



## Legislation Text

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File #: 20-128, Version: 1

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### Memorandum

**Date:** March 3, 2020

**To:** The Honorable Moke Simon, Chair, Lake County Board of Supervisors

**From:** Scott DeLeon, Eric Porter - Community Development Department

**Subject:** Appeal to Board of Supervisors, AB 19-07 for Major Use Permit UP 19-09 (Grocery Outlet Appeal)

**Exhibits:**

- A1 - Vicinity Map, Site/Building/Signage Plans
- A2 - AB 19-07 Appeal Packet
- A3 - Katzoff & Riggs, LLP Response (December 5, 2019)
- A4 - Planning Commission Staff Report Packet (October 10, 2019)
- A5 - Planning Commission Minutes (October 24, 2019)
- A6 - CEQA Addendum and MMRP
- A7 - Agency Comments
- A8 - Conditions of Approval
- A9 - LAFCO Annexation Order
- A10 - Hidden Valley Lake Community Service District Letter
- A11 - PMC Water Supply Assessment
- A12 - Testimony from Attorney for KIMCO (Feb 21, 2020)

**Executive Summary:** (include fiscal and staffing impact narrative):

The appellant, Lake County Local represented by attorney Tal C. Finney, is appealing the decision by the Planning Commission at a hearing that occurred on October 24, 2019 on the approval of Major Use Permit, UP 19-09 and an Addendum to Environmental Impact report (EIR) to allow the developer of Valley Oaks development to construct an approximately 18,000 square foot retail store for Grocery Outlet, on a commercially zoned portion of a parcel that is about 42.75 acres in size.

### ***Project Background and Summary***

The project site is located at the intersection of Highway 29 and Hartmann Road, with a new access proposed off of Hartmann Road named Oak Meadow Drive. While the original plan and approved project connected to the new roundabout, the applicant moved the access onto Hartmann Road; this was the configuration taken to the Planning Commission. The project consists of ninety-two paved on-site parking spaces, with an additional 4 ADA parking spaces and would provide circulation for delivery trucks to occur in a manner that is indirectly accessed by Highway 29. A trash enclosure,

lighting, and a detention basin are proposed as part of the project. Landscaping is required throughout the unpaved areas, along Highway 29, and along Hartmann Road.

The site is designed to accommodate future additional commercial development, although this Major Use Permit is for a new Grocery Outlet and a new access road only.

A Major Use Permit is required for this project pursuant the Conditions of Approval of the Specific Plan of Development. The Review authority may only approve or conditionally approve a major use permit if all of the findings listed in Article 51 of the Lake County Zoning Ordinance are made.

***Points of the Appeal.*** The appellant has raised seven points of concern within the appeal documentation as follows:

1. Proper hearing notice was not given
2. Grocery Outlet usage presents an unreasonable fire hazard
3. Project has substantially changed from the project certified within the original EIR
4. Project is inconsistent with the Middletown Area Plan
5. Project was put on hold by the Hidden Valley Lake Community Services District
6. The approval of UP 19-09 is not compliant with the California Environmental Quality Act requirements until a revised EIR is drafted and circulated for public comment
7. The approval of the Amendments to the EIR, and UP 19-09 each fails to implement all feasible operational mitigation measures

***Point of Appeal #1: The Planning Departments Public Hearing was not properly noticed to the local community.***

**Response:** The legal notice was sent out in accordance with Article 57 (*Notice of Public Hearing*) of the Lake County Zoning Ordinance. Pursuant to Section 57.3(a)(3) of Article 57, when parcels are greater than five (5) acre in size notices shall be sent to all property owners within 700 feet of project parcel(s). The Community Development Department notified all surrounding property owners within 725 feet of the project parcel, exceeding the minimum requirement (legal notices are mailed out to property owners only, not to those who lease/rent). Additionally, the legal notice was published in the Lake County record Bee on October 14, 2019, 10 days prior to the public hearing.

When creating the mailing labels for public hearing notices, the Community Development Department uses a database from the Lake County Assessor/Recorders Office to obtain the property owners information and mailing address the County has on file. It is the property owner's responsibility to update the County if their contact information has changed. If individuals did not receive a legal notice and are within the 725-foot buffer, they may want to contact the Assessor/Recorders Office to update and/or confirm if the County has their correct contact information.

***Point of Appeal #2: The Grocery Outlet usage presents an unreasonable fire hazard.***

*The appellant states that "... the project owner indicated that the grocery store intends to burn bio-waste rather than transport it to a local landfill. The reason for this is economic..."*

*The appellant also states that burning bio-waste in a dry rural community "is just not a good idea, especially in a community intended for seniors that may not escape a conflagration in time."*

**Response:** The appellant is objecting to the burning of bio-waste that is present on the site. This project can be divided into three specific development actions in which bio-waste burning could occur: (1) preliminary site preparation, (2) infrastructure improvements, and (3) operations.

The bio-waste burning, however, will occur only during phase 1 and 2 of these three steps, and proposes burning 'on site bio-waste material' only. Section G2 of the Conditions of Approval require material to be chipped and spread on site for erosion control where feasible, which will limit the amount of material that would be burned on site. Phase 3 of the development, Operations, will not involve burning of on-site bio-waste.

***Point of Appeal #3: The project has been substantially changed from the project that was subject of the certified EIR.***

**Response:** The Grocery Outlet building is located within the footprint of the Commercial Development Area of the commercially zoned portion of the project site as was approved by the Planning Commission and the Board of Supervisors in 2015. An additional 2.6 acres of adjacent land was added at that time for the purpose of providing a second access road to the commercial site; this is shown on the site plan approved by the Planning Commission at the October 24<sup>th</sup> 2019 public hearing and subsequently appealed by this action.

The only change to the project relates to the recent construction of the round-a-bout at the intersection of Highway 29 and Hartmann Road, and the subsequent reconfiguration of Hartmann Road along the Commercial Development Area by CalTrans. The changes identified by the appellant are: (1) the construction of the new access road from Hartmann Road to the development and an associated left-turn lane for traffic mitigation purposes, (2) an amendment to Condition #33 of UP 07-05 which is specific to this project, and (3) the increase of impervious surface as a result of the access road.

According to Section V (Environmental Analysis) Pages 6 through 7 of the Staff Report Packet, dated October 10, 2019, an EIR was prepared for this project and certified by the Planning Commission. Additionally, pursuant to CEQA guidelines Section 15162, staff has reviewed the proposed project and concluded that recirculation of the EIR is not required and a subsequent EIR is not necessary. Please refer to pages six (6) through seven (7) of the Staff Report dated October 10, 2019 (Exhibit A4).

The original Planning Commission staff report for UP 19-09 considered these deviations, and determined that they did not constitute a 'substantial change' that warranted the recirculation of, or revisions to, the EIR. The staff report also found that these changes were examined by the EIR and are appropriately addressed through the adopted mitigation measures within UP 19-09's conditions of approval for the project.

***Point of Appeal #4: The project is inconsistent with the Middletown Area Plan.***

**Response:** The project is located within the Coyote Valley portion of the Middletown Area Plan. During the October 24, 2019 hearing, Planning Commission discussed conformity with the Middletown Area Plan (Lake County Planning Commission minutes, October 24, 2019). The EIR specifically found that commercial development in this specific area is consistent with the Middletown

Area Plan (EIR 4.9-7). The Use Permit UP 19-09 approved by the Planning Commission made the same conclusion.

The findings made within file number UP 19-09 specifically indicate that the Addendum to the EIR is consistent with the Middletown Area Plan (Exhibit A4, page 8, finding #11), and that the Use Permit (UP 19-09) is consistent with the Middletown Area Plan (Exhibit A4, page 9, finding #5).

The draft and final (certified) EIR had analyzed the proposed project for compliance with the Middletown Area Plan, as well as the General Plan and applicable zoning ordinance standards. Ultimately the County concluded that the EIR was consistent with the Middletown Area Plan.

***Point of Appeal #5:*** *The project has been put on hold by the Hidden Valley Lake Community Services District (HVL CSD).*

**Response:** The project site was annexed into the Hidden Valley Lake Community Services District (HVL CSD) on July 17, 2019 according to Exhibit A9, Resolution 2019-0007 by Lake Local Agency Formation (LAFCO).

The LAFCO resolution (Exhibit A9) states that the local water provider, HVL CSD did not object to the property being brought into its jurisdiction. A letter dated April 27, 2005 provided by the HVL CSD stated that the District had adequate water to supply to the Valley Oaks Project. The applicant provided a subsequent water study in 2015 that verified the adequacy of the water supply to this development by HVL CSD.

A letter that was provided to the County from the HVL CSD dated April 27, 2005, stated “the district has more than enough capacity to provide water and sewer services to a project of this type” (Exhibit A10).

The applicant’s attorney states in his reply letter that the ‘hold’ referred to by the appellant was in fact during the LAFCO Annexation Process, and was temporary until the annexation process concluded.

***Point of Appeal #6:*** *The approval of UP 19-09 is not compliant with the California Environmental Quality Act requirements unless and until a revised EIR is drafted and circulated for public comment.*

**Response:** The County had determined that the changes to the site plan did not represent substantial changes given the addendum to the EIR and given the extensive review processes, including the draft and final EIR for the project that had occurred prior to and during the October 24, 2019 Planning Commission hearing.

The applicant has addressed the changes that would result in storm water runoff and erosion control due to an increase in impervious surfacing. The applicant has agreed to install a new access road that will be a safer alternative than would be a direct access onto the roundabout. The Staff Report for UP 19-09 also found that these changes were examined by the EIR and are appropriately addressed through mitigation measures as incorporated into the Conditions of Approval for UP 19-09, which found that “... as mitigated, the project will not result in any significant adverse environmental impacts”, and “a mitigated negative declaration has been adopted.”

***Point of Appeal #7:*** *The approval of the Amendments to the EIR and UP 19-09 each fail to*

*implement all feasible operational mitigation measures.*

**Response:** The appellant has indicated that additional significant environmental effects would result from this project that were not accounted for in the original or amended EIR documents. The EIR contains a comprehensive analysis of potential environmental impacts associated with the project regarding increase to impervious surfaces (water runoff), cultural and biological impacts and mitigation measures, traffic and transportation-related facilities, air quality and noise (specifically addressing the burning of on-site biomass and dust generated by soil disruption), geology, soils, hydrology, water quality, and public health.

The Use Permit contains conditions of approval, many of which resulted from mitigation measures that resulted from the EIR and EIR addendum leading up to the Use Permit and its conditions of approval. Staff's position is that all potential impacts have been mitigated to 'less than significant' levels through the Conditions of Approval for use permit UP 19-09.

### **Project Description**

Applicant/Owner: Valley Oaks Land Development, #2 Arabian Lane, Hidden Valley, CA 95046

Location: Highway 29 and Hartmann Road, Hidden Valley, Middletown  
18196 and 18426 South State Highway, Middletown  
18765 Hartmann Rd., Middletown

A.P.N.: 014-260-51, 14-260-24, 14-260-36

Parcel Sizes: 014-260-51 is approximately 42.75 acres (including the Grocery Outlet site)  
014-260-24 is approximately 17 acres (access road)  
014-260-36 is approximately 103 acres (not being developed at this time, although EIR includes parcel)

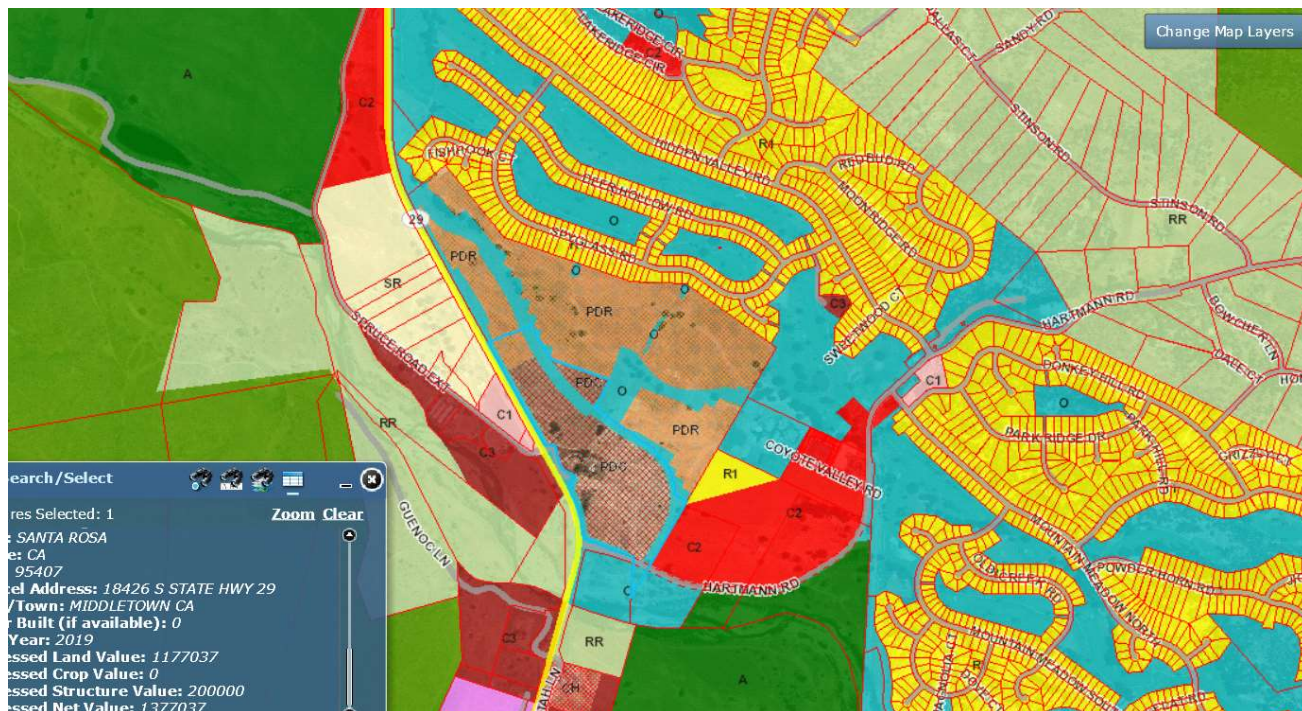
General Plan: Community Commercial

Zoning: "PDC,C2" Planned Development Commercial, Community Commercial  
"O-FF-SC-FW-WW" Open Space, Floodway Fringe, Scenic Corridor, Floodway, Water Way

Topography: The affected portion of the parcel is flat

Flood Designation: Flood Zone AO

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Zoning Map of the Subject Site and Vicinity

Surrounding Zoning and Land Use: The properties to the immediate north, south and southwest are vacant and contain a mixture of residential and commercial zoning designations (see map above). The properties to the northwest are developed with commercial uses (primarily storage units). Hidden Valley Lake subdivision is located to the southeast of the project site beyond the C2 and O zoned properties.

Soils: According to the soil survey of Lake County, prepared by the U.S.D.A, The parcel contains soil type, 147 (Kelsey Fine Sandy Loam) and 233 (Still Loam).

Water Supply: Hidden Valley Lake Community Services District

Sewage Disposal: Hidden Valley Lake Community Services District

Fire Protection: South Lake County Fire Protection District

## Project Analysis

### **1. Article 51.4, Major Use Permits, 'Findings Required for Approval'**

The Board of Supervisors may approve or conditionally approve a Major Use Permit if all of the following findings are made:

*1. That the establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County.*

**Response:** The Grocery Outlet store will offer a new shopping option for residents in and around the Middletown/Hidden Valley Lake area. Impacts associated with this facility have been mitigated, and



there is no evidence that this development will be detrimental to the health, safety, morals, comfort and general welfare of neighboring residents or to the general neighborhood.

*2. That the site for the project is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of development proposed.*

**Response:** The affected portion of the site is about 6 acres in size. The total size of the commercial site is about 42.75 acres. The three parent sites total about 147 acres. The positioning of the store is convenient for highway access, yet will not have direct traffic from the highway into and out of the commercial use. The site is in a flood zone, so special foundation engineering will be needed at the time of building permit review.

*3. That the streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the specific proposed use.*

**Response:** CalTrans has provided the following written comments (edited for brevity here; please see Exhibit A7 for complete CalTrans comments):

“This letter is regarding the Use Permit (UP) for an initial portion of the Valley Oaks Mixed Use Development, adjacent to State Route (SR) 29 and Hartmann Rd. The UP would permit an 18,000 square foot Grocery Outlet. The traffic analysis provided also included an 11,000 square foot Rite Aid Pharmacy and a 3,300 square foot Taco Bell with a drive through. The Rite Aid and the Taco Bell are not included in the UP.

“...(A)s currently proposed, all access for the Grocery Outlet would take its access from a new connection to Hartmann Rd., located approximately 1,000 feet to the east of the roundabout.

“We concur with the overall findings of the traffic analysis: With the construction of the grocery store only, a left-turn pocket is not warranted. However, with the addition of any additional development, a left-turn pocket on Hartmann Rd. is warranted. Therefore, we recommend that a condition be applied to the Use Permit, stating that a left-turn pocket must be constructed on Hartmann Rd. for the entrance to the commercial development, prior to the construction of a drug store, a fast-food restaurant, or any other additional development proposed to utilize the Hartmann Rd. access. Our concurrence with these findings is based, in large part, on operational concerns about the potential for traffic stopped in the through-lane, making left-turns into the development, to back-up and impact the operation of the roundabout.

“We recommend the project include a sidewalk from the entrance on Hartmann Rd., along project frontage, connecting with the sidewalk around the north-east portion of the roundabout.

“It appears that the UP does not include any work within Caltrans right of way. However, any work proposed to take place within Caltrans right of way including landscaping, pedestrian facilities or utility placement, will require an approved encroachment permit.

“Prior to permit application submittal, the applicant is required to have a pre-submittal meeting with Ukiah Permits staff. The applicant can set up the meeting by calling Amber McCall at 707.463.4743.”

These comments support staff's recommendation that this project meets the requirements found in Section 51.4 (3) regarding adequacy of streets, highways and pedestrian facilities.

*4. That there are adequate public or private services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the project.*

**Response:** The comments received from all public and private services have been supportive of this facility at this location. The LAFCO annexation (Exhibit A) brought the three properties into the boundary of the HVL CSD, and a Water Adequacy Analysis was provided (Exhibit A11).

*5. That the project is in conformance with the applicable provisions and policies of this Code, the General Plan and any approved zoning or land use plan.*

**Response:** As explained in the sections above, the original and amended EIR were offered a public review and comment period. Changes were incorporated into the EIR, and the Use Permit UP 19-09 has been reviewed for consistency with the EIR and all other governing documents, and has been found to be compliant with the General Plan, the Zoning Ordinance, and to be exempted from the Middletown Area Plan due to its location beyond the downtown Middletown core.

*6. That no violation of Chapters 5, 17, 21, 23 or 26 of the Lake County Code currently exists on the property, unless the purpose of the permit is to correct the violation, or the permit relates to a portion of the property which is sufficiently separate and apart from the portion of the property in violation so as not to be affected by the violation from a public health, safety or general welfare basis.*

**Response:** There are no violations on the subject site.

**APPEAL SUBMITTAL.** The appellant submitted an application for Appeal to the Board, along with the required fee and appellant's Attachment A2.

**If not budgeted, fill in the blanks below only:**

Estimated Cost: \_\_\_\_\_ Amount Budgeted: \_\_\_\_\_ Additional Requested: \_\_\_\_\_ Future Annual Cost: \_\_\_\_\_

**Consistency with Vision 2028 and/or Fiscal Crisis Management Plan** (check all that apply):

☒ Not applicable

- |                                                  |                                                      |                                           |                                              |
|--------------------------------------------------|------------------------------------------------------|-------------------------------------------|----------------------------------------------|
| <input type="checkbox"/> Well-being of Residents | <input type="checkbox"/> Public Safety               | <input type="checkbox"/> Infrastructure   | <input type="checkbox"/> Technology Upgrades |
| <input type="checkbox"/> Economic Development    | <input type="checkbox"/> Disaster Recovery           | <input type="checkbox"/> County Workforce | <input type="checkbox"/> Revenue Generation  |
| <input type="checkbox"/> Community Collaboration | <input type="checkbox"/> Business Process Efficiency | <input type="checkbox"/> Clear Lake       | <input type="checkbox"/> Cost Savings        |

**If request for exemption from competitive bid in accordance with County Code Chapter 2 Sec. 2-38, fill in blanks below:**

Which exemption is being requested?

How long has Agreement been in place?

When was purchase last rebid?

Reason for request to waive bid?

**Recommended Action:** Deny the Appeal (AB 19-07); uphold Planning Commission's decision to adopt the Addendum to the EIR, and approve the Use Permit (UP 19-09).

**Sample Motions:**

**Appeal Denial**



I move that the Board of Supervisors make an intended decision to deny the Appeal AB 19-07.

**Addendum to EIR**

I move that the Board of Supervisors certify that the Addendum to the Environmental Impact Report prepared by the Planning Division for the Valley Oaks project Phase 1 has been completed in compliance with CEQA and Section 15164 of the State CEQA Guidelines.

**Use Permit Approval**

I move that the Board of Supervisors find that the Use Permit (UP 19-09) applied for by KIMCO Development Inc. on property located at Highway 29 and Hartmann Road, Hidden Valley, Middletown 18196 and 18426 South State Highway, Middletown, and 18765 Hartmann Rd., APN 14-260-24, 14-260-36 and 014-260-51 does meet the requirements of Sections 27(a)(7)(i) and 51.4 of the Lake County Zoning Ordinance and that the Board of Supervisors has reviewed and considered the EIR and Addendum which was adopted for this project and the Use Permit be granted subject to the conditions and with the findings listed in the staff report dated October 10, 2019.