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Via Electronic & U.S. Mail

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Re: Applicant's appeal of Planning Commission's denial of DP15-001 for the Rough and Ready Dollar General project

Dear Chair Weston, Vice Chair Scofield, and Supervisors Anderson, Hall, and Miller:

On October 26, 2017, the Planning Commission denied Development Permit DP15-001 ("Project Permit") for the Rough and Ready Dollar General project at 12345 Rough and Ready Highway ("Project"). The Commission did, however, certify the environmental impact report (EIR) that evaluated the Project along with the proposed Alta Sierra and Penn Valley Dollar General projects in the County (EIR 15-001). The applicant Simon CRE filed a timely appeal of the Project permit denial to this Board.

On behalf of Simon CRE, we ask the Board to overturn the Commission's denial of the Project permit. We have reviewed the Commission's denial findings in the October 26, 2017 Staff Report ("Staff Report") recommending denial of the Project permit. For the reasons stated below, we respectfully disagree with the Planning Commission's conclusions that: (1) the Project is inconsistent with certain General Plan Goals and Policies, and (2) the Project will have significant land use compatibility impacts. (See Rough and Ready CEQA¹ Findings, p. 33 [Land Use and Planning Impact 12.3.2 found significant and unavoidable]; Staff Report, pp. 17-20, 22-25.)

The Project involves construction of a 9,100 square-foot retail store on a one-acre, commercially-zoned site located along Rough & Ready Highway. (Staff Report, p. 5.) The Project also involves removal of an existing structure being used for commercial purposes. (*Ibid.*) The proposed building design is in a "traditional/western theme with

¹ California Environmental Quality Act, Pub. Resources Code, § 21000 et seq. (CEQA). The CEQA Findings are separate from the denial findings in the Staff Report. Unless otherwise noted, references to Findings in this letter are to the denial findings, not the CEQA Findings.

gabled entryway and rectangular façade elements with wood posts supporting an awning structure.” (*Ibid.*) The Project includes landscaping throughout the site that would serve as a buffer for adjacent uses. (Staff Report, p. 14.)

As the Staff Report acknowledges, the Project is wholly consistent with the site’s commercial “C1” zoning and its General Plan designation of Neighborhood Commercial (NC) use. (Staff Report, p. 2, 17-18.) Additionally, the Project is consistent with: (a) the County’s Comprehensive Site Development Standards as outlined in the Land Use and Development Code Commercial District standards (Section L-II 2.4), and (b) the Western Nevada County Design Guidelines. (Staff Report, pp. 17-18.) In other words, the “design of the structure meets County standards.” (Staff Report, p. 14.) The Project also preserves a portion of the site as open space per County requirements. (Staff Report, p. 14.) Moreover, the project site is currently occupied by an existing commercial building and is surrounded by other commercially zoned properties. (Staff Report, pp. 2, 5 [Table A: C1 Zoning Pod Land Use comparison], 11, 22 [eight adjoining parcels to the southeast, east, west, and northwest are all designated NC/C1].)

Nonetheless, the Commission and staff concluded that the Project would be incompatible with the surrounding rural residential uses that occupy the adjoining, commercially-zoned properties. (Staff Report, pp. 11, 22-25.) In particular, the Commission found that the Project would be inconsistent with a number of General Plan Goals and Policies. (*Ibid.*) Under the Commission’s reasoning for the permit denial, the project site will effectively be rezoned residential because any proposal for commercial use on the C1 site should be found incompatible with the surrounding residential uses. For example: (a) Findings II(A)(1) and II(A)(4) reference the project’s “proximity to adjacent residential uses” and the “predominantly residential neighborhood”; (b) Finding II(A)(2) cites the “existing NC designated parcels surrounding the site [that] are all developed with residential uses”; (c) Finding II(A)(3) notes that this is a “primarily a rural residential area”; (d) Finding II(B) states that “[e]xisting residential units are within close proximity to the project site that could experience interruption to enjoyment of their residential property by the induction of a commercial use of this size”; and (e) Finding II(E) quotes the Project EIR’s discussion of Impact 12.3.2(RR) as stating that “the site is surrounding by rural residential uses” and the project “could be incompatible with these residential properties.” (Staff Report, pp. 22-25.)

If the County wishes to rezone the project site and surrounding properties to rural residential uses, it may properly do so only by adopting a new zoning ordinance. Since the County did not choose to change the zoning *before* the applicant dutifully paid fees and committed resources to submitting a code-compliant project proposal and the preparation of a full EIR analyzing a zoning-compliant use on the site, the County would abuse its discretion to uphold the denial of the Project permit on the basis that County decisionmakers wished the site was zoned differently.

The Commission’s denial findings are arbitrary because they are unsupported by facts and law. Indeed, in contrast to the Commission’s denial findings, the EIR

concluded that the Project “would be consistent with the Nevada County General Plan” and would not result in any conflicts with applicable land use plans, policies, or regulations. (Draft EIR, p. 12.0-15 and -16; CEQA Findings, p. 33.) It appears as if the Commission arbitrarily interpreted General Plan policies to discriminate against certain commercial uses that the Commissioners find objectionable. (See *Del Monte Dunes at Monterey, Ltd. v. City of Monterey* (9th Cir. 1990) 920 F.2d 1496, 1508 [substantive due process claims, where city council allegedly changed course and rejected project that city staff had found met all required conditions]; *Village of Willowbrook v. Olech* (2000) 528 U.S. 562, 564-65 [recognizing “equal protection claims brought by a ‘class of one,’ where the plaintiff alleges that she has been intentionally treated differently from others similarly situated”]; *Bateson v. Geisse* (9th Cir. 1988) 857 F.2d 1300, 1303-1304 [finding that the city was liable for violating the applicant’s substantive due process rights because they arbitrarily withheld a building permit].)

For example, in Finding II(A)(1), the Commission chose to focus on the latter part of General Plan Goal 1.4, to the exclusion of the earlier segment italicized below:

Within Community Regions, provide for an adequate supply and broad range of residential, employment-generating, and cultural, public, and quasi-public uses located for convenience, efficiency, and affordability while protecting, maintaining, and enhancing communities and neighborhoods.

(General Plan, Vol. 1, p. 1-28, italics added; Staff Report, p. 22.) When Goal 1.4 is read in full, it is apparent that the Project is consistent with this General Plan goal because the addition of the Project to the existing rural residential neighborhood would contribute an employment-generating, commercial use to an area lacking such uses, thus enhancing the existing community in keeping with the intent of Goal 1.4. But the Commission discounted Goal 1.4’s focus on providing a “broad range” of uses, thereby effectively rewriting Goal 1.4 with respect to this parcel. The Commission also ignored Policy 1.4.6, which directs the County to “[d]esignate a diversified compatible mix of land uses *in close proximity to residential uses*” in order to support Goal 1.4. (General Plan, Vol. 1, p. 1-31, italics added.) When the County zoned the Project site for commercial uses, it presumably set an intention to create a “diversified compatible mix of land uses.” Denial of the Project permit on the grounds stated in the Commission’s findings runs contrary to this intention.

Finding II(A)(5) suffers from the same cherry-picking. (Staff Report, p. 24.) General Plan Goal 2.1 states: “*Provide for a strong economic base while protecting and maintaining neighborhoods.*” (General Plan, Vol. 1, p. 2-2, italics added.) The Commission’s findings fail to even acknowledge that the proposed commercial use would contribute more to a “strong economic base” than another rural residential project.

In conclusion, the Board should reverse the Commission’s denial of the Project permit because the Commission’s denial findings are based on arbitrary and

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unreasonable interpretations of the County's General Plan policies and goals. Thank you for your careful consideration of these important points.

Very truly yours,



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cc: Tyler Barrington
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