

**Rachael E. Koss  
Attorney at Law  
309 Morning Sun Avenue  
Mill Valley, CA 94941  
rachaelkoss@hotmail.com**

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Marin County Planning Commission  
c/o Heidi Scoble, Planner  
3501 Civic Center Drive #308  
San Rafael, CA 94903  
[hscoble@marincounty.org](mailto:hscoble@marincounty.org)

Re: Opposition to Appeal of Planning Division's Administrative Decision for the Parish-Martin Design Review and Sign Review Project (ID 2014-0421)

Dear Honorable Planning Commissioners:

I am writing regarding Dave Coury's March 12, 2015 appeal of the Planning Division's Administrative Decision to exempt the Parish-Martin Design Review and Sign Review project (ID 2014-0421) ("Project") from review under the California Environmental Quality Act ("CEQA"). The Project includes Design Review and Sign Review approval to allow for the remodel to an existing commercial building located at 201-205 Flamingo Road in Mill Valley, California. The remodel includes exterior and interior modifications to the building, new hardscape, landscaping and three signs. The Planning Division's Administrative Decision should be upheld, and the appeal should be denied, because: (1) the appellant is not eligible to appeal the Decision under the County's Development Code; and (2) the Planning Division properly exempted the Project pursuant to CEQA Guidelines<sup>1</sup> section 15301(e).

**I. THE APPEAL SHOULD BE DENIED BECAUSE THE APPELLANT IS NOT ELIGIBLE TO APPEAL**

Section 22.113.030(A) of the County's Development Code states that persons "*affected*" by a discretionary determination or action" are eligible to appeal the determination or action.<sup>2</sup> Mr. Coury does not have standing to appeal the Planning Division's Administrative Decision because there is no evidence that Mr. Coury would be affected by the Decision. There is zero evidence that Mr. Coury lives,

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<sup>1</sup> 14 Cal. Code Regs. §§ 15000 et seq.

<sup>2</sup> Emphasis added.

works or recreates in the Project area, or that Mr. Coury would otherwise be affected by the Decision. Quite the opposite, Mr. Coury's Petition for Appeal provides that his address is in Corte Madera, which is approximately five miles from the Project site. Mr. Coury is not eligible to file an appeal under section 22.114.030 of the County's code. Therefore, the appeal should be denied.

## **II. THE APPEAL SHOULD BE DENIED BECAUSE THE PLANNING DIVISION PROPERLY EXEMPTED THE PROJECT FROM CEQA REVIEW**

### **A. The Planning Division Properly Applied the "Existing Facilities" Categorical Exemption**

The Planning Division properly exempted the Project from CEQA review under CEQA Guidelines section 15301. Section 15301 provides that a project is categorically exempt from CEQA review if the project:

consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

Section 15301 notes that "[t]he key consideration is whether the project involves negligible or no expansion of use of an existing use." Here, the Project entails the remodel of an existing structure and new signs that would not add floor area to the Project site. The existing structure housed various grocery stores for over 50 years. The Project includes remodeling the existing structure for the tenancy of another grocery store. Not only would the use of the existing structure be the same as past uses, but the remodel would result in a *net reduction of floor area* of the existing structure.<sup>3</sup> This Project, which "involves negligible or no expansion of use of an existing use," is precisely the type of project that is properly exempted under section 15301.

### **B. The "Unusual Circumstances" Exception Does Not Apply**

The CEQA Guidelines provide that a categorical exemption is not proper if "there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances."<sup>4</sup> Application of the exception requires two inquiries: (1) whether the project presents unusual circumstances; and (2) whether there is a reasonable possibility that a significant environmental impact

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<sup>3</sup> Notice of Exemption, February 10, 2015, p. 1.

<sup>4</sup> 14 Cal. Code Regs. § 15300.2(c).

will result from those unusual circumstances.<sup>5</sup> “A negative answer to either questions means the exception does not apply.”<sup>6</sup>

It is the burden of an exemption challenger to show that a project is not exempt because it falls within an exception.<sup>7</sup> The challenger must support their findings with substantial evidence.<sup>8</sup> Here, Mr. Coury provided **zero** evidence that the Project would have any significant effects on the environment due to unusual circumstances. Therefore, the appeal must be denied.

1. There is No Evidence that the Project Presents Unusual Circumstances

The question of whether circumstances are “unusual” is whether the circumstances of a project differ from those of the projects covered by a categorical exemption and create a risk that does not generally exist for the exemption class.<sup>9</sup> Here, there is no evidence that the Project presents any unusual circumstances.

Mr. Coury argues that there is a reasonable possibility that there will be increased traffic in “a highly congested area” from the Project which includes five additional parking spaces.<sup>10</sup> Mr. Coury also argues that the Project’s signs and copula are “factors that dictate a full CEQA review.”<sup>11</sup> This is not substantial evidence of “unusual circumstances” and this type of argument has been expressly rejected by the courts. For example, in *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4<sup>th</sup> 1329, 1351, the court rejected claims that the location of an infill project at a crowded intersection constituted an “unusual circumstance,” noting that this type of circumstance is precisely what is expected in the infill development context.<sup>12</sup> Like *Wollmer*, here, the Project is proposed to be located in a commercial area on a site that housed a grocery store for more than 50 years. The Project is exactly the type of development that would be expected on this site. There is nothing so out of the ordinary about the Project that the exemption would not apply. There is no substantial evidence that the Project presents “unusual circumstances” and, therefore, the appeal must be denied.

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<sup>5</sup> *North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4<sup>th</sup> 832, 869.

<sup>6</sup> *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4<sup>th</sup> 786, 800.

<sup>7</sup> *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4<sup>th</sup> 106, 115.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See Petition for Appeal, Grounds for Appeal, March 12, 2015.

<sup>11</sup> *Id.*

<sup>12</sup> See also *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4<sup>th</sup> 1243, 1260 (no showing that addition of building in commercial area would result in unusual traffic impacts) and *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified Sch. Dist.* (2006) 139 Cal.App.4<sup>th</sup> 13356 (no evidence traffic, parking, and access problems are unusual circumstances in context of school consolidations).

2. There is No Evidence of a Reasonably Possibility that a Significant Environmental Impact Would Occur

Even if there was substantial evidence of “unusual circumstances” (which there is not), there is no evidence of a reasonable possibility that the Project would cause significant environmental impacts. Mr. Coury provides a laundry list of significant impacts that would occur from the Project, including impacts related to traffic, parking, safety, drainage and flood hazards, wildlife, public services, noise, visual character, land use, and economic effects.<sup>13</sup> However, Mr. Coury provides **zero** evidence to support his list.

On the contrary, evidence shows that the Project may **reduce** environmental impacts. For example, the more than 12,000 residents of Tamalpais Valley and the surrounding communities<sup>14</sup> that currently drive to grocery stores in Mill Valley proper or Sausalito could walk, bike or drive fewer miles to the Project site. In turn, environmental impacts related to traffic and traffic-related noise, air quality and greenhouse gas emissions would be **reduced**. Also, for example, the Project would enhance the visual character of the existing structure and its surroundings by providing much needed updates and upgrades to the structure.

Furthermore, one of the fundamental purposes of CEQA is to ensure that public agencies weigh the socioeconomic and environmental risks and benefits of a project.<sup>15</sup> Agencies are required to consider “the provision of employment opportunities for highly trained workers.”<sup>16</sup> Here, the Project will create 40 to 50 construction jobs that will last approximately eight months and 175 permanent jobs for store operation.<sup>17</sup> Thus, the Project will **benefit** workers and the economy – it will not have adverse “cumulative economic effects” as stated in Mr. Coury’s appeal.

In short, Mr. Coury failed to meet his burden that the Project is not exempt from CEQA review. There is no evidence that the Project presents unusual circumstances or that there is a reasonable possibility that a significant impact would result from unusual circumstances. Therefore, the appeal must be denied.

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<sup>13</sup> See Petition for Appeal, Grounds for Appeal, March 12, 2015.

<sup>14</sup> According to Marin LAFCO (<http://lafco.marin.org/>), as of 2010, Stinson Beach population is 632, Muir Beach population is 310 as of 2014; Almonte Sanitary District population is 1478 as of 2000, Tamalpais Community Services District population is 7,000 as of 2012, and Homestead Valley Sanitary District population is 2,354 as of 2000; see also [http://www.realtor.com/local/Muir-Woods-Park\\_Mill-Valley\\_CA/lifestyle](http://www.realtor.com/local/Muir-Woods-Park_Mill-Valley_CA/lifestyle) for Muir Woods Park Community population of 796. Total population for Tamalpais Valley and surrounding communities is 12,570.

<sup>15</sup> Pub. Resources Code § 21081.

<sup>16</sup> *Id.*, § 21081(a)(3).

<sup>17</sup> Email communication with Sheila McNulty, Marketing Director for Good Earth, March 23, 2015.

### III. CONCLUSION

Mr. Coury's appeal should be denied because he is not eligible to appeal and the Planning Division properly exempted the Project from CEQA review.

Thank you for attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Rachael E. Koss". The signature is written in a cursive style.

Rachael E. Koss

cc:  
Kate Sears, Supervisor [ksears@marincounty.org](mailto:ksears@marincounty.org)