limited to design and aesthetics considerations and did not rise to the level of discretion necessary to trigger a need for a CEQA document. El Dorado County has essentially codified this legal concept in Ordinance Code Section 130.52.030. The project site has a General Plan Designation of Commercial and is zoned Commercial-Community Design Review District (CC-DC). All proposed uses for the project are allowed uses within the Commercial Community Design District. Further, this proposed site plan is consistent with a reasonable interpretation of all adopted/existing development standards applicable to the Commercial zoning district.

A primary purpose of this letter is to state for the record that the applicant does not waive their rights under Ordinance 130.52.030, nor should the election to provide an enhanced Initial Study/Mitigated Negative Declaration be construed as an implied waiver of the benefits of the Ordinance.

Notwithstanding the foregoing, if it could be construed that CEQA does apply to the Design Review process, the project would be analyzed in accordance with CEQA Guidelines Section 15183, which provides for a limited scope of review for projects which are consistent with the General Plan, a community plan or the zoning for the property for which an EIR had been prepared. In this case, the project, as proposed, is consistent with the General Plan and zoning which has been in place for many years. In such a case, the environmental analysis is limited to effects which are peculiar to the site or significant offsite and cumulative impacts which were not discussed in the prior EIRs. The numerous studies which are incorporated into the Initial Study/Mitigated Negative Declaration for the project reveal no significant impacts which were not considered with the adoption of the General Plan, or its recent updates. In fact, due to the significant reduction of commercial square footage on the site, the projected impacts arising from the use of the property were actually less than assumed in those prior studies. Accordingly, arguments related to cumulative impacts are inapplicable to the project as proposed, as such impacts were studied in prior EIRs and where determined that such impacts were significant and unavoidable, statements of overriding findings were made.

There are a couple of recurring comments brought up in the appeals that bear addressing at least briefly. Commenters refer to what is variously described as an agreement, promise or adopted policy that "tourist serving" uses would not be allowed on this site. Actually, the reference was in the form of a finding justifying a request to eliminate the RV parking requirement based on the proposed 2009 site plan. Such considerations have no relevance to the current application since the RV spaces have been included on the site plan and design waivers have not been requested. There is no limitation imposed on this site as to commercial uses.

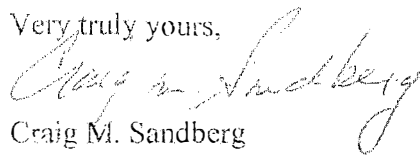
In an effort to find any adopted regulation with which the application is not consistent, the appellants point out Section H.2 of the Community Design Standards which prohibits siting drive-through facilities on driveways facing residential zones. They argue that since the encroachment on Saratoga Way for the Saratoga Retail Center is facing residentially zoned property it is in violation of this provision. However, careful reading of the provisions associated with drive-through regulations makes it clear that the term "drive-through facility" refers to that portion of the building which contains the window and equipment where the drive-through transaction actually occurs. This is most evident in Section H.1 of the regulations which provides that a drive-through facility shall be located at the rear or side of a commercial structure. Clearly this reference isolates the "facility" to the drive through and does not characterize the entire building or center as the facility, as the appellants would like. The project design clearly complies with this requirement by having the driveway serving the drive-through

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facility directed towards El Dorado Hills Blvd at its point of ingress and towards the Walgreens store at the point of egress.

We respectfully request your rejection of this appeal and upholding of the Planning Commission's approval of this Design Review.

Very truly yours,



Craig M. Sandberg

CMS/ms

cc: Efren Sanchez
Mike Nihan
Dave Livingston
Client