

FILED
Superior Court of California
County of Placer

NOV 09 2018

Jake Chatters
Executive Officer & Clerk
By: M. Taylor, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

MICHELE THRELKEL and PETITIONERS
OF WEST ROSEVILLE,

Petitioners,

vs.

CITY OF ROSEVILLE, et al.,

Respondents.

Case No.: SCV 40328

Ruling on Submitted Matter

CEQA CASE

DHILLON & SON ENTERPRISES, INC.,
et al.,

Real Parties in Interest.

The hearing on the petition for writ of mandate in this action came on for hearing on October 19, 2018 at 8:30 a.m. in Department 42. Don Mooney, Esq. appeared on behalf of petitioners. Kate Wheatley, Esq. and Michelle Sheidenberger, Esq. appeared on behalf of the respondent City of Roseville. James Wiley, Esq. appeared on behalf of respondents. The court has carefully considered the briefing and oral arguments of the parties. The court rules on the petition as follows:

The current action stems from a dispute over an infill development off

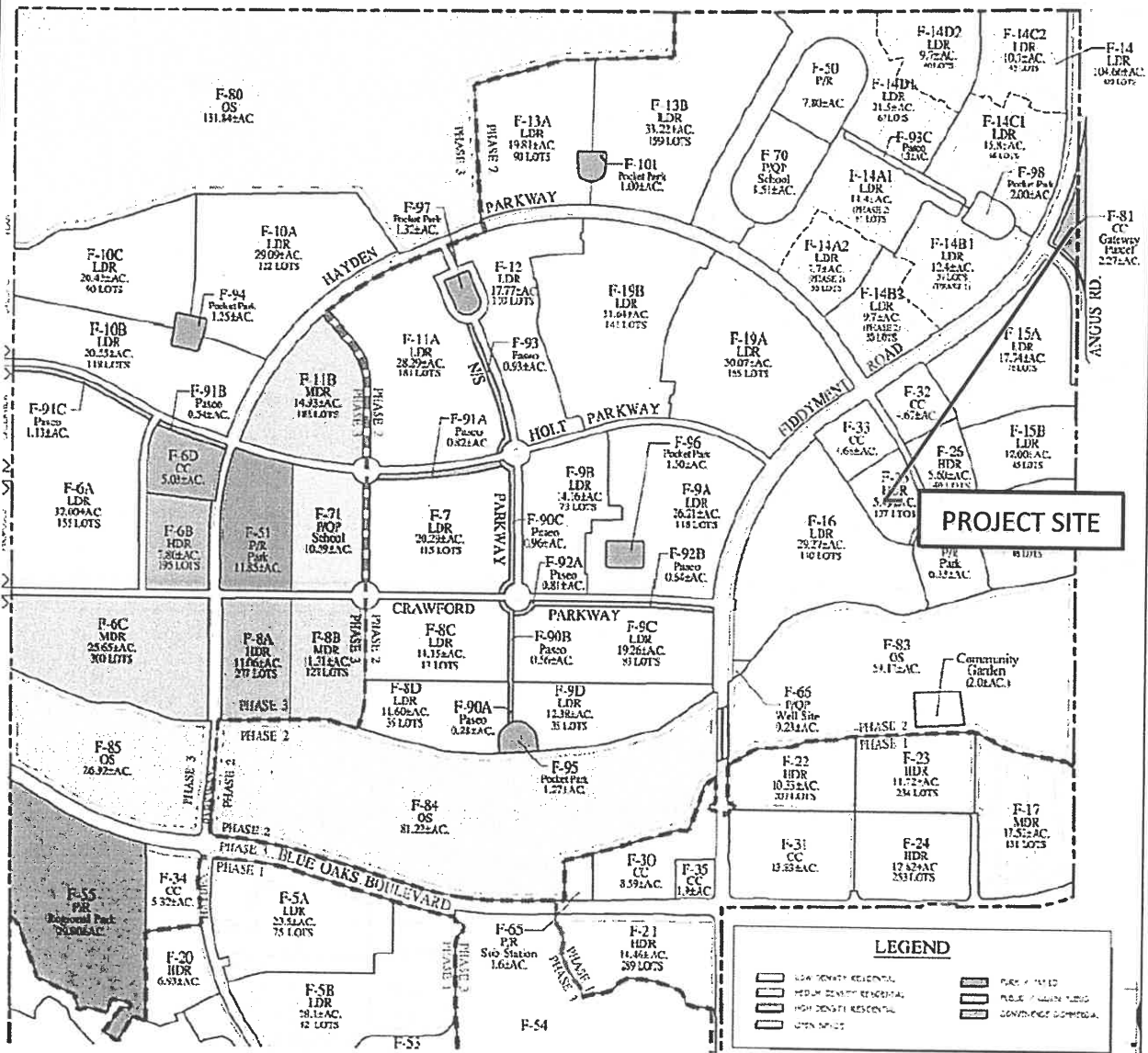
1 of Fiddymment Road in Roseville, California. The Fiddymment Plaza Project
2 involves the development of a 1.38 acre parcel at 4701 Fiddymment Road.



(Figure taken from AR 05004)

22 The parcel is part of the West Roseville Specific Plan (WRSP), which
23 was originally adopted in February of 2004. (AR 01688.) The parcel falls
24 within the Fiddymment Ranch, a 1,678 acreage portion in the northwest part
25 of the WRSP containing a residential community. (AR 02555.) The parcel
26 originally consisted of 1.93 acres zoned as Single Family
27 Residential/Developmental Standards (R1/DS) for Low Density Residential
28 (LDR) land use. (AR 02549-02551, 02553-02554, 02581.) The parcel, also

1 referred to as F-81, was rezoned in 2014 to Community Commercial (CC)
 2 under the Fiddymment Ranch Specific Plan Amendment 3 (SPA 3). (Ibid.)
 3 This was part of rezoning done for multiple undeveloped parcels in the
 4 Fiddymment Ranch SPA 3. (AR 02553.) The subject parcel, however, differed
 5 from the other rezoning that occurred since a substantial amount of
 6 residential construction had been completed around the parcel site, which
 7 included at least 240 residential units and an elementary school. (AR
 8 02555.)

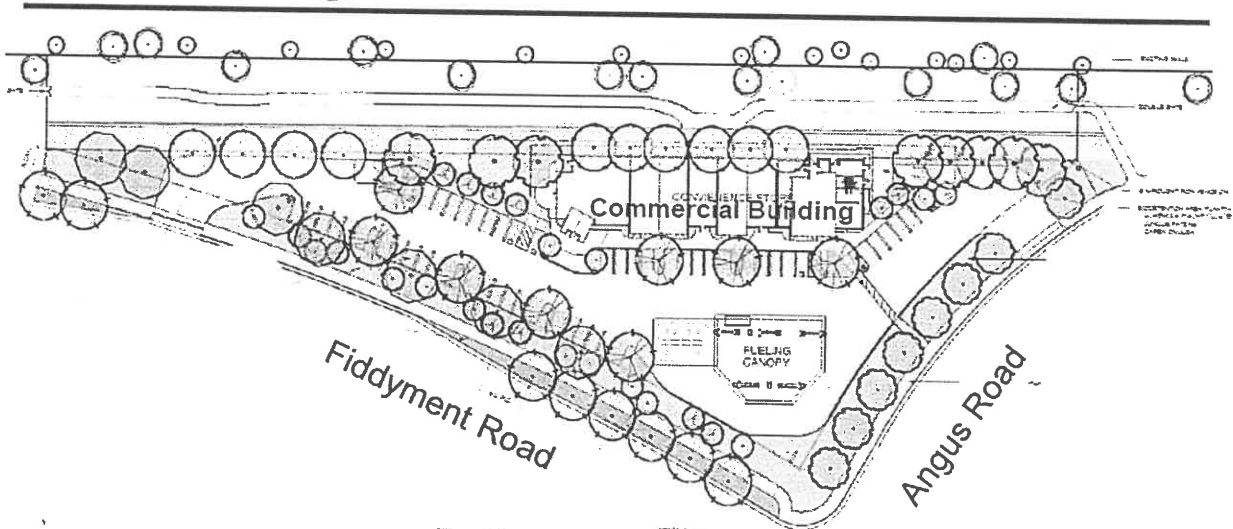


(Figure taken from AR 02554)

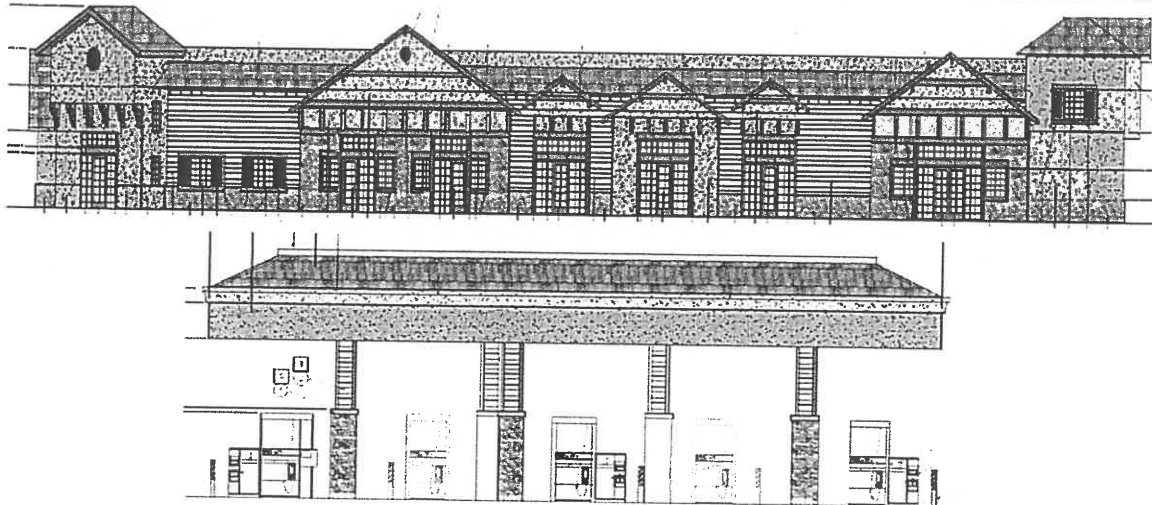
1 The rezoning of the parcel from R1/DS (LDR) to CC was a specific
2 objective of the SPA 3: "Given limited services on the western side of the
3 city, change the designation of a two-acre parcel in the northeast portion of
4 Phase 2, at the corner of Angus Road and Fiddymment Road, from residential
5 to Community Commercial in order to provide neighborhood services
6 proximate to planned residential uses." (AR 02556.) The recognized CC
7 land uses included grocery stores, retail stores, banks, restaurants, personal
8 services, professional offices, and gas stations. (AR 02561.) The SPA 3
9 required all future projects to comply with the WRSP Design Guidelines. (AR
10 02564, 02578-02579.) The parcel was also subject to the City of Roseville's
11 Community Design Guidelines for commercial parcel development. (AR
12 02586.)

13 On September 28, 2016, Dhillon & Son Enterprises, Inc. filed a
14 universal application seeking a design review permit (DRP) to build the
15 Fiddymment Plaza Project. (AR 01134-01163.) The Project consists of a
16 10,306 square foot mix use commercial development with 7,606 square feet
17 of retail and 2,700 square feet of restaurant sites. The retail portion
18 encompasses a 2,766 square foot convenience store with a 3,310 square
19 foot gas station canopy for a five fuel bay, ten pump fueling station. The
20 Project also includes a parking lot and landscaping.

21 Site Design



Building Design



(Figures taken from AR 05008-05009)

The Project went through the design review process within the Planning Division, who determined there was a categorical exemption under CEQA as an infill development under 14 C.C.R. Section 15332. (AR 00096, 01052.) The Planning Division also made recommendations regarding four findings of fact and one hundred conditions of approval. (AR 00045-00056.) A public hearing before the Planning Commission was set for August 10, 2017. (AR 01052.) The Planning Commission subsequently adopted the Planning Division's four findings of fact and one hundred conditions of approval with an amendment to Condition No. 9 prohibiting signage on the east elevation of the commercial building. (AR 00229.)

The Planning Commission's findings and approvals were then set for final approval before the Roseville City Council. A public hearing was set for October 4, 2017. (AR 01044-01046.) The Council approved the actions of the Planning Commission and adopted Resolution No. 17-430. (AR 00003-00005, 00130-00131.) The City posted a notice of exemption for the Project on October 5, 2017. (AR 00001.)

The Project garnered opposition throughout the approval process with members of the community appearing at every hearing to oppose the

1 Project along with filing all applicable appeals. Some of these individuals
2 continued their opposition after the notice of exemption was posted,
3 including filing the writ petition in this action.

4 Requests for Judicial Notice

5 The City brings two separate requests for judicial notice in support of
6 its opposition to the petition. In the first request, filed June 14, 2018, the
7 City seeks judicial notice of the following documents:

8 Exhibit 1 City of Roseville Municipal Code sections 19.12.020;
9 19.74.010; and 19.78.060

10 Exhibit 2 Placer County Air Pollution Control District Rules 501 and
11 502

12 Exhibit 3 Placer County Air Pollution Control District Advisory Notice
13 for Gasoline Dispensing Facilities dated August 21, 2002

14 Exhibit 4 City of Roseville, FEIR for West Roseville Specific Plan &
15 SOI Amendment, Section 4.4 dated January 9, 2004

16 The court grants the request for judicial notice of these four
17 documents under Evidence Code section 452.

18 In its second request, filed July 17, 2018, the City seeks judicial notice
19 of the following document:

20 Exhibit 1 PCAPCD Authority to Construct/Temporary Permit to
21 Operate Permit issued on May 21, 2018 and Final
22 Memorandum re Analysis of Public Health Risks dated
23 March 29, 2018

24 The petitioners objected to this document during oral argument. The
25 objection is well taken and the court sustains the objection. This exhibit
26 appears to encompass two separate and distinct documents; however, it is
27 submitted as a single document without any distinction. The first part is a
28 temporary permit issued by the PCAPCD. The second part is a technical

1 memorandum that appears to be drafted by a private consulting firm and
2 addressed to counsel for the real party in interest. The combination of these
3 two documents into a single submission appears misleading since it is not
4 apparent the memorandum has been incorporated into the temporary
5 permit. Whether intentional or unintentional, the submission amounts to
6 extra-record evidence that was not in existence at the time the City
7 determined the CEQA categorical exemption applied and would be improper
8 to consider at this time. It appears to have been drafted, *after the fact*, to
9 justify the City's previous determination. (*Western States Petroleum Assn.*
10 *v. Superior Court* (1995) 9 Cal.4th 559, 576.)

11 Petitioners' Contentions

12 Petitioners seek relief based on (1) CEQA violations; (2) violations of
13 the Roseville Municipal Code; and (3) violation of Planning and Zoning Laws.
14 First, petitioners argue the City could not rely upon the infill development
15 project categorical exemption since the City failed to show that the Project
16 met all of the conditions of an infill development. (14 C.C.R. section 15332.)
17 They also contend the City did not sufficiently address whether there was a
18 reasonable possibility that the Project would have a significant effect on the
19 environment due to unusual circumstances. (14 C.C.R. section 15300.2(c).)
20 Second, petitioners assert the City violated sections of the Roseville
21 Municipal Code when it approved the design for the noncompliant Project.
22 Finally, petitioners contend the City violated Planning and Zoning Laws since
23 the Project conflicted with the City's general plan.

24 First Cause of Action – CEQA Violations

25 Application of the Infill Development Exemption to CEQA Review

26 There are instances where a project may be exempt from CEQA
27 review. These include classes of projects that the Secretary of the Natural
28 Resources Agency has found do not have significant effects on the

1 environment. (Public Resources Code section 21084(a).) Also referred to as
2 categorical exemptions, the qualifying projects are fully exempted from
3 CEQA and listed in the CEQA Guidelines. (Ibid; 14 C.C.R. section
4 15061(b)(2), 15354, 15300-15329.) This includes infill development
5 projects.

6 Certain infill projects qualify for a categorical exemption to CEQA. (14
7 C.C.R. section 15332.) The infill development exemption may be applied if
8 the project meets five factors: (1) the project is consistent with general
9 plan designations, general plan policies, zoning designations, and zoning
10 regulations; (2) the proposed development falls within city limits on a site no
11 larger than five acres and substantially surrounded by urban uses; (3) the
12 site has no endangered, rare, or threatened species habitat; (4) approving
13 the project will not result in any significant effects to traffic, noise, air
14 quality, or water quality; and (5) the site can be adequately served by
15 utilities and public services. (14 C.C.R. section 15332(a)-(e).) Even if a
16 categorical exemption - such as the infill development project exemption - is
17 germane, it cannot be used if there is an applicable exception. (14 C.C.R.
18 section 15300.2.) For example, an exception exists where there is a
19 reasonable probability that the project will have a significant effect on the
20 environment due to unusual circumstances. (14 C.C.R. section 15300.2(c).)
21 Under these circumstances, an exception exists that prevents the usage of a
22 categorical exemption. (Ibid.)

23 Standard of Review

24 A review of the City's determination to claim a categorical exemption
25 to CEQA falls under Public Resources Code section 21168.5, which reviews
26 the City's determination for a prejudicial abuse of discretion. (*Berkeley*
27 *Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1009-1110;
28 *California Farm Bureau Federation v. California Wildlife Conservation Bd.*

1 (2006) 143 Cal.App.4th 173, 178.) Section 21168.5 provides that an abuse
2 of discretion exists where “the agency has not proceeded in a manner
3 required by law or if the determination or decision is not supported by
4 substantial evidence.” The application of this standard when contesting a
5 categorical exemption determination depends upon how the petitioner
6 frames the challenge. If the petitioner challenges whether the requirements
7 of a categorical exemption have been met, then the determination is
8 reviewed to see if the agency failed to proceed in a manner required by law.
9 (*Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 817; *Fairbanks*
10 *v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1251.) If the petitioner’s
11 challenges go to the factual determinations of an agency, then the
12 determinations are reviewed for the existence of substantial supporting
13 evidence within the record. (*Walters v. City of Redondo Beach* (2016) 1
14 Cal.App.5th 809, 817.)

15 The standard of review is applied differently when assessing whether
16 an exception bars reliance on a categorical exemption. Where the unusual
17 circumstances exception under 14 C.C.R. section 15300.2(c) is involved, an
18 agency’s determination is reviewed under the “fair argument” standard.
19 (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086,
20 1115.) That is, the agency must show there is substantial evidence in the
21 record sufficient to support a fair argument regarding the agency’s
22 determination on significant impacts and the reviewing court determines
23 whether the agency properly applied this test. (*Ibid.*) The substantial
24 evidence standard is applied to review an agency’s factual determinations on
25 whether a project presents unusual circumstances. (*Id.* at p. 1114.)

26 Challenges Asserted by Petitioners

27 Petitioners’ challenge here is limited in scope. First, they argue that
28 the categorical exemption could not be relied upon by the City. Petitioners

1 specifically challenge the project's ability to qualify under the infill
2 categorical exemption, asserting that the City failed to meet the project
3 consistent with general plan factor or the lack of significant effects to air
4 quality factor. Second, petitioners contend the significant effects exception
5 prevents the City from relying on the infill categorical exemption.

6 Infill Development Project Categorical Exemption – Consistencies
7 with the General Plan

8 Petitioners contend that the City's application of the infill categorical
9 exemption was unlawful since the project is inconsistent with the City's
10 general plan. They argue the project is inconsistent with the general plan in
11 two key respects. First, they argue that the project is not harmonious,
12 efficient, or safe within a residential development. Second, petitioners
13 assert that the general plan does not identify a gas station as a primary or
14 secondary use for CC zoning.

15 Every city is required to adopt "a comprehensive, long-term general
16 plan for the physical development of the ... city...." (Government Code
17 section 65300.) " 'An action, program, or project is consistent with the
18 general plan if, considering all its aspects, it will further the objectives and
19 policies of the general plan and not obstruct their attainment.' [Citation.]'
20 [Citation.] State law does not require perfect conformity between a
21 proposed project and the applicable general plan...." (*Friends of Lagoon*
22 *Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 817.) Further,
23 "[g]eneral plans ordinarily do not state specific mandates or prohibitions.
24 Rather, they state 'policies,' and set forth 'goals.' " (*Napa Citizens for*
25 *Honest Government v. Napa County Bd. of Supervisors* (2001) 91
26 Cal.App.4th 342, 378.) A project is inconsistent if it conflicts with
27 fundamental, mandatory, and clear policies with the general plan. (*Families*
28 *Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Sup'rs*

1 (FUTURE) (1998) 62 Cal.App.4th 1332, 1341-1342.) A city's determination
2 of consistency with its own general plan is provided great deference; the city
3 is in a unique position of competency to interpret the policies adopted in the
4 general plan since it acts in both a legislative and adjudicatory nature in
5 relation to those policies. (*The Highway 68 Coalition v. County of Monterey*
6 (2017) 14 Cal.App.5th 883, 896.)

7 In light of this deference, the trial court's review of the city's
8 determination is limited. The trial court reviews the record to decide
9 whether the city officials considered the applicable policies and the extent to
10 which the project conforms with the policies. (*Ibid.*) An agency's findings of
11 consistency will only be reversed upon a showing that no reasonable person
12 could have reached the same conclusion. (*Ibid*; *FUTURE, supra*, 62
13 Cal.App.4th at p. 1338.) The petitioners bear the burden of showing why
14 the City's determination is unreasonable based upon the evidence in the
15 record. (*The Highway 68 Coalition v. County of Monterey* (2017) 14
16 Cal.App.5th 883, 896; *California Native Plant Society v. City of Rancho*
17 *Cordova* (2009) 172 Cal.App.4th 603, 639.)

18 The City's Determination of Project Consistency with the
19 General Plan

20 The City, in determining that the project was consistent with the
21 general plan, relied upon the recommendations of the Planning Division.
22 The Planning Division issued a staff report for the August 10, 2017 Planning
23 Commission meeting that stated:

24 "ENVIRONMENTAL DETERMINATION

25 The project is categorically exempt from the environmental review
26 requirements of the California Environmental Quality Act (CEQA) per Section
27 15332 pertaining to Infill development projects and pursuant to Section 305
28 of the City of Roseville CEQA Implementing Procedures." (AR 00097.)

1 The Planning Division did not present any further information regarding this
2 determination at the meeting. (Id. at 00227-00304.)

3 The Planning Division provided another staff report to the City Council
4 for its October 4, 2017 meeting. This staff report went into more detail
5 discussing the project's consistency with the City's general plan.
6 Specifically, the report stated that a CC land use designation is conditionally
7 compatible with residential development. (AR 00017.) The staff report
8 further stated that design elements were adopted to reduce impacts on the
9 residential homes. (Ibid.) The design review plan analysis went into further
10 detail regarding vehicular and pedestrian circulation aimed at consistency
11 with the Community Design Guidelines, WRSP, and zoning ordinances. (Id.
12 at 00017-00018.) The general plan suggests that commercial development
13 should be on parcels between five to twenty-five acres but does not preclude
14 development on parcels that are under five acres. (Id. at 00018.) The
15 general plan also identifies that CC land use should be on the corners of or
16 adjacent to arterial roadways and the staff highlighted that the site was on
17 such an arterial road. (Ibid.) The staff also pointed out that zoning
18 ordinances did not prohibit such a project from being built within the
19 proximity of a park site. (Ibid.)

20 The staff report addressed the location of the gas station canopy. The
21 report acknowledged the placement was a deviation from the City's Design
22 Guidelines but highlighted that the guidelines are a framework which allows
23 for applicable deviations. (Ibid.) Staff stated the project canopy design was
24 similar to several other designs within the City that had canopies adjacent to
25 intersections. (Ibid.)

26 The staff report also added a specific discussion section,
27 "Environmental Review," which broke down the five factors required to claim
28 a categorical exemption for an infill development project. In reference to

1 the consistency of the project to the City's general plan, the report stated:
2 "The project site has a land use and zoning designation of CC which
3 principally permits the proposed use. Furthermore, as noted herein the
4 project is consistent with the Zoning Ordinance standards and Community
5 Design Guidelines." (AR at 00019.) The staff did not present any new
6 evidence, outside of what was submitted in their report, at the October 4,
7 2017 meeting. (AR 00121-00132.)

8 The Evidence within the Record Shows that the City's
9 Determination was Reasonable

10 Contrary to petitioners' assertions, the record contains sufficient
11 evidence to support the City's determination the project is consistent with
12 the City's general plan. The general plan specifically states that proposed
13 land use definitions are "broad in scope to allow the flexibility necessary to
14 achieve the General Plans policies related to pedestrian orientation and
15 convenience gained by allowing mixed use projects." (AR 01205.)
16 Petitioners are correct that this designation within the general plan refers to
17 larger parcels that will support full scale retail and businesses or professional
18 offices like medical offices and clinics. (Id. at 01213.) However, the
19 purpose of the CC category under the general plan is to provide "a broader
20 range of goods and services to an expanded service area." (Ibid.) There is
21 nothing within the language of the general plan that prevents a project on a
22 parcel designated CC from including smaller scale projects. To the contrary,
23 the express language of the general plan states that the CC category is
24 broader rather than limited in scope. (Ibid.)

25 The dispute here is caused in part by the category designation chosen
26 by the City. A review of the general plan language shows that the parcel
27 falls more along the lines of a neighborhood commercial (NC) category
28 rather than a CC category. The NC designation refers to parcels "intended

1 to provide basic commercial services for the convenience of surrounding
2 neighborhoods within walking distance of major residential areas.” (Id. at
3 01212.) The primary use of NC is a “limited range of goods and services,
4 including gas stations, intended for the convenience of the immediate
5 neighborhood and compatible with adjacent land uses.” (Ibid.) The general
6 plan describes the standard for the NC category as “applied to lands that are
7 adjacent to collector and/or arterial streets, and residential neighborhoods.
8 Goods and services may be provided in stand-alone buildings, or in small
9 centers, on three to seven acres, with a floor area ratio between 20% to
10 40%. Project designs in this category will have a pedestrian scale and
11 orientation, and provide convenient pedestrian and bicycle access thereby
12 reducing the need for an automobile trip.” (Id. at 01213.)

13 The project falls squarely within one typically found within this NC
14 designation since it is limited in size to 1.38 acres on an arterial street,
15 adjacent to collector street, and surrounded by LDR. The project also
16 consists of a single commercial building for some retail and restaurants
17 along with a gas station. This apparent deviation in designation, however,
18 does not render the project inconsistent. To the contrary, the project falls
19 squarely within the realm of usage contemplated for such a parcel. The fact
20 that the WRSP provided a broader land use designation with the CC category
21 does not render the project inconsistent with the general plan. The WRSP
22 redesignated the parcel as CC in order to provide neighborhood or
23 community serving uses near the surrounding Village neighborhoods. (AR
24 01716, 01718, 01731.) The CC land use designation allowed for greater
25 zoning flexibility as compared to an NC designation. An NC category only
26 allows for NC and planned development (PD) zoning. (Id. at 01208.) A CC
27 designation allows for expanded zoning, which includes CC; NC; PD;
28 highway commercial (HC); general commercial (GC); and commercial mixed

1 use (CMU). There is no inconsistency here since the project is among the
2 land uses allowed for the parcel and is the specific type of project sought for
3 a parcel surrounded by LDR.

4 Nor is the gas canopy design/positioning inconsistent with the general
5 plan. One of the goals for community design under the general plan is to
6 “achieve a consistent level of high quality aesthetic and functional design
7 through the development of, and adherence to, superior design concepts
8 and principles as defined in the Community Design Guidelines.” (AR 01228.)
9 “The intent of the guidelines is to define those design elements that are
10 important to the City, that, when applied during development review, will
11 ensure quality design for both public and private projects.” (Id. at 01230.)
12 In addressing gas station canopies, Guideline CC-5 states that “[g]as station
13 canopies, ..., ... *should* be located away from the corner.” [Emphasis added.]
14 (Id. at 04822.) This language suggests, but does not mandate, the
15 positioning of gas canopies away from the corner of the parcel. As is stated
16 in the guidelines, their purpose is to provide project designers flexibility and
17 encourage creativity to satisfy the design objections. (Id. at 04811.) The
18 staff report acknowledged the gas canopy placement was a deviation from
19 CC-5 but also stated the design was similar to other projects within the City
20 that had deviated in position, placing the canopies adjacent to intersections.
21 (Id. at 00018.) The record supports the City’s determination regarding the
22 gas canopy and its consistency with the general plan.

23 Infill Development Project Categorical Exemption – Significant
24 Effects to Air Quality

25 Petitioners also argue the City’s reliance on the infill categorical
26 exemption was improper since the City failed to show the project will not
27 significantly impact air quality. They assert the record is absent any specific
28 findings or evidence supporting the City’s position. To reiterate, one of the

1 five factors the City must show to invoke the infill categorical exemption is
2 approval of the project will not result in any significant effects to, among
3 other things, air quality. (14 C.C.R. section 15332(d).) The City's factual
4 determinations regarding a project falling within an exemption category are
5 reviewed for substantial evidence within the record. (*Save Our Carmel River*
6 *v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 667,
7 694; *San Francisco Beautiful v. City and County of San Francisco* (2014) 226
8 Cal.App.4th 1012, 1021.) Reviewing the record for substantial evidence
9 involves reviewing the evidence, resolving all conflicts in favor of the agency
10 with all reasonable and legitimate inferences indulged in to uphold the
11 agency's determination. (*Western States Petroleum Assn. v. Superior Court*
12 (1995) 9 Cal.4th 559, 570-571.) Any evidence, whether contradicted or
13 uncontradicted, may support the determination so long as it substantial.
14 (*Ibid.*) Furthermore, the court cannot substitute its own deductions when
15 two or more inferences can be reasonably deduced from the facts within the
16 record. (*Ibid.*)

17 The City's Determination the Project Would Not Result in
18 any Significant Effects to Air Quality

19 Again, the City relied upon the recommendations of the Planning
20 Division when it determined the project would have no significant effects to
21 air quality. The Division's staff report for the August 10, 2017 Planning
22 Commission meeting included a single sentence stating that the project was
23 exempt from CEQA under the infill exemption. (AR 00097.) The Planning
24 Division provided no further information regarding this determination at the
25 August 2017 meeting. (*Id.* at 00227-00304.) The second staff report,
26 provided at the October 4, 2017 meeting, included further details on the five
27 infill exemption factors. The staff report stated the following in relation to
28 the lack of significant effects to air quality:

1 "As noted above, the project will generate fewer trips than anticipated
2 by the City's Traffic Model and air quality impacts related to gas stations are
3 governed by PCAPCD. The project was circulated to PCAPCD and no special
4 comments were submitted. The Subsequent Environmental Impact Report
5 (SEIR) for SPA 3 included air quality mitigation measures that the project
6 must meet. Additionally, the nearest homes back up to the site or the
7 adjacent roadway and will be setback from the gas station a minimum of
8 125'. These homes will also be screened by landscaping and a six foot tall
9 masonry wall further reducing noise impacts. Staff does not anticipate any
10 noise impacts or significant air quality impacts to adjoining properties
11 beyond those customarily associated with traffic from the nearby roadways.
12 However, consistent with City policy the project will be required to comply
13 with the City's Noise Ordinance to ensure minimal impacts on nearby homes,
14 and the proposed gas station will be required to secure an annual permit to
15 operate, through PCAPCD, ensuring the required local, state, and federal
16 standards are adhered to as it relates to air quality impacts." (AR 00020.)

17 Staff from the Planning Division appeared at the October 4, 2017
18 hearing to discuss the report. At the meeting, Associate Planner Wayne
19 Wiley made several statements regarding the project. First, Mr. Wiley
20 framed the review process for the project: "... I think it's important to
21 provide information on the design elements of the project, because as noted
22 in my staff report, legally with the design permit, we are only able to
23 analyze the design aspects of the project. And as such, the proposed uses
24 are not in question as the project cannot be denied by virtue of including a
25 gas station" (AR 00139.) Mr. Wiley addressed the issue of air quality:
26 "...[A]t the [August 10, 2017] meeting there were issues or concerns raised
27 regarding air quality impacts or issues. And in response we noted that the
28 Air District governs gas stations and actually has a very stringent permit

1 process that ensures compliance with regulatory standards.” (Id. at 00143.)
2 He discussed the matters outlined in the staff report: “But as outlined in my
3 staff report the project is exempt per CEQA pertaining to [infill] projects. In
4 addition, the project will have to comply with the City’s noise ordinance and
5 will have to secure a permit through the air district prior to operating the gas
6 station.” (Id. at 00145-00146.) Mr. Wiley also stated: “But for CEQA
7 purpose projects are characterized as in fill development if they meet five
8 conditions which include the project will not have or result in significant
9 traffic [noise], air quality or water quality impacts, So, all of these are
10 outlined in your staff report on page three and they are followed by an
11 analysis.” (Id. at 00146.) Mr. Wiley also acknowledged that members of
12 the community had voiced concerns throughout the process regarding the
13 impacts to air quality that the project would have to the surrounding
14 residential communities (Id. at 00143-146), concluding: “[S]taff
15 acknowledges that there are residents with concerns and we have addressed
16 those to the best extent possible.” (Id. at 00147.)

17 The applicant’s representative, Marcus LoDuca, also testified at the
18 hearing: “[T]his project is exactly what the State had in mind by adopting
19 State CEQA guidelines section 15332 related to exemptions for small infill
20 projects. That exemption notwithstanding one thing that has been
21 mentioned is this site has already been the subject of an environmental
22 impact report done for the SPA three project which you approved in April of
23 2014. That EIR analyzed all of the land uses in the SPA Three project, ...,
24 All impacts, including traffic, noise, air quality, greenhouse gas emissions,
25 and others were analyzed in that EIR assuming that the commercial parcels,
26 including this parcel, and the SPA Three project, would be built out As
27 for air quality, again, as staff mentioned, you have to go through the air
28 pollution control district to get your permit to construct, you have to comply

1 with their rules on nozzles and the gas station and all of the rest. Those
2 have gotten stricter and stricter over the years, but more, moreover, the Air
3 District has commented on this project. When the City gets an application in
4 it sends it to all commenting agencies, it went to the Air District last year,
5 the Air District submitted a letter to the city, it had no comments, it just
6 said, you have to comply with our rules to be able to construct the project.
7 So, again, as staff mentioned, there are the, any air quality issues are dealt
8 with by the Air District in the context of their authority to give a permit to
9 construct. So, in short, there simply aren't any CEQA issues with this
10 project." (Id. at 00154-00156.) Mr. LoDuca provided an additional
11 statement after public comments from the petitioners and other community
12 members to readdress air quality: "[T]he process relative to the air pollution
13 control district. The application process to the air pollution control district
14 takes place when improvement plans are prepared after the local action by
15 the City is done, the applicant then spends several months preparing
16 improvement plans, it goes through the building and engineering
17 departments there, and at that time they develop the information relative to
18 what the air district will look at putting through put, how the pumps are
19 designed, there are vapor recovery systems in all, that's the process." (Id.
20 at 00199-00200.)

21 Mr. Wiley made additional statements regarding air quality after the
22 public comment portion of the hearing: "[W]e route projects initially [to
23 PCAPCD], when a project first comes in we route a fairly complete project
24 description, and so, we have correspondence from the Air District last
25 October regarding the project, and they recognize that there were going to
26 be five gas fueling pumps with, you know, obviously two hoses per pump, so
27 then stations to fuel from. So, they had an idea as to the number of pumps.
28 And in our correspondence and all of our correspondence they haven't

1 indicated any issues with the location of this, of this gas station relative to
2 the residential units. So, they will not only have to comply with Air District
3 regulations to build a gas station but they will have to comply with ongoing
4 operational regulations from the Air District to ensure that they are not
5 creating an air quality impact.” (Id. at 00206-00207.)

6 Greg Bitter, the Planning Manager, also responded to address the role
7 of PCAPCD, stating that PCAPCD would regulate the issues related to the gas
8 station, including through put; thresholds and distance requirements from
9 sensitive receptors; and maximum number of gallons to sold per year. (Id.
10 at 00210.) Mr. Bitter further stated: “[W]hen we receive correspondence
11 back from the Air District, they didn’t have any, any concerns, ... it was our
12 assumption that ..., ..., because their regulations are ministerial, you have to
13 meet, you cannot operate a gas station [if] you are not meeting their
14 regulations. There is no discretion that the Air District has. You meet their
15 regulations in order to operate your gas station.” (Id. at 00212.) No
16 additional evidence was submitted by the City at the time of the hearing.

17 Substantial Evidence Does Not Exist within the Record to
18 Support the City’s Determination that the Project Would
19 Not Significantly Effect Air Quality

20 The City’s determination on this factor relies upon two specific areas.
21 First, the City relies on the air quality mitigation measures analyzed in the
22 SEIR for SPA 3. Second, the City relies on the gas station being regulated
23 by the PCAPCD. Both of these areas will be addressed separately.

24 One of the bases for determining that the project would not have a
25 significant effect on air quality was the City’s reliance on the SEIR for SPA 3
26 with the City determining that the project would have to implement those
27 mitigation measures. The SPA 3 rezoned the subject parcel from LDR to CC
28 designation, expanding its zoning usages. This rezoning was identified as a

1 specific objective within the SPA 3. (AR 02556.) While rezoning for the
2 parcel was an objective of the SPA 3, the SEIR did not provide analysis
3 discussing the parcel. The SEIR focused upon the environmental impacts for
4 the undeveloped portions of phases 2C through 3B for the Fiddymment Ranch
5 development. (AR 02359.) This project parcel was part of phase 2B, which
6 had been substantially completed. (Ibid.) In light of this, the environmental
7 analysis for air quality and mitigation measures focused upon construction
8 related emissions and project operation emissions centered on residential
9 construction. (Id. at 01951-01955, 01957-01958, 02342-02373.)

10 The SEIR did identify gas stations as sources of toxic air contaminants
11 (TACs), which include the release of benzene. (Id. at 02349-02350.) It
12 identified residences and schools as sensitive receptors that are considered
13 more sensitive to air pollutants. (Id. at 02350.) The SEIR also referred to
14 the PCAPCD, its Air Quality Handbook, and the PCAPCD's rules/regulations
15 as identifying various mitigation measures where a project's impact exceeds
16 any significant threshold criteria. (Id. at 02354-02356.) The SEIR,
17 however, does not significantly analyze any of these issues. As previously
18 stated, the focus of the environmental analysis and related mitigation
19 measures was on the development of further subdivisions within phases 2C
20 through 3B of Fiddymment Ranch. There was no significant analysis regarding
21 the air quality impact of a gas station in a residential subdivision, or the
22 specialized air quality concerns that surround the release of TACs from a gas
23 station, as there was no such project slated at the time the SEIR was
24 drafted.

25 The second basis of reliance for the City's determination is the
26 PCAPCD's rules and regulations over the project. The record, however, does
27 not identify any of the applicable rules or regulations relied upon by the City
28 in its determination. The Planning Division's first staff report for the August

1 2017 meeting is completely devoid of substantive discussion, let alone
2 analysis, regarding the project's effects on air quality. (AR 00227-00304.)
3 In the second staff report, the Planning Division provides a paragraph
4 recitation to conclude that the gas station will not significantly effect traffic,
5 noise, water quality, and air quality without identifying the specific PCAPCD
6 rules and/or regulations applicable to the project. (Id. at 00020.) The staff
7 also spent a significant amount at the October 2017 hearing focusing upon
8 their limited role in analyzing the air quality for the project. (Id. at 00139,
9 00143, 00145-00147, 00206-00207, 00212.) That's all.

10 The question before the court is whether there is substantial evidence
11 in the record to support the City's determination that the project will not
12 have a significant effect on air quality. The answer here is "no". After
13 making an initial, conclusory determination that the project was exempt
14 from CEQA review, the City switched gears to rely on a patchwork of items
15 to support its prior conclusory determination. The SEIR identifies - but
16 never analyzes - the significance of TACs or their impacts on sensitive
17 receptors and the mitigation measures do not take these issues into
18 account. Furthermore, mitigation measures generally cannot be used to
19 support a categorical exemption to CEQA. (*San Francisco Beautiful v. City*
20 *and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1032.)

21 As to the PCAPCD rules and regulations, the City argues it is entitled to
22 rely upon PCAPCD's generally applicable regulations to support its conclusion
23 that the gas station will not significantly effect air quality. (*San Francisco*
24 *Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012,
25 1033.) This assertion misses the mark. The City can legitimately rely upon
26 the PCAPCD's regulations but first it has to identify them. The record makes
27 it clear that justification for reliance on the categorical exemption was an
28 afterthought that arose when residents in the surrounding neighborhood,

1 which include petitioners, voiced their concerns. The City then gathered
2 information in order to respond but throughout their responses, staff for the
3 City made it clear they were ceding the entire air quality issue to the
4 PCAPCD. With this concession, however, the record does not show that the
5 PCAPCD ever took on the mantle of providing a discussion or analysis
6 regarding the project's significant effects, or lack thereof, on air quality. To
7 the contrary, the PCAPCD provided a letter correspondence providing some
8 "comments for consideration". (AR 00392-00393.) The PCAPCD never
9 expressly stated, nor does the record show, that the PCAPCD would provide
10 some justification to support the City's determination regarding air quality.

11 The City's position that mere regulation of the gas station by the
12 PCAPCD meets the categorical exemption factor also fails to sufficiently
13 support its determination. To reiterate, the record is silent regarding the
14 PCAPCD rules and regulations the City relied upon to support its air quality
15 determination. This is because the City took the position, without providing
16 any substantive discussion or analysis, that the PCAPCD permitting and
17 regulation process would sufficiently address any air quality impacts. In its
18 opposition to this petition, the City attempts to cobble together, through
19 judicial notice requests, the applicable rules and regulations that support its
20 determination. This post hoc attempt to legitimize its determination does
21 not salvage the fact that the record fails to include substantial evidence to
22 support the City's determination. To be considered substantial evidence, the
23 evidence must be of ponderable legal significance with reasonable, credible,
24 and solid value. (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634,
25 651.) Logical and reasoned inferences can be considered substantial
26 evidence. (*Ibid.*) Speculation or conjecture, however, are generally not
27 considered substantial evidence. (*Ibid.*) What the record shows is that the
28 City relied upon speculation or conjecture regarding the strictness of the

1 PCAPCD's rules and regulations without actually identifying or reviewing
2 them. These conclusory determinations were not based upon any specific
3 evidence present within the record. Indeed, there is a substantial lack of
4 evidence. Moreover, there is a striking portion of the record that directly
5 contradicts the City's current arguments. It is the notice of exemption
6 posted on October 5, 2017, which states as follows: "REASONS WHY
7 PROJECT IS EXEMPT: The project is consistent with the development
8 assumptions anticipated by the land use and zoning, and the potential
9 impacts of the project were acknowledged in the General Plan and
10 Fiddymment Ranch Specific Plan Amendment 3 (FRSPA) EIR
11 (SCH#2010082075). The project is consistent with the anticipated impacts
12 identified in the General Plan and FRSPA EIR; therefore, no further
13 environmental review is necessary." (AR 00001.) The City's own notice of
14 exemption fails to rely upon any of the PCAPCD rules or regulations as a
15 basis for exemption from CEQA review. For these reasons, it cannot be
16 determined that substantial evidence supports the City's determination
17 regarding the lack of significant impacts to air quality.

18 Exception to the Infill Development Project Categorical
19 Exemption

20 Since it has been determined that substantial evidence does not exist
21 to support the City's determination regarding the fourth factor necessary to
22 invoke this categorical exemption, the court need not discuss whether an
23 exception exists.

24 Second Cause of Action – Violations of the Roseville Municipal Code

25 In the second cause of action, petitioners once again challenge the
26 consistency of the project, this time as it pertains to Roseville Municipal
27 Code section 19.78.060(B)(3). They argue the project violates the section
28 since the gas canopy deviates from the Guidelines and the gas station is not

1 harmonious with the general plan. Section 19.78.060(B)(3) states in
2 pertinent part:

3 "Section 19.78.060 – Required Findings for Approval or Conditional
4 Approval of Permits and Variances

5 The Approving Authority may approve or conditionally approve an
6 application for a permit or variance, as defined in Section 19.14.010,
7 only if all of the following applicable findings, in addition to those
8 findings that are applicable in this Title are made.

9 B. Findings for a Design Review Permit. The Approving Authority
10 shall make the following findings to approve a Design Review
11 Permit:

12 [¶][¶]

13 3. The building design, including the materials, colors, height,
14 bulk, size and relief, and the arrangement of the structures
15 on the site, as approved is harmonious with other
16 development and buildings in the vicinity and which is
17 consistent with the applicable goals, policies and objectives
18 set forth in the General Plan, the Community Design
19 Guidelines and the applicable Specific Plan and/or
20 applicable design guidelines."

21 Petitioners' contention here does not involve interpretation of the
22 section, rather, it is a different framing of the same challenge to the City's
23 determination of the project's consistency with the general plan and
24 community design guidelines. This determination is reviewed for substantial
25 evidence. (*Eskeland v. City of Del Mar* (2014) 224 Cal.App.4th 936, 941-
26 942.) As previously discussed above, these assertions lack merit and the
27 second cause of action fails.

28 Third Cause of Action – Planning and Zoning Law Violations

1 As previously discussed, a city must adopt a comprehensive, long-term
2 general plan to pursue an effective planning process. (Government Code
3 section 65300; *Orange Citizens for Parks & Recreation v. Superior Court*
4 (2016) 2 Cal.5th 141, 152.) “ ‘The propriety of virtually any local decision
5 affecting land use and development depends upon consistency with the
6 applicable general plan and its elements.’ ” (*Citizens of Goleta Valley v.*
7 *Board of Supervisors* (1990) 52 Cal.3d 553, 570 (*Goleta Valley*)). The
8 standard of review under the Planning and Zoning laws is similar to that
9 analyzing the general plan consistency element for a CEQA infill project
10 categorical exemption. “Where a consistency determination involves the
11 application of a general plan’s established land use designation to a
12 particular development, it is fundamentally adjudicatory. In such
13 circumstances, a consistency determination is entitled to deference as an
14 extension of a planning agency’s ‘ ‘unique competence to interpret [its]
15 policies when applying them in its adjudicatory capacity.’ [Citation.]’
16 Reviewing courts must defer to a procedurally proper consistency finding
17 unless no reasonable person could have reached the same conclusion.
18 [Citations.]” (*Orange Citizens for Parks & Recreation v. Superior Court*
19 (2016) 2 Cal.5th 141, 155.) Petitioners argue the City violated Planning and
20 Zoning laws due to the inconsistency between the project and the general
21 plan. Specifically, they claim that the gas canopy deviations; small parcel
22 size; parcel position to arterial and connector streets; and the gas station
23 not being listed as a primary or secondary use. These assertions do not
24 establish inconsistencies in the general plan for the reasons detailed in the
25 prior CEQA discussion. In light of this, petitioners’ third cause of action fails.

26 Disposition

27 Petitioners do not prevail on their second cause of action.

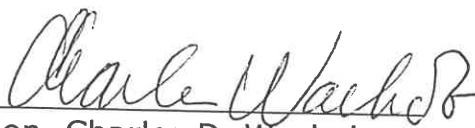
28 Petitioners also do not prevail on their third cause of action.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Petitioners prevail on their first cause of action for CEQA violations. Specifically, substantial evidence does not support the City's determination as to the fourth factor that the project will not have a significant effect on air quality to allow the City to rely upon the infill project categorical exemption.

Let a peremptory writ of mandate issue instructing respondent City of Roseville to vacate and set aside City of Roseville Resolution No. 17-430, adopted on October 4, 2017, along with vacating and setting aside the determinations that the project qualifies for a categorical exemption as an infill development project under CEQA.

Dated: 11-9-18


Hon. Charles D. Wachob
Judge of the Superior Court

**SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER**

CLERK'S CERTIFICATE OF MAILING (C.C.P. §1013a(4))

Case No.: **S-CV-0040328**

Case Name: **Michelle Threlkel, et al vs City of Roseville, et al**

I, the undersigned, certify that I am the clerk of the Superior Court of California, County of Placer, and I am not a party to this action.

I mailed copies of the documents(s) indicated below:

Ruling on Submitted Matter

True copies of the documents were mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as follows:

Donald Mooney
129 "C" Street, Ste 2
Davis, CA 95616

Robert Schmitt
311 Vernon St
Roseville, CA 95678

Kate Wheatley
500 Capitol Mall, Ste 1150
Sacramento, CA 95814

I am readily familiar with the court's business practices for collecting and processing correspondence for mailing; pursuant to those practices, these documents are delivered to

- the US Postal Service
- UPS
- FedEx
- Interoffice mail
- Other

on November 9, 2018 in Placer County, California.

Dated: November 9, 2018

JAKE CHATTERS
Clerk of the Superior Court

by: 
M. Taylor, Deputy Clerk