

Inland Minor Use Permit Approval Appeal
Project No.DRC2021-00102 and N-SUB2022-00042

Basis for this Appeal

Type of Permit being appealed: Minor Use Permit

Decision was made by: Planning Commission

Decision Date: August 10, 2023

Decision is appealed to the Board of Supervisors

Project Location: Las Tablas Road Templeton

Appeal submission date: August 24, 2023

This appeal request is submitted by Concerned Citizens of Templeton, an unincorporated association formed by a group of San Luis County Templeton Area Property Owners and Residents who oppose the SLO County Planning Commission's August 10, 2023 Minor Use Land Use Permit approval of Project No. DRC2021-00102 known as East Bennet Village. Project Numbers DRC2021-00102/N-SUB2022- 00042. This proposed project is located in the SLO County unincorporated Templeton area of Las Tablas Road and Highway 101. A search of various SLO County Planning Department websites and a review of the August 10, 2023 Planning Commission's Minor Use Permit hearing agenda item documents clearly indicates that the County failed to publicly disclose substantial amounts of public record information required by SLO County Land Use Permit application ordinances, policies and guidelines. We will be filing a Public Record Request in accordance with the California Public Records Act (CPRA) shortly with SLO County asking for ALL public records in existence that relate in any manner whatsoever with the processing of this project's Land Use Permit applications and its Commission approval. We reserve the right to amend the basis of our appeal in a timely manner following the receipt of a complete response to our CPRA request.

The August 10, 2023 Planning Commission hearing was attended by only three of the five SLO County Commissioners. Two of the Planning Commissioners (Mariam Shah and Anne Wyatt) were absent from the Planning Commission hearing. The project was approved 2-1. This project generated major controversy and opposition in the Templeton area that elevated its Minor Use Permit application approval hearing to the Planning Commission for consideration. We recognized that the Commission quorum is three of five Commissioners being present to proceed with this hearing. However, in community's overwhelming opinion is that the Commission failed to provide full, comprehensive and unbiased consideration of the issues impacting this project. This Commission hearing should have been continued to a future date that allowed for it to be considered by the entire five member Commission.

This project's Minor Use Permit application was originally referred to the Templeton Area Advisory Group (TAAG) during 2021. TAAG spent considerable time conducting several publicly noticed meetings attended by community residents and property owners, the project applicant and his planning consultants Kirk Consulting. This process generated a substantial amount of public controversy and opposition to the project. Eventually the applicant, to his credit, proceeded to reduce the scope and design of the project by deleting a proposed drive through restaurant and drive through car wash activities. Both of these activities did not comply with various County Land Use Permit application ordinances. Additional project design revisions were proposed by the applicant that resulted in a proposed increase in the size of the proposed convenience store building from 3,200 sq.ft to 5,200 sq.ft.; and, a request to increase the gas station's underground fuel storage capacity from 20,000 gallons to 40,000 gallons; and the extension of the original convenience store's proposed 5AM to 11PM operation hours that were in compliance with the Templeton Design Plan to 24 hours a day.

Substantial public controversy and opposition to the project resulted in the County's elevation of the project's Minor Use Permit application to a Planning Commission hearing. Please note that 85 concerned community members have

signed on to this appeal.

TAAG submitted the following recommendations to the County Planning Commission for consideration during the Commission's August 10th hearing. The TAAG Board voted on each modification individually, in relation to whether the project should be approved, based on the modification. The TAAG Board then voted 5-0 on July 20, 2023, to recommend APPROVAL of DRC2021-00102, given the following conditions:

1. Section 22.10.070 of the Land Use Ordinance sets gallonage limitations of underground flammable liquids stored onsite to not exceed 20,000 gallons unless greater quantities are authorized through a Minor Use Permit or Conditional Use Permit approval. TAAG Board voted unanimously (5-0) to recommend allowance of this adjustment.

2. The Applicant requested an adjustment to allow the extension of daily business hours of operation of the Convenience Store and fuel pump dispensaries to 24 hours per day. Self-service from 11PM to 5AM. This proposal to operate the convenience store 24hour a day is not in compliance with Templeton Community Design Plan's Standard V.F.3 that restricts retail business hours from 5:00 AM to 11:00PM. The TAAG Board voted 5-0 to recommend APPROVAL of DRC2021- 00102, with the following conditions:

➤ Only the fuel dispensaries are operational 24 hours per day, and they are self-service between 11:00PM and 5AM.

➤ TAAG voted 5-0 in favor of the Convenience Store complying with the Templeton Community Design Plan's limited retail business hours 5:00AM – 11:00PM instead of proposed 24-hour operation.

➤ **If operating hours are not restricted to 5:00AM 11:00PM then the TAAG recommended denial of the project.** The applicant chose to request the 24 hour Convenience Store operating hours. Accordingly TAAG's recommendation was to deny the project.

3. The applicant requested signage areas totaling 802 square feet of various signs. SLO County Land use Ordinance Section 22.20.040.A.2 allows 237 square feet of signage for this project. TAAG Board voted 5-0 to recommend Approval of DRC2021-00102, if the excessive signage is decreased to comply with "Signs allowed" in SLO County LUO Section 22.20.060.

TAAG suggested that excessive signage be decreased by reducing the request for (4) wall signs of 80 sq.ft. each for the Gas Station, since (2) addition wall signs are also requested for the Convenience Store's building, TAAG also requests that lighting of signs must be indirect with no internal lighting, and that there be no North-facing signs because of nearby residences to the North. The Commission approved the expanded 800 sq.ft signage as proposed by the applicant.

4. TAAG agreed to investigate whether Duncan Road should be restricted to an "entrance only" access point to the gas station. Exiting onto Duncan Road results in entering Las Tablas Road with a right hand west bound turn only. Left turns from Duncan Road onto Las Tablas Road are prohibited. Station customers choosing to return to highway 101 or travel east on Las Tablas Road must execute a U-turn at the Bennett Way stop light intersection or beyond. This project site exit to Duncan Road should be prohibited. A TAAG Board member met with the CHP Duncan Road station and reviewed this issue with the station commander on duty the day of the visit. The officer agreed that no exit should be allowed onto Duncan Road from the project site.

The County's Mitigated Negative Declaration (MND) environmental determination for this project fails to adequately support the County's environmental conclusion that "Although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent." The MND is based on the original project design and scope of operations that was substantially revised as discussed above. **No effort was made by the County to revise the MND to reflect the**

revise approved project and its environmental impacts. Accordingly, the MND fails to disclose to the public the revised description of the project site, the scope of its operations and various environmental issues and impacts affected by its approved revised operations.

This appeal memo presents the Basis for our Appeal based on project information currently available to us and in response to the Planning Commission's failure to recognize various violations of SLO County Land Use Permit standards and violations of the Templeton Community Plan and its Design Plan standards that the County is obligated to comply with. The August 10th Planning Commission Planning staff report that recommended approval of the revised project as submitted by the project applicant acknowledges that *"SLO County Land Use ordinance Section 22.104.090 – Templeton Community Standards Communitywide 1. Compliance with the Templeton Community Design Plan. All Minor Use Permit, Conditional Use Permit and subdivision applications shall be in conformity and compliance with the Templeton Community Design Plan, dated January 11, 1991 and subsequent amendments, which was duly adopted by the Board in Resolution No. 90-688 and is on file in the Office of the Clerk of the Board, and which is hereby incorporated by reference herein as though set forth in full."* Obviously, the approved project does not comply with various LUO County ordinances or the Templeton Community and Design Plans.

This appeal addresses the following issues that support our opposition to the Planning Commission's August 10, 2023 Minor Use Permit approval of his project.

BASIS FOR THE APPEAL

- SLO County's failure to conduct a comprehensive environmental review of the project that would have disclosed significant environmental impacts on the project area that requires a full ENVIRONMENTAL IMPACT REPORT rather than the existing Mitigated Negative Declaration.
- The Commission failures to consider the County's failure to comply with certain provisions of the Templeton Design Plan.
- The county's failure to comply with certain SLO County Land Use Permit application and approval ordinances, policies and guidelines.
- Objections to various Planning Commission approved Minor Use Permit Findings and Conditions of Approval.

1. THIS APPEAL IS BASED ON THE FACT THAT THE GAS STATION – CONVENIENCE STORE DOES NOT PROVIDED ANY BENEFITS OR SERVICES WHATSOEVER THAT DO NOT READILY EXIST IN THE GENERAL TEMPLETON AREA.

- 1) Along the 101 highway corridor between south Paso Robles 101-highway 36 west interchange and the north end of Atascadero at San Anselmo Road, a distance of approximately 6 miles, 7 gas stations with varying size convenience stores are in operation daily. All 7 stations provide gas pump service 24 hours a day. Travel time to each station varies from one to five minutes. One additional gas station – convenience store exists on Main Street Templeton. This this station operates a convenience store from 6AM to 8PM daily. A pumps are self-service 24 hours a day.**
- 2) Convenience stores are located at each of the 8 stations. Most operate from 5AM or 6AM to 8PM to 10PM. A couple of stores operate 24 hours a day.**

2. THE PROJECT'S MITIGATED NEGATIVE DECLARATON (MND) IS BASED ON THE ORIGINAL PROJECT PROPOSAL TO STORE 20,000 GALLONS OF FLAMMABLE LIQUID IN UNDERGROUND STORAGE TANKS. THE COMMISSION APPROVED 40,000 GALLONS OF UNDERGROUND FUEL STORAGE.

The SLO County Land Use ordinance Section 22.10.070 D.2. clearly limits the maximum underground flammable fuel storage to 20,000 gallons unless greater quantities are authorized through Conditional Use Permit or Minor Use Permit approval. At the beginning of the August 10th Commission hearing, County Planning staff member

Eric Tolle announced that SLO County Counsel had determined that the increased 20,000 gallon variance in fuel storage to 40,000 gallons DID NOT REQUIRE COMMISSION CONSIDERATION. Tolle identified the increase as an “Adjustment” No explanation was provided for justifying the 100% increase in fuel storage except that County Counsel advised Planning of this “adjustment” interpretation. The Commission did not consider this issue. This “Adjustment” process is permitted by the following County Code ordinance Section.

County Code ordinance Section **22.70.030 - Adjustments. A. states that “When allowed. When a standard of Articles 3, 4, or 5, or a planning area standard of [Article 9](#) identifies specific circumstances under which reduction of the standard is appropriate,** an applicant may request an adjustment to the standard. (For example, Section 22.10.140.D.2.b provides that a required front setback may be reduced to a minimum of five feet through the adjustment process when the elevation of the lot is seven feet above or below the street centerline at 50 feet from the centerline.) **B. Application filing and processing.** An adjustment request shall be filed with the Department in the form of an attachment to the project application, with appropriate supporting materials. The request shall specify the Land Use Ordinance standard requested for adjustment and document the manner in which the proposed project qualifies for the adjustment. **A request for adjustment shall not be accepted for processing by the Department unless the request is within the range of adjustments prescribed in the standard.** A request for adjustment shall be approved by the Director when the Director finds that the criteria for adjustment specified in the subject standard are satisfied.”

The issue here whether the 100% proposed increase of the project’s flammable fuel storage capacity is qualified pursuant to the above noted “Adjustment” ordinance. The maximum fuel storage issue is subject to County Code Section 22.10.070 D.2. that clearly limits maximum underground flammable fuel storage to 20,000 gallons unless greater quantities are authorized through Conditional Use Permit or Minor Use Permit approval. There is no range of adjustments described in this Code Section. It clearly only limits storage to 20,000 gallons. There is no discussion whatsoever of ranges of maximum gallonage in the ordinance. Obviously, Adjustment Code Section 22.70.030 DOES NOT does not apply unless a range of adjustments is specified in Code Section 22.10.070 . This increase of the excess 20,000 gallon storage allowance is a County ordinance VARIANCE subject to County Code Section 22.62.070. The 20,000 gallon increase to 40,000 gallons IS NOT AN ADJUSTMENT.

The following County Code Section 22.62.070 – Variance provides the guidelines for the County’s processing and approval of Variances to County Land Use Code Standard and approval of Land Use project applications. Section 22.62.070 states:

D. Action on a Variance. The Commission shall approve, approve subject to conditions, or disapprove a Variance in compliance with this Subsection. The decision may be appealed to the Board in compliance with [Section 22.70.050 \(Appeals\)](#).

D. 1. Findings. Approval or conditional approval may be granted only when the Commission first determines that the Variance satisfies the criteria in Government Code Section 65906 by finding that:

- a.** The Variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and land use category in which the property is situated; and
- b.** There are special circumstances applicable to the property, related only to size, shape, topography, location, or surroundings, and because of these circumstances, the strict application of this Title would deprive the property of privileges enjoyed by other property in the vicinity that is in the same land use category; and
- c.** The Variance does not authorize a use that is not otherwise authorized in the land use category, and.
- d.** The granting of the Variance does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.

D. 2. Conditions of approval. In approving an application for Variance, conditions shall be adopted as are deemed necessary to enable making the findings required by Subsection D.1.

Obviously, the County misrepresented the interpretation of this issue as “Adjustment” that was not to be considered by the Planning Commission that resulted in the 40,000 gallon storage amount be shown as approved Condition of Approval a. A 5,200-square-foot convenience store and detached gas station with eight fuel dispensers, nine electric vehicle (EV) charging stations, **and 40,000 gallons of underground fuel storage. This is an unapproved COA that violates County Code Section 22.62.070. A failure that impacts the health, welfare and safety of the public.** It should also be noted that the project’s MND did not evaluate the environmental effects of either the 20,000 gallon or the 40,000 gallon underground storage amounts. Another project related CEQA violation.

3. THE REVISED PROJECT INCREASED THE ORIGINAL PROPOSED SIZE OF THE CONVENIENCE STORE BUILDING FROM 3,200 SQ.FT. TO 5,200 SQ.FT.

The project’s MND evaluates the environmental impacts of the original proposed 3,200 sq.ft. building not the approved 63% approved expansion of the 5,200 sq.ft. convenience store building. The increase in building size produces increased energy use, air quality and GHG issues that were not considered by the County’s environmental study.

4. APPROVED TOTAL SIGNAGE AREAS ARE ESTIMATED TO BE 802 SQ.FT. WHICH EXCEED COUNTY CODE SIGNAGE STANDARDS BY 338%.

SLO County Land Use Ordinance Section 22.20.040.A.2 allows 237 square feet of signage for this project. The project is approved with an increase of 338% over the signage area allowed by County ordinance. TAAG recommended additional reductions to the 802 signage area. The TAAG recommendations were ignored by the Commission.

5. THE PROJECT’S APPROVED CONVENIENCE STORE 24/7 OPERATING HOURS DOES NOT COMPLY WITH THE TEMPETION DESIGN PLAN.

The Templeton Design Plan limits the Convenience Store operating hours for this project from 5AM to 11PM daily. The County and the applicant have attempted to justify the 24 hour schedule according to approved Findings Item H. Finding H comments and our appeal responses indicated in **RED** are the following.

1) an Acoustical Analysis has been provided which demonstrates all aspects of the project, complies with the Noise Standards contained in the Land Use Ordinance. **Noise standards are set forth in County ordinance Section 22.10.120. This code section requires the use of certified decibel meters in order for the County to enforce noise complaints. County Code enforcement and the County Sheriff’s department have never been provided with decibel meters. Accordingly, noise violations cannot be legally determined or enforced.**

2) the nearest residential land use category boundary is located approximately 397 feet north of the convenience store and approximately 439 feet southwest of the gas station, but the nearest residences are located approximately 470 north of the convenience store and approximately 590 feet southwest of the gas station; **This comment is interesting. We wonder what effort was made by the County and the applicant to determine that these distances succeed in preventing excessive noise from impacting the indicated residential areas especially during late evening hours between 11PM to 5PM.**

3) the proposed project is located on Las Tablas Road, which contains other land uses and circulation improvements that operate 24 hours a day, including the Twin Cities Hospital and U.S. 101, and the population that uses these improvements are expected to be the same population that would use the proposed project’s uses after normal business hours; **Several other gas station-convenience stores are within ½ to 4 miles of this project site to serve the “population that requires such services”.**

4) the gas station and convenience store are located so that active areas, such as the fueling dispensers and the entrance to the convenience store, are located facing Las Tablas Road. **This only makes the disturbances and pollution closer to the residences that are near to the development to the south and the southwest.**

5) Las Tablas Road, a County Maintained Collector Road, is located between the proposed gas station and convenience store and the residential development to the southwest. Any noise generated by the gas station and convenience store will be absorbed into the existing transportation noise levels generated by the Las Tablas Road and Highway 101 corridors. Additionally, there are existing intervening commercial structures along Las Tablas Road that will provide an additional buffer and separation between the gas station and convenience store and residential uses. **We guess this is about noise generated by the project between 11PM and 5AM. It appears that no effort was made by the county or the Applicant to determine the extent of "transportation noise" is generated in the area between 11PM and 5PM that would "absorb" noise generated by the Convenience Store throughout the late evening and early morning hours.**

6) a Landscaping Plan has been incorporated into the proposed project consisting of shade trees., drought tolerant shrubs, grasses, ground cover to provide screening of the drive-through areas creating a visual and sound buffer between the gas station and convenience store and residential uses; **This landscape will provide little, if any, buffering of noise or evening lighting.**

7) and existing landscaping surrounding the residential development consists of mature shade trees, shrubs and grasses. This landscape buffer not only screens the proposed gas station and convenience store from the existing residential uses, it also creates a natural sound barrier from Las Tablas Road and other existing and proposed commercial uses to the north **Again, this landscaping will not provide effective noise or nighttime lighting buffering.**

AS NOTED ABOVE, THE APPROVED PROJECT EXCEEDS THE COUNTY CODE STANDARDS REGARDING THE SQUARE FOOTAGE OF SIGNAGE AND THE NUMBER OF CERTAIN TYPES OF SIGNS THAT ARE ALLOWED BY COUNTY CODE FOR THE PROJECT.

1. **Number of Wall Signs is in Excess of Code:** County Code Land Use Permit standard 22.20.060.A.2.a only allows as many wall signs as "building faces having a public entrance". The developer is requesting 4 wall signs for the gas station canopy, which only has two entrances. 22.20.040.2 requires explicit minor use permit approval for a "greater number of signs". The additional number of signs is not listed as an ordinance variance and was not considered by the Planning Commission.
2. **Number of Monument Signs is in Excess of Code:** County Land Use Permit standard 22.20.060.A.2.c only allows "One free-standing or monument sign for each 300 linear feet of site frontage or portion thereof". This site has approximately 656 feet of site frontage, so should only be allowed 3 free standing or monument signs. The developer requested 6 free standing and monument signs, but this is not listed as an adjustment to the project's standard signage allowance and was not discussed at the Planning Commission. 22.20.040.2 requires explicit minor use permit approval for a "greater numbers of signs" than the county code.
3. **Individual Wall Sign Sizes are in Excess of Code:** County Land Use Permit standard 22.20.060.2.a only allows wall signs to cover 15% of a building face. For the gas station canopy, the developer is counting the open air area below the physical face of the gas station canopy to be counted as part of the face area and is requesting the maximum 80 sq ft per canopy face, far in excess of 15% of the actual face area. The "face" of a wall does not include open air. That is certainly not the intent of the code and was not discussed at the Commission hearing. The developer did not request an adjustment to use wall signs greater than 15% of the canopy faces.

REGARDING THE THREE ITEMS DISCUSSED ABOVE, THE PROJECT'S APPROVED FINDINGS ITEM G – SIGNAGE ADJUSTMENT INDICATES APPROVAL OF COUNTY CODE STANDARD VARIANCES THAT ALLOWING 802 TOTAL SQUARE FEET OF SIGNAGE ON THE PROJECT VS THE 237 SQUARE FEET ALLOWED BY THE STANDARDS. THE THREE ISSUES

DISCUSSED ABOVE INVOLVE COUNTY CODE STANDARDS THAT LIMIT THE NUMBER, NOT THE SQUARE FOOTAGE, OF ALLOWED SIGNAGE ON THE PROJECT. THE EXCESSIVE NUMBER OF SIGNS NOT ALLOWED BY THE EXISTING COUNTY CODE STANDARDS IS NOT INDICATED IN THE APPROVED FINDINGS OR CONDITIONS OF APPROVAL AS BEING VARIANCES THAT WERE CONSIDERED OR APPROVED BY THE PLANNING COMMISSION.

This permit request is for a 24 Hour/7 Day gas station and convenience store located less than 500 feet from existing residences to the north, southwest, and a previously approved un-built residential housing development to the south (People's Self Help Phase 3). This gas station and convenience store creates noise pollution, traffic congestion, light pollution, gasoline pollution, exhaust pollution, and the potential for criminal activity due to the convenient store's approved 24 operation hours.

Two gas station-convenience stores operate in the immediate Templeton area. Several others operate within 2 to 4 miles of the project site. All services required by the Templeton area community are provided by currently existing operations located within a five minute drive of the Las Tablas Road – 101 highway project site.

We respectfully submit our appeal opposing the SLO County Planning Commission's approval of Project No. DRC2021-00102/N-SUB 2022-00042's Minor Use Permit. As noted above, we will be filing a Public Record Request shortly with the County asking for ALL public records in existence that relate in any manner whatsoever to the County's processing and approval of this project's Land Use application and approval. We reserve the right to amend the bases of our appeal in a timely manner following the receipt of a complete response to our PRA request. Please contact Joe Jarboe if you have any questions or comments.

Concerned Citizens of Templeton

Joe Jarboe
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Templeton Residents Who Support This Appeal to Deny the August 10, 2023 Planning Commission Minor Use Permit Approval.

Mary Jo Anderson
Steve Anderson
Adele Aston
Josh Aston
Mike Bailey
Alex Bassi
Chris Becker
Jennifer Becker
Bill Bradley
Mark Edward Breitung
Kenneth Brem
Mary Brem
Geoffrey Brown
Lynda Brown
Charles Chalekson
Jennifer Chalekson
Alanna Cooperman
Priscilla Cooperman
Jeffrey Deskins [all the Deskins are adults]

Julie Deskins
Nathaniel Deskins
Nicholas Deskins
Braxton Deus
James Deus
Bradley Eaton
Cheryl Eaton
Marion Edwards
Robert Edwards
David Farmer
Denise Fitzgerald
Kevin Fitzgerald
Matthew Gilliss
Valerie Gilliss
Mark Glenesk
Carol J Hanna
Jackie Howard
Theresa Isbell
William Isbell
Natalie Jarboe
Lynn James
Esme Jensen
Elisabeth Kahan
George Kartsioukas
Kay Kartsioukas
Holly Kennedy
Peter Kennedy
Pamela Kliewer
Beth Kline
Shayne Kline
Susan Speer Kocher
Troy Phillips Kocher
Jennifer Kuhn
Pamela J Lee
Jane Lefebre
Yvonne Lewis
Natalie Mendenhall
Carrie Millan
David Millan
Lisa Mowery
Dorothy Muckinhaupt
Kimberley Odell Mulligan
Charles Mulligan
Cynthia Marie Nelson
Tiffany Ortiz
John Paulick
Dana Pehrson
Murray Powell
Teress Quinonez
Doug Reed
Melinda Reed
Carson William Reifers [all the Reifers are adults]
Heidi Marie Reifers

Michael Patrick Reifers
Savannah Marie Reifers
Zane William Reifers
Ruben Salcedo
Nancy Shaw
Sam Shofner
Sandra Lynn Simons
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