

**From:** Lisa Kaplan [<mailto:liskaplan@gmail.com>]  
**Sent:** Tuesday, January 24, 2017 11:43 AM  
**To:** dgCDD  
**Subject:** Revisiting letters and peititons

Dear Planning Commissioners,

Thank you for your service and Welcome to your new very important role in developing our communities!

Middletown are residents have been engaged in public comments regarding the Dollar General for nearly two years. Many community members including business owners, our school district, representatives from the arts community, and about 90% of community members attending MATH meetings where the Dollar General was on the agenda 3 times, have expressed opposition and concern about the proposed Dollar General location, size, design and impact in a variety of ways.

We have been told that ALL of our letters and petitions (3 petitions ranging from 500 to just over 100 signatures) will be included in your files and thus many of these were not submitted again.

Thank you for your attention to our calls to guarantee that development in the Middletown Area adhere to the Middletown Area Plan, its true intent and purpose to maintain the small town character and charm of Middletown, and prohibit chain and big box stores in town, as it was envisioned and negotiated by residents of our community over a lengthy period of time and authorized by the Board of Supervisors in 2010.

Thank you again for your service to Lake County and its residents.

Sincerely,  
Lisa Kaplan

--

Lisa Kaplan

[www.LisaKaplanArt.com](http://www.LisaKaplanArt.com)

Art / Education / Digital Media and Design

Tel: 707-987-9095

Cell: 707-295-6663

EXHIBIT I



January 23<sup>rd</sup>, 2017

Michalyn DelValle  
Community Development Department Planning Division  
255 N. Forbes Street  
Lakeport, CA 95453

ITEM 2  
9:05 AM  
JANUARY 26, 2017

RE: Middletown Dollar General, IS 15-10

Dear Ms. DelValle and County of Lake Planning Commissioners,

My wife and I are new residents to Lake County, and it was recently brought to my attention that the Dollar General corporation is currently negotiating a plan to build one of their stores in Middletown.

I encourage the County of Lake Planning Commission to postpone the further review of Dollar General Corporations proposed future building projects, until such time as the outcome of the multiple ethics violations class action lawsuits against them are fully resolved.

It is quite possible that Dollar General may need to liquidate assets in order to try and survive their business, versus take on additional liability incurred through additional construction projects. But that will not be determined until after the outcome of the current ethics violations against them in the courts. There does appear to be evidence that liabilities were not responsibly disclosed to shareholders.

If you desire to review the Dollar General publicly available quarterly reports (unaudited versions are readily available on their website), you may arrive at a similar conclusion.

It is my responsibility as a concerned citizen to relay this information to you, and encourage you to utilize our county of lake resources toward projects that have significantly less liabilities attached to them, and a higher success rate toward their ethical and responsible contribution to our county and it's members.

There are other concerns that came up in my research on Dollar General, and even though they have little to do with actual planning, I thought I'd include them, so they are a part of the record.

I've also been informed that the location is across the street from the local schools, which I do find a bit concerning.

I have conducted additional research regarding Dollar General, and the results that I've found, I need to share with you. I have included the links to my research so you can further verify what I have found.

1. The Consumer Affairs Overall Satisfaction Rating for Dollar General, is 1 out of 5 stars. This organization has generated 588 Complaints in the last 18 months.
  - o <http://www.complaintslist.com/dollar-stores/dollar-general/>
2. The Consumer's Voice Complaints List gives Dollar General an Average Rating of 1.44 out of 5  
Based On: 97 Reviews
3. Also, Consumer's Voice noted that Dollar General continues to maintain losses.
  - o <https://finance.yahoo.com/news/dollar-general-shareholder-alert-former-044520267.html>
4. My3cents.com Dollar General Consumer Reviews give a 1.4 out of 5, based on 9 ratings and 16 reviews & complaints
  - o <http://mythreecents.com/reviews/dollar-general>



Summation of the unfavorable reviews and comments (of all three reviewers for 2016) were consistently in the following areas:

- Accused customer of product price switching
- Customers unable to receive assistance from store staff
- Excessively long waits at registers due to understaffing
- Store managers disrespectful and/or condescending to customers needing assistance
- Store is dirty, restrooms filthy, trash consistently all over store and parking lot
- Many customers reported being accused of potentially shoplifting
- Store managers not clarifying or honoring pricing regarding multiple pricing signs on items
- "Digital coupons are a scam to get consumers into the store. They appear in My Coupons but does not apply the discount when purchasing and the unprofessional associates in the store does nothing about it, but say to call the corporate office."
- "I won't go into detail but the health department should see and smell the restroom. I have complained to the store manager only to be told that they don't have time to do the regular task much less any extra. It's sad that a store that isn't very old looks like the city dump."
- "I was sent a postcard in the mail with a coupon for \$5 off of a \$25 purchase. I scoured the coupon for an expiration date multiple times, and there was none. At the store, the clerk took my coupon and I thought she scanned it. They told me the coupon had expired and showed me some small yellow coupons which I told them was not like the one I received in the mail."

5. Also, there are class action lawsuits pending against Dollar General. (January 19, 2017)

DOLLAR GENERAL SHAREHOLDER ALERT BY FORMER LOUISIANA ATTORNEY GENERAL: KAHN SWICK & FOTI, LLC REMINDS INVESTORS WITH LOSSES IN EXCESS OF \$100,000 of Lead Plaintiff Deadline in Class Action Lawsuit Against Dollar General Corporation – (DG)

GlobeNewswire • January 20, 2017

**Comment:**

NEW ORLEANS, Jan. 20, 2017 (GLOBE NEWSWIRE) -- Kahn Swick & Foti, LLC ("KSF") and KSF partner, the former Attorney General of Louisiana, Charles C. Foti, Jr., reminds investors that they have until **March 20, 2017** to file lead plaintiff applications in a securities class action lawsuit against Dollar General Corporation ([DG](#)).

About the Lawsuit;

Dollar General and certain of its executives are charged with failing to disclose material information during the Class Period, violating federal securities laws.

On this news, the price of Dollar General's shares plummeted.

For additional information

Contact:

Kahn Swick & Foti, LLC

Lewis Kahn, Managing Partner

[lewis.kahn@ksfcounsel.com](mailto:lewis.kahn@ksfcounsel.com)

1-877-515-1850

206 Covington St.

Madisonville, LA 70447

- <https://finance.yahoo.com/news/shareholder-alert-bronstein-gewirtz-grossman-161600833.html>

6. There appears to additional class action suits regarding Dollar General

SHAREHOLDER ALERT - Bronstein, Gewirtz & Grossman, LLC Notifies Investors of Class Action Against Dollar General Corporation (DG) & Lead Plaintiff Deadline: March 20, 2017

Jan 19, 2017, 8:16 AM

**Comment**

NEW YORK, Jan. 19, 2017 /PRNewswire/ -- Attorney Advertising -- Bronstein, Gewirtz & Grossman, LLC notifies investors that a class action lawsuit has been filed against Dollar General Corporation ("Dollar General" or the "Company") (DG) and certain of its officers, on behalf of shareholders who purchased Dollar General securities between March 10, 2016, and November 30, 2016, both dates inclusive (the "Class Period").

This class action seeks to recover damages against Defendants for alleged violations of the federal securities laws under the Securities Exchange Act of 1934.

The complaint alleges that throughout the Class Period, defendants made materially false and misleading statements and failed to disclose adverse facts about Dollar General's business and operations to the investing public.

**Contact:**

Bronstein, Gewirtz & Grossman, LLC  
Peretz Bronstein or Yael Hurwitz  
212-697-6484 | [info@bgandg.com](mailto:info@bgandg.com)

7. Regarding providing living wages, it should be noted that the average Dollar General salary ranges from approximately **\$14,500** per year for Cashier to **\$65,954** per year for Supervisor. Most of the employees would be earning below poverty level wages.

8. This was also an interesting bit of information:

**America's Worst Companies to Work For**

For the second year in a row, 24/7 Wall St. has identified **America's worst companies to work for**. While company management can improve employee satisfaction, **most of the companies on our list continue to make workers miserable**.

In order to identify America's worst companies to work for, 24/7 Wall St. examined employee reviews at jobs and career community site [Glassdoor](https://www.glassdoor.com/). Based on the reviews, Glassdoor scores companies on a scale of one to five with an average score of 3.2 for the over 250,000 companies measured. 24/7 Wall St. identified the nine publicly traded companies that received scores of 2.5 or lower.

Certain industries appear more likely to have lower employee satisfaction than others. Four of the companies on this list — Dillard's Inc. (NYSE: [DDS](#)), Sears Holdings Corp. (NASDAQ: [SHLD](#)),

**Dollar General Corp. (NYSE: [DG](#))** and RadioShack Corp. (NYSE: [RSH](#)) — are in retail.

- <http://finance.yahoo.com/news/america%E2%80%99s-worst-companies-to-work-for-152240719.html>

I encourage you to verify the research that I've provided.

I also request that you suspend any further building plans (or County of Lake resources) regarding Dollar General in the County of Lake.

Not only does it appear that Dollar General is currently struggling (losing money), the class action suits against them also add the potential of a significant additional liability.

We need to encourage ethical solvent businesses that can contribute added value to our community, provide an enhancement of quality products and services, as well as provide our valuable local people a living wage.

County of Lake is not in need of another business liability, and Dollar General as per their past and current history does display a significant liability.

Sincerely,

A handwritten signature in black ink, appearing to be 'Sam Euston', with a stylized, looped design.

Sam Euston





ITEM 2  
9:05 AM  
JANUARY 26, 2017



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## Central Valley Regional Water Quality Control Board

11 January 2017

Michalyn DelValle  
County of Lake  
255 North Forbes Street  
Lakeport, CA 95453

CERTIFIED MAIL  
91 7199 9991 7035 8417 7761

### **COMMENTS TO REQUEST FOR REVIEW FOR THE MITIGATED NEGATIVE DECLARATION, MIDDLETOWN DOLLAR GENERAL, MAJOR USE PERMIT UP 15-08, DESIGN REVIEW AND INITIAL STUDY IS 15-10 PROJECT, SCH# 2016122036, LAKE COUNTY**

Pursuant to the State Clearinghouse's 19 December 2016 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Mitigated Negative Declaration* for the Middletown Dollar General, Major Use Permit UP 15-08, Design Review and Initial Study IS 15-10 Project, located in Lake County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

#### **I. Regulatory Setting**

##### **Basin Plan**

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources

KARL E. LONGLEY ScD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCCE, EXECUTIVE OFFICER

11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | [www.waterboards.ca.gov/centralvalley](http://www.waterboards.ca.gov/centralvalley)

Control Board (State Water Board), Office of Administrative Law (OAL) and in some cases, the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues.

For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/).

### **Antidegradation Considerations**

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Policy is available on page IV-15.01 at:

[http://www.waterboards.ca.gov/centralvalleywater\\_issues/basin\\_plans/sacsjr.pdf](http://www.waterboards.ca.gov/centralvalleywater_issues/basin_plans/sacsjr.pdf)

In part it states:

*Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.*

*This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.*

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

## **II. Permitting Requirements**

### **Construction Storm Water General Permit**

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Construction General Permit), Construction General Permit Order No. 2009-009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan



drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements.

If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACOE at (916) 557-5250.

**Clean Water Act Section 401 Permit – Water Quality Certification**

If an USACOE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications.

**Waste Discharge Requirements – Discharges to Waters of the State**

If USACOE determines that only non-jurisdictional waters of the State (i.e., “non-federal” waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation.

For more information on the Water Quality Certification and WDR processes, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/help/business\\_help/permit2.shtml](http://www.waterboards.ca.gov/centralvalley/help/business_help/permit2.shtml).

**Dewatering Permit**

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Risk General Order) 2003-0003 or the Central Valley Water Board’s Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Risk Waiver) R5-2013-0145. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Risk General Order and the application process, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo2003-0003.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf)

For more information regarding the Low Risk Waiver and the application process, visit the Central Valley Water Board website at:

For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at:  
[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2013-0074.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0074.pdf)

For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:  
[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2013-0073.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0073.pdf)

**NPDES Permit**

If the proposed project discharges waste that could affect the quality of the waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit.

For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at:  
[http://www.waterboards.ca.gov/centralvalley/help/business\\_help/permit3.shtml](http://www.waterboards.ca.gov/centralvalley/help/business_help/permit3.shtml)

If you have questions regarding these comments, please contact me at (916) 464-4644 or [Stephanie.Tadlock@waterboards.ca.gov](mailto:Stephanie.Tadlock@waterboards.ca.gov).



Stephanie Tadlock  
Environmental Scientist

cc: State Clearinghouse unit, Governor's Office of Planning and Research, Sacramento

Law Office of Rose M. Zoia

50 Old Courthouse Square, Suite 401  
Santa Rosa, California 95404  
707.526.5894 . fax 267.381.6097  
rzoia@sbcglobal.net

January 24, 2017

*via email and USPS*

Lake County Planning Commission  
Community Development Department  
255 North Forbes Street  
Lakeport CA 95453

RE: Middletown Dollar General Design Review and Initial Study for Use Permit  
UP 15-08, IS 15-10  
January 26, 2017

Dear Planning Commission:

Attached is a copy of my letter on behalf of Middletown neighbors dated December 7, 2016, for the December 8, 2016, hearing on the above-referenced project. Since that hearing was continued to January 26, 2017, we are re-submitting the attached letter for your consideration. You may disregard the section under the first bold-face heading for the purposes of this hearing.

However, the current Notice of Intent to Adopt a Mitigated Negative Declaration and Notice of Public Hearing by the Lake County Planning Commission remains problematic. It states that any comments on the proposed mitigated negative declaration (MND) must be "submitted to the Planning Division or Project planner prior to the end of the review period" in order to receive "consideration by the Commission." This implies that comments on the MND made *at* the hearing before the close of the public hearing may not receive consideration by the Commission. This, of course, is not what the law requires. My client asks that this incorrect information to the public immediately be rectified.

Thank you for your continued close attention to this matter.

Very truly yours,

  
Rose M. Zoia

cc: Board of Supervisors  
Michalyn DelValle, Senior Planner



# Law Office of Rose M. Zoia

50 Old Courthouse Square, Suite 401

Santa Rosa, California 95404

707.526.5894 . fax 267.381.6097

rzoia@sbcglobal.net

December 7, 2016

*via email and USPS*

Lake County Planning Commission  
Community Development Department  
255 North Forbes Street  
Lakeport CA 95453

RE: Middletown Dollar General Design Review and Initial Study for Use Permit  
UP 15-08, IS 15-10  
Item 2, December 8, 2016, 9:30 a.m.

Dear Planning Commission:

On behalf of Middletown neighbors, please accept these comments on the above-referenced project.

My letter dated August 24, 2016, addressed the design review issue and is attached hereto and fully incorporated herein by reference.

## **Inadequate Notice of Updated Initial Study and Updated Mitigated Negative Declaration**

CEQA requires a Notice of Intent to adopt a negative declaration to be posted at the County Clerk's office for 20 days or 30 days if any responsible or trustee agency is a state agency, or if a project is of statewide, regional, or areawide environmental significance.<sup>1</sup> It also requires, among other things, that public notice be published in a newspaper of general circulation, or posted on and off site in the area of the project, or mailed to owners and occupants of parcels contiguous to project, and mailed to anyone who submitted a written request.

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<sup>1</sup> Public Resources Code § 21091(b), CEQA Guidelines (14 Cal. Code Regs.), §§ 15206, 15073(a), 15105(b)

The required review and comment period is 20 days or 30 days if any responsible or trustee agency is a state agency, or if a project is of statewide, regional, or areawide environmental significance. It does not appear that these critical procedures were followed for the Revised Initial Study (UIS) and Revised Mitigated Negative Declaration (UMND) dated November 29, 2016.<sup>2</sup>

### **The Updated Initial Study and Updated Mitigated Negative Declaration Are Inadequate**

CEQA requires the preparation of an Environmental Impact Report (EIR) when substantial evidence supports a fair argument that a project may create one or more significant environmental effects. The fair argument standard establishes a low threshold.<sup>3</sup> The standard is met if the record reveals substantial evidence supporting a fair argument that the project may have a significant adverse effect on the environment.<sup>4</sup>

Courts independently review the record of proceedings and determine whether there is substantial evidence to support a fair argument that the proposed project may have a significant environmental impact. Under this standard of independent review, when courts examine the sufficiency of the evidence to support a fair argument, no deference is given the agency's determination.<sup>5</sup> "If such evidence is found, it cannot be overcome by substantial evidence to the contrary."<sup>6</sup>

Here, the UIS/UMND dated November 29, 2016, recognizes the project will create a significant aesthetic impact related to conflict with the Lake County Zoning Ordinance and Middletown Area Plan mandates that the design of

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<sup>2</sup> The first IS/MND is dated April 7, 2016.

<sup>3</sup> *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1067-1068.

<sup>4</sup> *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 171.

<sup>5</sup> *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1579.

<sup>6</sup> *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1348.

buildings maintain and reinforce the unique scale and character of Middletown. The UIS/UMND states a condition that requires the Planning Commission to act as the Design Review authority on the project.

This condition/mitigation measure is ineffectual. The formulation of mitigation measures may not be deferred until a future time unless they specify clear performance standards or compliance with regulations that will mitigate the significant impact.<sup>7</sup> Simply stating a board will act as design review authority is improper deferral.

The mitigation measure for significant air quality impacts related to the increase in dust likewise is improper deferral. It states that

All construction that may generate dust is required to be completed before or after school is in session. If substantial dust complaints are received a dust mitigation plan shall be reviewed and approved by the Lake County Air Quality Management Division prior to continuing construction.

(UIS/UMND, p. 7) A dust mitigation plan must be developed prior to project approval, since the UIS/UMND acknowledges the impact as significant. *If* the mitigation plan is to be developed later, the mitigation measure must contain language that requires compliance with specific performance criteria or compliance with regulations. (See, e.g., mitigations requiring compliance with BMPs in accordance with Chapter 29 of the Lake County Code.)

The UIS/UMND incorrectly states that the project will have no land use impacts with respect to conflicts with any land use plan, policy, or regulation. In fact, as indicated in the UIS/UMND and elsewhere in the record, the project is inconsistent with several objectives and policies in the Middletown Area Plan (MAP) including

Objective 6.1.1 and the Policies therein: "Expand economic activity in Middletown that builds on the community's strengths and reinforces its small town character"; Objective: 3.7.2f "Strip commercial development shall be discouraged because of its negative impact to scenic resources and negative economic impacts"; Objective 3.7.4e "Create a streamside walking path along St. Helena Creek from the Perry's Deli area to the Hutts Canyon Road Bridge"; Objective 5.1.2c "Formula" or "franchise" business

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<sup>7</sup> CEQA Guidelines, § 15126.4(a)(1)(B)



structures, signs and box stores within and surrounding the Planning Area that detract from the small-town rural character shall be generally discouraged unless architecture and signage are made compatible with local themes.”

(UIS/UMND, p. 16) The project also is inconsistent with section 54.5 of the Lake County Zoning Ordinance because the required findings, including whether the project is consistent with the MAP and the Middletown Commercial Design Guidelines, cannot be made.<sup>8</sup> (See letter dated August 24, 2016, attached.)

Finally, the project illegally segments review of the parcel map from the approval of the use permit. However, recordation of the Final Parcel Map is required prior to issuance of the building permit. Thus, the parcel map is part of the larger project, particularly because recordation of the Final Parcel Map is a condition of approval for the subject project.<sup>9</sup>

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<sup>8</sup>To wit,

a) The Review Authority shall only approve or conditionally approve a design review permit if all of the following findings are made:

\* \* \*

4. That the project is in conformance with the applicable provisions and policies of this Chapter, the Lake County General Plan and any approved zoning or land use study or plan.

5. That the placement and design of buildings and structures are compatible with existing development and will not detract from the visual setting.

6. That the project is in conformance with any applicable community design manual criteria.

(§ 54.5(a)4, 5, 6)

<sup>9</sup> *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214 (Proposed Lowe's project and a planned realignment of an adjacent road were improperly segmented in light of the dispositive fact that the road realignment was a condition of approval for the Lowe's project.)

### **Procedural Problem Must Be Remedied**

As explained in my September 13 and September 20, 2016, letters to planner Michalyn DelValle, on July 19, 2016, the Board of Supervisors granted the Use Permit (UP) for the project but took no action on the Mitigated Negative Declaration, and sent Design Review back to the Planning Commission. Then, on August 23, 2016, the Board of Supervisors approved Findings of Fact and the UP, and remanded back to the Planning Commission for Design Review *and* environmental review. On August 25, 2016, your Commission held a hearing on Design Review only and made no decision.

Thus, the Planning Commission originally denied the UP and MND, then the Board of Supervisors approved the UP *before* approving the environmental document, i.e., the MND. This is putting the cart before the horse. An agency may not approve the project, i.e., the UP, before approving the environmental document, i.e., the MND.<sup>10</sup>

The fact that the Board of Supervisors issued a putative "conditional" approval of the project, i.e., subjecting it to "further . . . environmental review," does not save the improper action by the Board.<sup>11</sup> CEQA is clear that an agency may consider whether to approve a project only after approving the environmental document. The statutory and regulatory scheme, as well as treatises on the subject, are replete with assurances to this effect.<sup>12</sup>

In addition, because the Board already determined to approve the use permit, the after-the-fact exercise of environmental review can easily become a post-hoc rationalization to support the prior approval. CEQA does not countenance this backwards approach.<sup>13</sup>

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<sup>10</sup> CEQA Guidelines, § 15092, subd. (a); *see also* <http://resources.ca.gov/ceqa/flowchart/>

<sup>11</sup> The language in the Board's Findings of Fact and Decision states that it "grants the appeal of Appellant Cross Development, LLC. [sic] and approves Major Use Permit UP 15-09) [sic] subject to further design and environmental review by the Planning Commission." (Findings of Fact and Decision, p. 10.)

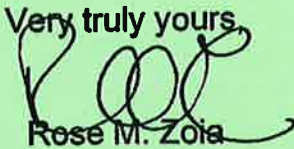
<sup>12</sup> *E.g.*, CEQA Guidelines, §§ 15092, subd. (a), 15021, subd. (a)(2); *see also* <http://resources.ca.gov/ceqa/flowchart/>

<sup>13</sup> *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 394; *Save Tara v. City of West Hollywood* (2008) 45 Cal. 4th 116, 130.

Based on this improper process, my clients have requested the Board of Supervisors set aside its approval of the UP. Before this Commission, my clients request you not adopt the MND, not take any action on the Major Use Permit, and not issue a Design Review Permit.

Thank you for your close attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Rose M. Zoia', with a stylized flourish at the end.

Rose M. Zoia

cc: Board of Supervisors  
Michalyn DelValle, Senior Planner





MONICA ROSENTHAL  
P.O. BOX 1105, MIDDLETOWN CA 95461

Lake County Planning Commission  
Community Development Department  
255 North Forbes Street  
Lakeport, CA 95453

REGARDING: Middletown Dollar General Design Review and Initial Study for Use Permit

DATE: January 25, 2017

Dear Planning Commissioners:

With all due respect to the Lake County Planning Department, the Middletown Dollar General retail store project proposal is not in compliance with the Middletown Area Plan (MAP) or with the Lake County General Plan and should be denied. It is 'strip commercial development' and fails to preserve the small-town rural character of the area among other concerns including traffic, safety and economic impacts.

In the report prepared by the Planning Department, section VIII. MIDDLETOWN AREA PLAN (MAP), a paragraph from MAP is included and select words and sentences have been placed in bold type and underlined to draw attention to that which supports the recommendation of the Planning Department.

Following is a copy of that same MAP paragraph revealing a different perspective with highlighted words and sentences supporting the intent of the community and many of the authors of the updated MAP.

*"Design guidelines are a series of recommendations which will help each community retain its uniqueness and discourage incompatible construction. Guidelines will not, by themselves guarantee good design. An important goal of these Design Guidelines is to present positive solutions to design problems that developers may encounter. These guidelines should be viewed as a starting point for new construction or replacement buildings.*

*These Design Guidelines are specifically drafted to address the General Plan and zoning issues identified during the preparation of the Middletown Area Plans.*

*The established character reflects a "western-style" design theme that has been continued intermittently through the years. A majority of development in the town's center will take the form of infill on vacant properties or replacement of existing structures. The current "core" of the downtown area has been defined as the blocks facing Highway 29/Calistoga Street from Wardlaw Street, south to Callayomi Street. The design principles should be applied to ALL commercial and industrial areas, but particularly to the downtown.*

MAP's objectives and policies "are an area-specific supplement to the County General Plan, and reflect in more precise detail the characteristics found in the Planning Area." (MAP, pg 2-8)

The guidelines, objectives and goals set forth in MAP by the community of Middletown and the policies found in the Lake County General Plan should be considered.

*General Plan policies that apply to the Project and to MAP:*

**General Plan -- Goal LU-7 (page 3-48)**

"To preserve Lake County communities' character and scale, including their design heritage and historic character."

**General Plan -- Policy LU-7.4 Contextual & Compatible Design (page 3-48)**

"The County shall ensure that new development respects Lake County's heritage by requiring that development respond to its context, be compatible with the traditions and character of each community, and develop in an orderly fashion which is compatible with the scale of surrounding structures."

*Middletown Area Plan policies that apply to the Project:*

**Middletown Area Plan Section 5.1 page 5-2**

"Formula" or "franchise" business structures, signs and box stores within the Planning Area that detract from the small-town rural character shall be generally discouraged unless architecture and signage are made compatible with local themes.

**Middletown Area Plan Section 7.2, page 7-4**

"These design guidelines will be used by Planning Staff, the Planning Commission, and Middletown Design Review Board in evaluating changes to existing properties and new construction."

Referring to the staff report prepared by the Planning Department, section XIII DESIGN REVIEW FINDINGS: Items numbered 1, 2, 4, 5, 6 and 7 are all findings that may or may not meet the requirements necessary to approve this application. Each one is based on an interpretation of MAP that may or may not include mitigation measures that may or may not bring this project into compliance with MAP, the General Plan and the Zoning Ordinance.

'In the Matter of the Appeal of Cross Development, LLC (AB 16-02) Findings of Fact and Decision' following the appeal hearing before the Lake County Board of Supervisors, item 'e' states:

*"That the project is in conformance with the applicable provisions and policies of the Zoning Code, the General Plan, and the Middletown Area Plan. (Zoning Ordinance Sec. 51.4(a)(5). County staff presented evidence, both through testimony and documentary evidence, that the Project is generally consistent with the Lake County General Plan, the Middletown Area Plan, and the Zoning Ordinance. County staff stated that the Project may not be consistent with the Middletown Area Plan Objective 3.7.2f..."*

**Objective 3.7.2f** - Strip commercial development shall be discouraged because of its negative impact to scenic resources and negative economic impacts."

The Planning Commissioners Journal / Number 53 / Winter 2004 defines The Commercial Strip: "A linear pattern of retail businesses along a major roadway, characterized by box-like buildings with prominent parking lots visible from the roadway, multiple driveways, large signs and a dependency on automobiles for access and circulation."

The Journal further states, "Strip development is contrary to the basic elements of good planning: it consumes open space and depletes natural resources, impedes pedestrian and



*non-motorized traffic, grows outward from the limits of existing development, and ruins any sense of place."*

While the County's 'out-of-date' Zoning Ordinance does not define "strip commercial," this project in combination with the current businesses (Jolly Kone and the gas station) undeniably constitutes strip commercial development.

MAP Objective 5.1 (noted above) addresses strip commercial 'box stores' similar to this project.

This retail store project (Dollar General) is not consistent with numerous policies and specifications of Chapter 7 of MAP; it is in conflict with Objective 3.7.2f.

This project is before the Planning Commission because the project as presented by the applicant requires a Major Use Permit which in turn requires a public hearing because the project is 'greater in size' than the current zoning for the parcel allows. Admittedly, this is the process of planning and development. The applicant has an option and the right to apply for a Major Use Permit. But an application filed does not mean it must be approved especially when it is in conflict with the General Plan and with MAP.

Once again I refer to:

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"The County shall ensure that new development respects Lake County's heritage by requiring that development respond to its context, be compatible with the traditions and character of each community, and develop in an orderly fashion which is compatible with the scale of surrounding structures."

The zoning is C1-DR-FF-FW-SC-WW (Local Commercial-Design Review, Floodway Fringe-Floodway-Scenic-Waterway) Note the "Design Review," "Flood" and "Scenic" designations.

**C1 Zone is to establish centers for small, localized retail** and service businesses which provide goods and services to surrounding residential development. Key--SMALL & LOCALIZED.

This project is before the Commission because a LARGE Box retail store is proposed which requires a Major Use Permit because the applicants desired size of the Dollar General store does not fit within the C1 Zoning. This project is in conflict with the proposed FINDINGS.

In closing, I will state my concern with the Planning Departments assertive recommendation of this project although I appreciate the time involved to present the report in such great detail.

The Planning Commission hearing is a PUBLIC hearing at which decisions are made after hearing ALL the evidence and comments from a wide range of resources. The staff report as presented, fails to present an option for denial of the project should the evidence support a different outcome than that recommended by the Planning Department.

I hope the public hearing format before the Planning Commissioners remains an open and objective opportunity to execute the Land Use objectives and policies created by the people of the County of Lake -- paid staff and volunteers of our communities alike.

Thank you for your consideration.

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