



April 6, 2023

Ms. Michelle Lynch
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Electronic Transmission of seven (7) pages to:
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Subject: Acton Town Council Comments on the “One Stop” Recommendations Made By County Staff Pursuant to Proposed Modifications to a Final Subdivision Map Under Project Number RPPL2022012554.

Reference: “Subdivisions One-Stop Summary” Report Dated December 15, 2022.
Final Parcel Map No 16832

Dear Ms. Lynch;

The Acton Town Council appreciates your assistance in obtaining a copy of the referenced Summary Report prepared for Project Number RPPL2022012554 and we respectfully request that you accept the following comments that have been prepared pursuant thereto. We understand that Project RPPL2022012554 consists of proposed modifications to a final subdivision map that was recorded in 1999 as Parcel Map 16832 (“PM 16832”) and that the modifications are proposed because the Project Applicant does not wish to develop the office/retail “Lease Project” that was approved with PM 16832 and instead wishes to construct a new 8-pump gas station, fast food, and convenience store development. We have reviewed the Summary Report and also discussed the proposed project at the community meeting convened on March 20, 2023. During the discussion, a number of concerns were raised. and it was deemed prudent to communicate these concerns to you so that you are aware of the “local perspective” on this project. For simplicity and brevity, the concerns enumerated below are presented in a “list” format but more detailed comments can be provided upon request. The Acton Town Council respectfully requests that these comments be incorporated into the record of the proposed subdivision project.

The Proposed Project will require a New Environmental Review

The project site is a single lot that consists of parcel 2 which was created when Parcel Map 16832 was filed on August 17, 1999 in Map book 289 page 36 (Attachment 1). According to DRP records, the tentative map was approved by the Department of Regional Planning on May 25, 1993 (Attachment 2) based on the following conditions:

- Parcel 2 was created for lease purposes (Attachment 2) and included several separate buildings; as such, it was a “Lease Project” as that term is defined in County Code Section 21.08.090
- The land use designation assigned to Parcel 2 pursuant to the 1986 Antelope Valley Area Plan is “Community Commercial” (Attachment 2).
- Parcel 2 was created and approved for office/retail uses and configured to accommodate 1 parking spot per 400 square feet of office/retail space (Attachment 3).

The land use analysis and environmental review of Parcel 2 that was conducted by DRP before approving Map 16832 was based entirely on the fundamental assumption that “Community Commercial”¹ uses and **only** “Community Commercial” uses would be developed on the property; that is why the final map is configured with driving lanes. Now however, the developer does not intend to provide the community-focussed, low intensity office and retail uses that were committed to when the subdivision was approved; instead, the developer intends to construct a large freeway serving gas station, fast food restaurant, and convenience store (Attachments 4 and 5). The summary report further indicates that parcel 2 will not be used for the “Lease Project” that was approved in 1993 and for which parcel 2 was created. These constitute “substantial changes” to the project which will result in new and potentially significant environmental effects (such as traffic, noise, safety, air quality, etc.) that were analyzed when the subdivision was approved in 1993; these also constitute “substantial changes” in the circumstances under which Parcel 2 will now be developed. Therefore, and consistent with Section 15162 of Title 14 of the California Code of Regulations, a new review pursuant to the California Environmental Quality Act (“CEQA”) is required.

The Tentative Parcel Map is Required to Depict all the Structures and Improvements that Are Proposed for the Project Site.

The Summary Report establishes that the “project” is to make certain revisions to a recorded final map (PM 16832) and that the developer will prepare a tentative parcel map; additionally, Page 2 directs that “The parcel map will not depict any structures.

¹ The Antelope Valley Area Plan adopted in 1986 explicitly defines “Community Commercial” land uses as uses that “serve several adjoining neighborhoods” and typically consist of low intensity retail uses such as “drug stores, small clothing stores, shoe stores, jewelry stores, specialty shops” etc. More importantly, the 1986 AV Area Plan clearly distinguishes “Community Commercial” uses from “Highway Oriented Commercial Uses” such as gas stations and cafes that are intended to serve the traveling public [Page VI-6 of the 1986 AV Area Plan].

This will be for the modification only. Once the map has been approved by the Regional Planning Commission, then the project must be submitted to the county engineer as an amending engineer as an amending map or certificate of correction, as determined by DPW.” The direction provided in the summary report is ill-informed. The CEQA analysis that will be conducted for the project must analyze the impacts resulting from the “whole” of the proposed action [Guidelines 15003(h)]; this means that the CEQA analysis must assess the impacts of the proposed map revisions *as well as* the impacts caused by the development that will ensue as a result from the approved map revisions. In other words, CEQA does not permit the County to just consider the proposed revisions to PM 16832; this is particularly true given that the sole purpose of the proposed revisions is to enable the applicant to develop a high intensity, freeway-serving, gas station/fast food/convenience store project. Therefore, the tentative map must depict the gas station/fast food/convenience store uses that will be developed on the site if the proposed revisions to PM 16832 are approved because that is the only way that the CEQA analysis will properly consider the “whole” project. Furthermore, the tentative parcel map must show all the design elements and improvements that are proposed on the site because they are necessary for the County to make the finding required under Sections 21.52.030(G)(6) and 21.52.030(G)(8) of the County Code. Finally, the tentative map must depict the locations and dimensions of all impervious surface areas to ensure that the project is designed with sufficient stormwater capture/infiltration facilities and does not increase stormwater flows onto adjacent properties or contribute to further flooding problems in downtown Acton.

The Proposed Modifications to Parcel 2 of PM 16832 Cannot Be Processed Via a Certificate of Correction or an Amending Map.

The Summary Report establishes that the County intends to process the developer’s requested modifications to PM 16832 via either a “Certificate of Correction” or an “Amending Map” (see page 2). Such actions are governed by the California Subdivision Map Act (“The Act”) which establishes very limited circumstances under which the County can use a “Certificate of Correction” or an “Amending Map” to revise a final map; notably, none of these circumstances set forth in the Act are presented by the proposed modifications for PM 16832 and as such, the County is precluded from processing the developer’s proposed modifications via either a “Certificate of Correction” or an “Amending Map”. For instance, Section 66472.1 of the Act authorizes modifications to a final map only if such modifications are authorized by local ordinance **and** the local agency finds that there are changes in circumstances which make any or all of the conditions of the map no longer appropriate or necessary. The modifications proposed for PM 16832 do not meet this threshold for several reasons. First, the applicable “local ordinance” provisions are found in Section 21.52.030 of the County Code, and they only permit modifications when there are “physical problems associated with the development of the site or technical difficulties arising which are not under the control of the developer and which make it impossible to comply with certain conditions” [Section 21.52.030(G)(4)]; these circumstances do not exist. Specifically, there are no “physical problems” posed by parcel 2 which prevent development of the

“Lease Project” that was approved for PM 16832 and no “technical difficulties” pertaining to Parcel 2 have arisen that are out of the developers control and which make it impossible to develop the “Lease Project” approved with PM 16832; in fact, the only thing that is preventing the developer from constructing the “Lease Project” for which the subdivision was approved is the developer’s own desire to construct an entirely different “Non-Lease Project”. So, the standard imposed by 21.52.030(G)(4) for approving modifications to a final map cannot be met. Second, 21.52.030(G)(6) requires that the proposed changes to PM 16832 be consistent with applicable general and specific plans; this standard cannot be met because the heavily trafficked, high-intensity, freeway-dependent gas station, fast food, and convenience store uses that will result from the proposed changes to PM 16832 are intrinsically inconsistent with adopted County Plans². Finally, there have been no “changes in circumstances” that have occurred to make any of the “Lease Project” conditions under which PM16832 was approved either inappropriate or unnecessary; to the contrary, the driveways identified on the final map which the developer intends to eliminate are in fact both necessary and appropriate for the “Lease Project” for which PM 16832 was approved. The mere fact that a developer does not wish to construct the “Lease Project” for which PM 16832 was approved does not constitute a “change in circumstance” and it certainly does not render the approved “Lease Project” conditions either inappropriate or unnecessary.

Furthermore, Section 66469 of the Government Code restricts the circumstances under which a final map can be amended by a “Certificate of Correction” or an “Amending Map” to only those actions that are necessary to:

- Correct an error in any course or distance shown on the final map.
- Show any course or distance that was omitted from the final map.
- Correct an error in the description of real property shown on the map.
- Indicate monuments set after the death, disability, retirement from practice, or replacement of the engineer or surveyor charged responsible for setting monuments.
- Show the proper location or character of any monument which has been changed in location or character.
- Correct any additional information that was filed or recorded simultaneously with the final map as described in Section 66434.2 of the Map Act.
- Correct any other type of map error or omission that is approved by the County Surveyor.

² The Antelope Valley Area Plan explicitly restricts commercial development on the project site to only “low-intensity local commercial uses that serve community residents” [COMM 3-4] and it establishes that the purpose of new commercial uses is to serve local residents, not freeway commuters [LU-7]. It further establishes that the intent of “Rural Commercial” lands is to provide “limited, low-intensity commercial uses that are compatible with rural and agricultural activities”. The project is facially inconsistent with all of these Plan provisions because the freeway serving gas station, fast food, and convenience market uses which the developer intends to construct are high intensity and intrinsically incompatible with rural/agricultural activities.

None of these circumstances are embodied in the proposed project because the developer is not seeking to **correct** PM 16832; to the contrary, the developer seeks to **fundamentally alter** PM 16832 by eliminating the entire “Lease Project” for which PM16832 was approved. For all the reasons set forth above, the modifications to PM 16832 that are proposed by the developer do not qualify for consideration under the Map Act and as such, the County is not permitted to revise PM 16832 with either a “Certificate of Correction” or an “Amending Map”. The only path that is available to the applicant to secure the requested changes is to initiate an entirely new subdivision process.

Recommendations by The Department of Public Works Omit the Requisite Traffic Study Requirement and Are Inconsistent with the Antelope Valley Area Plan.

According to Page 4 of the Summary Report, the Department of Public Works (“DPW”) recommends site improvements such as curbs, gutters, sidewalks, and streetlights; this is inconsistent with the adopted Antelope Valley Area Plan. To correct this, the project must be conditioned to 1) comply with adopted rural roadway standards; 2) require that all new buildings on the project site “shall be linked to surrounding rural town areas through trails and pedestrian routes”; and 3) require all pedestrian paths to utilize “permeable pavement”; this will ensure compliance with the Antelope Valley Area Plan [see page COMM-4]. In other words, every building constructed onsite must be connected to a pedestrian pathway AND a separate equestrian trail. Furthermore, DPW failed to recommend the preparation of a traffic study. A traffic study is mandatory because the proposed revisions to PM 16832 will eliminate the low intensity, community serving office/retail “Lease Project” for which PM 16832 was approved and replace it with high-intensity, freeway-serving gas station/fast food/convenience store uses that will generate heavy traffic patterns which differ substantially from what was originally contemplated for the “Lease Project” approved with PM 16832. Most importantly, the County must prepare a traffic signal warrant analysis for the development that will ensue if the proposed revisions to PM 16832 are approved; this is essential to assessing the public safety impacts of the project and determining whether traffic signals are warranted. If the development either warrants a traffic signal or increases an extant need for a traffic signal, then both the development and the proposed revisions to PM 16832 must be denied due to inconsistencies with the Antelope Valley Area Plan [see page COMM-4].

The Department of Parks and Recreation Failed to Condition the Project with an Equestrian Trail.

The Acton Town Council was substantially disappointed to note that recommendations made by the Department of Parks and Recreation did not include an equestrian trail even though the Summary document clearly shows that the project lies on a mapped regional trail alignment [see page 9]. This is a substantial omission which must be corrected. It is further pointed out that the Acton Community Standards District mandates that proposals for trail easements “shall be developed and considered in conjunction with each land division” [see County Code Section 22.302.060 (J)].

Because the “project” is a land division activity, it must comply with the subdivision provisions of the Acton Community Standards District.

The Department of Public Health Failed to Address the Lack of Sewer Facilities on the Project Site.

The Acton Town Council was stunned to note that comments offered by the Department of Public Health did not even consider the fact that the project site is not served by a municipal sewer system and that the project will require at least one “package” onsite wastewater treatment system. More importantly, to protect the local groundwater resources that Acton residents rely on for their domestic water supply, the Health Department must also require the installation of multiple monitoring wells and ensure that the packaged wastewater treatment system meets tertiary standards. The Health Department should also have addressed the fact that such systems have high failure rates in the project area³ and thus pose a significant risk to groundwater, particularly when they are used to serve restaurants; this is because restaurant grease traps are ineffective⁴. The Health Department should have also acknowledged that the project area already has 3 existing gas station and that the gas station that will be developed if the project is approved is substantially larger than all of them;⁵ thus, it poses additional risks to local groundwater supplies.

Conclusions

As set forth above, the Acton Town Council is substantially concerned by the recommendations that were provided to the project applicant pursuant to the referenced project; we are also concerned by the County’s stated intent to process the proposed modifications to PM 16832 via either a “Certificate of Correction” or an “Amending Map” because this would directly violate the Subdivision Map Act and the County Code. Equally important, by processing the proposed modifications to PM 16832 as a “stand alone project” that is separate and distinct from any development which will ensue once the map is amended, the County will fail to consider the “whole project” and thus act in direct violation of CEQA. Finally, if a traffic study is not prepared for the project, then the County will lack the data and information necessary to support a finding that the project complies with adopted County Plans; by extension, no such finding can be made.

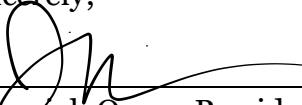
³ The project is located near the intersection of Crown Valley Road and Sierra Highway, and in that area, the package treatment systems that were installed for the 76 gas station, the MacDonalds fast food business , the Shell gas station/Subway fast food business, and the Don Chato restaurant all failed.

⁴ Package treatment systems serving restaurants often fail because restaurant grease traps are ineffective; they are ineffective because the hot water that restaurants use for sanitizing purposes tends to maintain grease in a liquid state; thus, it passes through the trap and accumulates in the boxes and even in the leach fields.

⁵ The developer intends to install *eight* two sided pumps which is twice as many as what is located at the 76 station and the Arco Station; it is also much larger than the Shell Station which only has six two sided pumps.

Please contact the Acton Town Council to discuss any of the matters raised herein; we can be reached at atc@actontowncouncil.org . To ensure that our comments are disseminated as much as possible, they will be distributed to all the County Staff identified in the Summary Report.

Sincerely;



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The Acton Town Council

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