

MEMORANDUM

County of Placer Planning Department

TO: Board of Supervisors

DATE: August 1, 2006

FROM: Michael Johnson, Planning Director

SUBJECT: **WITHDRAWAL OF APPEAL – CONDITIONAL USE PERMIT (PCPB T20060166) AND TENTATIVE PARCEL MAP (PMLD T20060173) FOR THE HOME DEPOT PROJECT**

SUMMARY:

At the April 27, 2006 meeting, the Planning Commission unanimously approved Conditional Use Permit (PCUP 20060166) and Tentative Parcel Map (PMLD T20060173) for the development of a single-story, 104,991 square foot Home Depot home improvement retail store, including an associated 24,304 square foot fenced outdoor garden center. The project site is located on a ±10.88 acre parcel within the northeastern portion of the Dewitt Center. On May 5, 2006, an appeal was filed by Dale Smith, on behalf of the Friends of Placer County Communities, Inc. (FPCC). On July 18, 2006, Mr. Smith submitted a withdrawal of the appeal. Staff is recommending your Board of Supervisors consent to the withdrawal of the appeal.

BACKGROUND:

Home Depot USA, Inc., requested approval of a conditional use permit and tentative parcel map to allow for the development of a single-story, 104,991 square foot home improvement retail store, including an associated 24,304 square foot fenced outdoor garden center on a ±10.88 acre parcel to be created within the northeastern portion of the Dewitt Center. The building and garden center would cover 27 percent of the project site. On-site improvements consist of 483 parking spaces, landscaping and related infrastructure to support the proposed project. Professional Drive will be extended through the northwestern portion of the property and will connect to 1st Street. Two primary vehicle access points to the site are planned on Willow Creek Drive along the southern boundary of the site. A third access point is planned at the northwestern corner of the project site, along Professional Drive. Off-site improvements, including the construction of Willow Creek Drive and improvements to Highway 49 will be required as well. (See Exhibit A, Site Plan).

On April 27, 2006, after hearing extensive public comment from both supporters and opponents of the project, the Planning Commission unanimously certified a final environmental impact report and approved the requested entitlements. On May 5, 2006, Dale Smith, on behalf of Friends of Placer County Communities, Inc., (FPCC) filed an appeal, listing 14 bases for appeal. A copy of the appeal is attached as Exhibit B.

On July 18, 2006, Mr. Smith, again acting on behalf of FPCC, submitted an unconditional withdrawal of the appeal. A copy of the withdrawal is attached as Exhibit C.

Pursuant to Section 17.60.110(D)(5) of the Placer County Zoning Ordinance: "After an appeal of a decision has been filed, an appeal shall not be withdrawn except with the consent of the appropriate hearing body." Accordingly, the consent of your Board of Supervisors is necessary to complete the formal withdrawal of the appeal in this matter.

FPCC was the sole appellant in this matter. Staff believes that the project as approved by the Planning Commission already addressed all of the issues raised by the appeal and requests your Board of Supervisors consent to the withdrawal, thereby making the decision of the Planning Commission the final decision for the environmental document and entitlements for this Project.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

1. Consent to the withdrawal of the appeal by Friends of Placer County Communities, Inc., thereby making the decision of the Planning Commission on April 27, 2006, the final decision for the approval of the Home Depot DeWitt Center Final Environmental Impact Report (SCH No. 1997122100), Conditional Use Permit No. PCUP 20060166 and Tentative Parcel Map No. PMLD T20060173, and;
2. Direct the Planning Director file a Notice of Determination with the County Clerk within five (5) working days in accordance with Public Resources Code section 21152(a) and CEQA Guidelines section 15094.

Respectfully submitted,


MICHAEL J. JOHNSON, AICP
Planning Director

By M. Heckel

MJJ/SHF:KH

EXHIBITS:

Exhibit A: Site Plan

Exhibit B: Appeal dated May 5, 2006, filed by Dale Smith on behalf of Friends of Placer County Communities, Inc.

Exhibit C: Withdrawal of Appeal dated July 18, 2006, filed by Dale Smith on behalf of Friends of Placer County Communities, Inc.

cc: Applicant
Dale Smith - Friends of Placer County Communities
Ken Grehm - Department of Public Works
Wes Zicker - Engineering and Surveying Division
Rick Eiri - Engineering and Surveying Division
Dana Wiyninger - Environmental Health Department
YuShuo Chang - Air Pollution Control District
Vance Kimbrell - Parks Department
Scott Finley - County Counsel
Michael Johnson - Planning Director

Staff report due May 20, 2006

RECEIVED
MAY 05 2006
PLANNING DEPT. 4:25



PLACER COUNTY PLANNING DEPARTMENT
AUBURN OFFICE 11414 B Avenue Auburn, CA 95603 530-886-3000/FAX 530-886-3080 Web page: www.placer.ca.gov/planning
TAHOE OFFICE 565 W. Lake Blvd./P. O. Box 1909 Tahoe City CA 96145 530-581-6280/FAX 530-581-6282 E-Mail: planning@placer.ca.gov

PLANNING APPEALS

The specific regulations regarding appeal procedures may be found in the Placer County Code, Chapters 16 (Subdivision), 17 (Planning and Zoning), and 18 (Environmental Review Ordinance).

PAPLT20060364

---OFFICE USE ONLY
Last Day to Appeal 5/8/06 (5 pm) Appeal Fee \$ 445.00
Letter _____
Oral Testimony _____
Zoning _____
Maps: 7-full size and reduced for Planning Commission items Geographic Area _____
---TO BE COMPLETED BY THE APPLICANT---

1. Project name HOME DEPOT(PCPBT20060166/PMLDT2006D173)
2. Appellant(s) FPCC, Inc. Telephone Number 530-885-8460 Fax Number 885-8886
Address 11768 Attwood Road 17B Auburn CA 95603
City State Zip Code

3. Assessor's Parcel Number(s):

4. Application being appealed (check all those that apply):
 Administrative Approval (AA-_____) Tentative Map (SUB-_____))
 Use Permit (CUP/MUP-_____) Variance (VAA-_____))
 Parcel Map (P-_____) Design Review (DSA-_____))
 General Plan Amendment (GPA-_____)) Rezoning (REA-_____))
 Specific Plan (SPA-_____) Rafting Permit (RPA-_____))
 Planning Director Interpretation _____ (date) Env. Review (EIAQ-_____))
 Minor Boundary Line Adj. (MBR-_____) Other: _____)

5. Whose decision is being appealed: Planning Commission (see reverse)
6. Appeal to be heard by: Board of Supervisors
7. Reason for appeal (attach additional sheet if necessary and be specific):

See Attached:
Note: Applicants may be required to submit additional project plans/maps.

Signature of Appellant(s) _____
[Signature]
Executive Director

Reasons for appeal are attached:

PLANNER: Gary Winegar
DPW - PHIL FRANTZ
EH - DANA WYNINGER **EXHIBIT B**
APCD - BRENT BACKUS
PARKS - VANCE KIMBRELL
PLANNING DEPT

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From Line 7, Previous Page: Reasons for appeal on the Home Depot Project

1. Failure to conduct adequate CEQA analyses of potentially significant environmental impacts and feasible mitigation measures for such impacts especially on the issues of health and public safety due to the unavailability of water and related infrastructure to put out fires and deal with other emergencies caused or significantly contributed to the storage and use of toxic material. This appeal is vital to keeping open all alternatives of the *FPCC* and any other group or individual wishing to participate.
2. It was virtually at the last hour that the *FPCC* found out about the extremely serious fire-flow issue that was not adequately or correctly dealt with at the hearing. Currently there are meetings going on with various county and other entities on the water availability, fire-flow pressure, need for a huge tank, etc., all vital health & safety issues.
3. Randy Roxson, Esq. our expert gave testimony including a request that the *Friends of Placer County Communities, Inc.* be included in these discussions. No one has contacted us on this matter, and we expect that this will not be done, but that cannot close us out of the process.
4. Significant new information is being developed that will have a profound effect on mitigation necessary to remedy the fire-flow problem. This is information that must be totally shared with the public, but that information is not now available, nor do we know when it will be available and made public.
5. The issue of the possibility of the construction of a million gallon water tank -- and all that goes with it -- is an activity that has obvious potentially significant environmental impacts which must be analyzed and, if feasible, mitigated, starting a whole new process.
6. One way to look at the matter is that certification of the final EIR is premature, and the EIR should be supplemented and recirculated because of these ongoing activities and issues dealing with vital health and safety impacts.
7. The county must establish detailed performance criteria to be used when the mitigation measures are dealt with in the future and the public is entitled to participate in the process of the formulation, etc., of those performance criteria, and in the present case this doesn't appear to have taken place.
8. The statement by the Home Depot legal counsel that it would be enough under CEQA to rely on "... a talented and tough minded staff" to hold the applicant "to the highest possible standards" is questionable. We maintain that the public has the right to participate in the complete decisionmaking process on the selection, evaluation, etc., of mitigation measures and this appeal keeps that option open for us.
9. We appeal on the basis of any other grounds raised by anyone who participated in the CEQA review process, or other grounds revealed after the public has had a full and fair opportunity to review the complete administrative record on this project.
10. The way the new & significant information is being handled, and particularly its omission from the record, impermissibly preclude or frustrate the right of well-informed and meaningful public participation.

11. Indeed, we are informed and believe, and take the position that this Board does not have the authority or power to act on this project until the potential health and safety impacts are dealt with adequately. This Board can only act to protect and promote the general health and welfare of its citizens. The Board cannot act to cause potential harm to the health & safety of its citizens.
12. Included by reference in this appeal are all the materials contained in our response to the DEIR as listed in our 124 page document dated August 18, 2005 and identified as: REF: HOME DEPOT PROJECT ON PLACER COUNTY PROPERTY – Draft Environmental Impact Report (DEIR) - EIAQ #3640 – Dated June 29, 2005 – Comments by the *Friends of Placer County Communities, Inc.* including the referenced letter and all attachments therewith.
13. Also included by reference are all of the materials submitted on April 27, 2006 by Dale Smith, Randy Roxson and others in opposition to the approval of this project. These were submitted for the administrative record and are again mentioned specifically as being part of that record and any subsequent action resulting from this appeal.
14. Finally, we appeal the Planning Commission decision because of their failure to conduct adequate CEQA analyses of potentially significant environmental impacts and feasible mitigation measures for the economic impacts to the greater Auburn area community.

END OF APPEAL REASONS

Friends of Placer County Communities, Inc.

11768 Atwood Rd. S-17-B · Auburn CA 95603-9074

(530)885-8487 · Fax (530)885-8886

e-mail: drdalesmith@aoaenviro.net



"I know of no safe depositories of the ultimate powers of society but the people themselves."
Thomas Jefferson

Board of Directors

Dale Smith, H.H.D. Vice Chair/Treas. · Donna Ford, Acting Secretary
Gary A. Allen · Al Clark · Joe Jones · Noah Mackenroth · Mary Sue Monahan

RECEIVED

JUL 18 2006

CLERK OF THE
BOARD OF SUPERVISORS

July 18, 2006

To: Supervisor Jim Holmes, Board of Supervisors, 175 Fulweiler Ave., Auburn, CA 95603
Planning Director Michael Johnson, Planning Department, 11414 B Ave. Auburn, CA 95603

From: Dale Smith, H.H.D., Vice Chairman/Executive Director

Re: The FPCC Appeal Filed at 4:22pm May 5, 2006 - Conditional Use Permit (PCPB T20060166) and Tentative Parcel Map (PMLD T20060173) for the construction of a 104,991 square foot Home Depot home improvement retail store. (APN #051-120-042) approved by Planning Commission on April 27, 2006 - 6-0. Formal notification of the withdrawal of this appeal by the Friends of Placer County Communities, Inc. (FPCC), the sole appellant in these proceedings.

After serious consideration including meetings with a number of community leaders including Supervisor Jim Holmes, Third District Supervisor where this project is proposed, the Friends of Placer County Communities, Inc., believe that it is in the best interests of the greater Auburn area community that this appeal be withdrawn, effective upon receipt of this letter at Placer County.

There are many factors leading to our decision, which is not an admission that our position was in any way incorrect. We do believe that several of our overall goals in filing the appeal have been met as we will point by citation of documents that substantiate our original position. We also recognize that the overwhelming odds of winning a battle of this size are so great that it is unfair to our own constituents and the community at large to continue a long, protracted legal battle. The press of time requires that this letter be done by Dale Smith, Vice Chair/Administrator, who speaks for the FPCC.

The FPCC is not without experience in this arena having weathered the over seven yearlong battle with Wal-Mart in our community. Some have asked if we really won, and our reply is to ask them, how many Wal-Marts are there in North Auburn?

It is that very experience and the ten years we have battled Home Depot that makes us realize that like the old the theme line of Kenny Rodger's song The Gambler: **"You've got to know when to hold 'em, know when to fold 'em."**

We pay close attention when James G. Moose, of REMY, THOMAS, MOOSE and MANLEY, LLP sends a 32-page letter to County Counsel Anthony LaBouff with this concluding line:

EXHIBIT C

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**Withdrawal of appeal by the Friends of Placer County Communities, Inc.
Home Depot home improvement retail store, DeWitt Center
Conditional Use Permit (PCPB T20060166) – July 18, 2006 – Page 2 of 14**

“The two substantive grounds provided in FPCC letter (sic) of appeal fail. First, FPCC has failed to cite to or provide any evidence that the Planning Commission's findings regarding fire flow capacity are inadequate. More importantly, substantial evidence supports the Planning Commission's conclusion that the impacts associated with fire flow capacity are less than significant. Therefore, the FPCC appeal as it relates to fire flow capacity fails.”

The most definitive, premier work on environmental and land use law in California is the Guide to the Environmental Quality Act by Remy, Thomas, Moose and Manley. It is where all of us go to find answers on the important issues in CEQA. I have the utmost respect for Jim Moose, but I can't quite agree with his statement above when he says:

“FPCC has failed to cite to or provide any evidence that the Planning Commission's findings regarding fire flow capacity are inadequate.”

The time and the place to have presented the evidence was to be at the Board of Supervisors hearing and not in lengthy legal briefs prior to the hearing, but we paid close attention when Mr. Moose's 32 page letter to County Counsel arrived on June 26, 2006. It is an extremely well researched and well-written document. I consulted several CEQA attorneys to ask them what they thought a R.T.M.M. “partner” letter that size might cost, and the guesses were from \$15,000 to \$25,000.

The question we kept coming back to, **is the issue of money extremely important in this matter?**

One of Placer County's top attorneys told me that a case like this -- if it were to be taken forward in the CEQA Writ of Mandate process could cost in excess of a quarter million dollars. No firm would even sniff at the case without a \$50,000 retainer. He reminded me that the conversation was private to the extent that I could not use his name, but at the same time, he lamented about this cutting out of the public these days, because of astronomical legal costs, and he is correct.

Having gone through six CEQA Writ of Mandate cases, not all here in Placer County, I can attest to the skyrocketing costs. We considered carefully and reached the conclusion – that it is time for the folding of the FPCC tent on this one. We are formally withdrawing our Appeal, as we know now that financially, we cannot compete. For 10 years we have prevailed and it is a far better project than what Home Depot started with. One good thing, our staunch protest on Home Depot Way got that street name returned to Willow Creek Road. A small, but significant victory.

However, we would not be faithful to the public or to the county if we did not present a small part of the evidence that caused us to file the appeal. We are not new to this process in Placer County both as participants and advisors to others who have used the Writ of Mandate route to good success.

In this letter we bring forward a number of elements of the issue of fire flow water not only for Home Depot, DeWitt, but all of North Auburn. We cite from documents obtained through our use of the California Public Records Act, and do not attach documents in the interest of brevity, all documents

**Withdrawal of appeal by the Friends of Placer County Communities, Inc.
Home Depot home improvement retail store, DeWitt Center
Conditional Use Permit (PCPB T20060166) – July 18, 2006 – Page 3 of 14**

cited in this letter are available to Placer County upon request. You will readily see that there was, as the old saying goes, a lot of smoke, and so how much fire was there? You be the judge.

In our California Public Records Act requests, we had good response from PCWA, NID and the State/County Fire Departments, but very poor response from Placer County, for what reason we do not know. Not only was their response not timely, but very little was produced. We did get enough NID/PCWA documents to cause grave concern. We cite and quote from these documents to the end that wherever elements not taken care of, Placer County will see to it that these loose ends are tied up.

The documents are not necessarily in date order, but some tell a very interesting story from the Minutes of regular meetings held by the Nevada Irrigation District (NID) and Placer County Water Agency (PCWA) Water Planning Committee of Representatives of the Board of Directors of the NID and PCWA. This committee was established in the spring of 2000.

Minutes – Feb. 2, 2006, Item 3:

NID General Manager reported that NID and the County met earlier this week to discuss providing fire service to the County facilities at DeWitt. It was agreed that the County, NID and PCWA all need to meet to most effectively plan for the long-term goals of DeWitt as we all want to make the right investments of infrastructures. Planning for storage at DeWitt is important. The entities should also consider storage at Auburn Airport.

Not once in any of the materials that were sent to us by Placer County could we find any documents that showed that this meeting took place. Furthermore, examination of documents sent to the FPCC by both NID and PCWA after inquires about this issue, did not produce any official actions as having been taken by either entity as a result of this or other such meetings.

Minutes – 11-3-2005, Item 3:

3. Discuss water service to Placer County's DeWitt Center.

Ron Nelson reported that NID would like to set up a meeting with the new Placer County Executive Officer to discuss opportunities to work together. Dave Breninger suggested working with the Deputy Director. PCWA has served the east side of the DeWitt Center and NID is in a good position to serve the west side. PCWA would like to encourage Placer County to stop using treated surface water for landscaping purposes. **Paul Williams stated that Placer County continues to develop without thinking of water.** Mal Toy reported that PCWA has set up a meeting with the County to discuss this very issue. NID should be a part of this process as well. *(Emphasis ours)*

This is a recurring theme in these and other similar documents from NID and PCWA. And the picture develops as we go along.

In response to our second question about the service of PCWA and NID to the DeWitt Center:

**Withdrawal of appeal by the Friends of Placer County Communities, Inc.
Home Depot home improvement retail store, DeWitt Center
Conditional Use Permit (PCPB T20060166) – July 18, 2006 – Page 4 of 14**

NID Letter October 5, 2005 Dennis Salter - Placer County Capital Improvements, 11476 C Ave. Auburn, CA 95603: RE: NID Service to Developments within DeWitt - Dear Mr. Salter:

NID and PCWA met September 22, 2005 and discussed service to developments within DeWitt. We jointly concluded that NID is in the best position to serve developments within DeWitt mainly because the ND treatment plant has capacity and the PCWA treatment plant does not.

NID and PCWA staffs **do not** support the idea of blending waters from both agencies. We are concerned that with two separate sources, with variations in pressure and demand, one source may end up providing the bulk of the water at various times. This could present a problem for tracking peak demands for calculation of capacity fees. We are also concerned about blending because we are not sure of the water quality impacts.

A larger pipe in DeWitt would still not increase the fire flow. Placer County facilities within DeWitt can be served through one or two NID master meters. The areas that can be served include the following: Auburn Justice Center (under construction) - Animal Shelter - Juvenile Hall – Jail - Women & Children Center (proposed) (No mention of Home Depot)

If you have questions on fire flow, call me at 530-271-6862. If you want to proceed with the mainline extension, contact Doug Roderick at 530-271-6866.

Sincerely, Vern Smith Supervising Engineer

In our limited investigation were not able to determine that the problems of **“two separate sources”** have ever been solved. **“Tracking peak demands”** and **“calculation of capacity fees”** and **“water quality impacts”** have somehow been ignored, at least in any documentation supplied to us.

However, the picture at the top of the next page is very interesting. It has the caption:

**16-Inch Water Transmission Valve System to Mix NID and PCWA Fire Flow Water
Constructed in late June by NID and paid for by Placer County.**

An NID engineer told me this at the site recently. What exactly has happened in all of this? Just as the FPCC had no obligation to give Attorney Moose the details of our case before the hearing, it could be argued that Placer County had not obligation to tell us anything, except that is not the way it works in CPRA laws, they require full public disclosure.

And this is a prime example why a small community organization with very limited financial resources cannot match up to the likes of Home Depot. However, as you read through this Appeal Withdrawal letter, some of these issues should peak the interest of officials as to just how is this all be handled by the several entities involved. How do you reply to the quotes above for the entities that are to be served for fire flow water, . . . that there was absolutely no mention of Home Depot?

There is reason to believe that the mixing of water by these two agencies to serve DeWitt Center may not be legal, something that should be thoroughly investigated.

**Withdrawal of appeal by the Friends of Placer County Communities, Inc.
Home Depot home improvement retail store, DeWitt Center
Conditional Use Permit (PCPB T20060166) – July 18, 2006 – Page 5 of 14**

**16-Inch Water Transmission Valve System to Mix NID and PCWA Fire Flow Water
Constructed in late June by NID and paid for by Placer County.**



The Minutes of the NID/PCWA Water Planning Committee of Sept. 1, 2005 meeting of the joint Planning Committee, Item 1 is quite revealing:

“Brian Martin displayed a map showing new buildings in the DeWitt Center area. The County contacted PCWA after the facilities were built and requested water for the new facilities.”

We wrote: “Please provide all documents pertaining to these actions and any explanations as to how the County can build a facility and then ask for water. Don’t they need a “Will Serve” letter before they can go ahead with the building of the project? Did PCWA address this issue in any way? Please provide the documents. Below is part of this response.

The referenced map will be provided for your review. The Agency does not provide “will serve” letters. It does, however, provide water availability letters for proposed developments upon request. No such water availability letter(s) for any proposed projects in DeWitt have been requested or prepared. We believe that the County request for water for new facilities referred to in the minutes of the September 1, 2005 meeting, was verbal. Brian Martin recalls attending subsequent meetings with the County regarding its increase in water demands; however, there are no written minutes or notes from those meetings in the Agency’s files. There is a letter in the Agency’s files from Brian Martin to Dennis Salter

**Withdrawal of appeal by the Friends of Placer County Communities, Inc.
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Conditional Use Permit (PCPB T20060166) – July 18, 2006 – Page 6 of 14**

concerning payment of water connection charges for new buildings that the County is constructing at the DeWitt Center. The letter will be available for your review.

Another inquiry to a high ranking person in the Planning Department who would not let us use his name told us that Placer County considers its operations in DeWitt Center as though they were their own water company, buying water from PCWA and NID and reselling it to others in DeWitt Center, and interesting concept, no doubt, but when was this approved by the Board of Supervisors?

Minutes - Sept. 1, 2005 meeting of the joint Planning Committee, Item D-3: -- Statement by Brian Martin:

“PCWA will also provide some fire flow water and between the two districts there should be enough for fire flows.”

We wrote: “This is a statement that must surely have been supported by a PCWA Board action at some juncture. Please provide the full documentation supporting this issue. Also provide any documentation with contacts of any kind, written, personal, telephone, e-mail between PCWA and any Placer County entity or other entity including the CDF Placer County Fire Department and Placer Consolidated Fire Protection District.” The reply is startling:

There are no records of PCWA Board action related to the determination of the amount of fire flow that can be delivered by the Agency at DeWitt

Do we dare ask the obvious question - ? What exactly is the situation? We are withdrawing the appeal because all of this is far beyond our capacity to sort out. There are only a few of us, and none of us, not even myself, get paid to do this investigation, but there still remains many, many unanswered questions. For example and this comes to the heart of the issue:

(6) - Minutes — Sept. 1, 2005 meeting of the joint Planning Committee, Item D-3: Second part of the above comment: **“... water and between the two districts there should be enough for fire flows.”**

We wrote: Please provide the documentation that conclusively proves this statement. If this is indeed, a fact why is it that the County did not fully reveal this fact at the Planning Commission Hearing of April 27, 2006? We do not expect an answer to that rhetorical question, but we have supplied the documents that support the assumption that the PCWA made in that statement:

“...between the two districts there should be enough for fire flows.”

Evidently this was NOT an established fact because the Home Depot FEIR, Mitigation Issues - page 2-3 has this terse statement:

“Mitigation Measure PA-AA Provides proof of adequate fire flow capacity to serve the site prior to issuance of building permit”

The PCWA response: **The Agency does not have any additional documentation.**

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Is this really true"? In that powerful statement made by Attorney Moose quoted on page 2 of this withdrawal letter we find some very curious, certainly confusing and contradictory words:

"More importantly, substantial evidence supports the Planning Commission's conclusion that the impacts associated with fire flow capacity are less than significant. Therefore, the FPCC appeal as it relates to fire flow capacity fails."

In view of what we have quoted above from the PCWA and the NID, where is the evidence that the ". . . impacts associated with fire flow capacity are less than significant?" If what the PCWA told us in that letter of June 19, 2006 is true, the "Moose evidence" seems to melt in the hot fires of CPRA inquiries, because the PCWA stated in their letter:

"The Agency does not have any additional documentation."

But it does not end there, our letter to PCWA of June 2, 2006 stated:

(7) - Minutes — Sept. 1, 2005 meeting of the joint Planning Committee Item D-3: Perhaps a little more light will be shed on this subject as the next quote from Item D-3:

"Tim McCall reported NID is ready to sign off on plans to serve fire flow and consumptive water to the County."

We wrote: When the Chief Engineer of NID states that NID is ready to sign off on fire flow back in Sept. 1, 2005 why is it in April 2006 this fire flow issue is still not solved? Please supply all documentation on this issue, knowledge of any kind that PCWA has about this.

Surely the glowing reports in 2005 are in stark contrast to the facts that face Placer County and Home Depot on April 27, 2006. Their reply:

The Agency does not have such documentation. Mr. Martin believes that the Chief Engineer was referring to the County's Land Development building in the above statement, not the proposed Home Depot building.

(8) - Minutes — Sept. 1, 2005 meeting of the joint Planning Committee Item D-3: The final sentence of this item has grave implications for North Auburn. This embraces all of the participants at that meeting and we would like certification that those listed in those minutes were indeed at the meeting and took part. The same applies for all of the other Joint Planning Committee meetings. Now our letter material ends here in the PCWA response, we don't know why.

See special notice on next page:

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Let the record show that at this point in the PCWA document, the sequence is totally jumbled and some portions of what was obviously “cut and paste” are lost. We follow it as well as we can and exactly as it is.

“The minutes stand as approved. The Agency cannot provide any additional certification of those present.”

PCWA letter again picks up with:

. . . and took part. The same applies for all of the other Joint Planning Committee meetings. Now the final statement of the 9-1-05 minutes:

“Discussion followed regarding other development that has been County approved but where no water service is available.”

We wrote: What a fascinating statement. Please provide all documentation that the PCWA has where any development has been approved for which there was no water service available from the PCWA.

“The Agency does not have any documentation related to the approval of development projects by any land use authority in Placer County for where there is no water service available.”

What is difficult to understand is that the NID and PCWA were having these regular meetings from which much of the material cited in this withdrawal letter is taken, yet you have the PCWA statement above on Sept. 1, 2005 Contrast that with this NID Memo exchange. **This extremely important.**

MEMORANDUM – NID Interagency

To: Tim McCall

From: Vern Smith

Date: **October 31, 2005**

Re: North Auburn Fire Flows, Transmission Mains Required

As we discussed, the North Auburn area fire flows have diminished with increased water use due to growth. Fire flows are now less than adequate for commercial and medium to high density residential. (Emphasis ours)

An example of this problem is that GW Consulting is requesting approval for The Plaza development to be served by PCWA because the District cannot provide 1,500 gpm fire flow whereas PCWA can. The District can provide 1,100 gpm.

A pipeline project is needed to restore fire flow to the North Auburn area.

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To the reader of this letter. Can you see how difficult it is to believe that there is sufficient fire flow water not just for the Home Depot but also for all of North Auburn? **What is the truth?** Compare these two statements: Mr. Moose writes:

“Substantial Evidence Supports EIR’s Conclusions That Health and Safety Impacts from Water and Water Infrastructure and Storage and Use of Hazardous Materials Are less than Significant.”

NID Engineer Verne Smith writes: **“As we discussed, the North Auburn area fire flows have diminished with increased water use due to growth. Fire flows are now less than adequate for commercial and medium to high density residential.”**

“A pipeline project is needed to restore fire flow to the North Auburn area.”

So which is it? Do you believe attorney Moose or engineer Smith?

In the paragraph below, Engineer Smith tells what the 2100 feet of 14-inch pipe along Hwy 49 will bring – and says that even this **“. . . leaves the Bell Road area low in fire flow at 1,100 gpm.”**

“Per your request, I have identified the transmission mains needed to provide 1,500 gpm fire flow, as shown in the attached table. Option 1 is in the Project List for 2007. It does not provide 1,500 gpm. Option 7 would be the least costly with 2,100 feet of 14-inch pipe along Hwy 49, however, it leaves the Bell Road area low in fire flow at 1,100 gpm.

Instead, I suggest either Option 13, 14 or 15, which would boost fire flows for a greater area. Options involving Richardson Drive (16 through 25) may not be advisable because Richardson Drive may be improved or re-aligned with future development.”

vs mccall mem n aburn fireflows transmission mains 10-31-05.doc

So what is actually needed for Home Depot Fire Flow? Our cursory investigation showed several figures, but in any event it is in excess of 4000 gpm over a four-hour period.

On this extremely serious matter of adequate fire flow, does the Board of Directors wish to rely only on statements by an attorney who surely was cut out of a lot of information? One asks WHY?

“Moreover, as set forth below, substantial evidence supports the conclusion that the impact is less than significant.” (Moose Statement)

Wait a minute, this does not make much sense. Mr. Moose states to the Planning Commission that it's enough under CEQA to rely on “a talented and tough minded staff” to hold the applicant “to the highest possible standards.” This sounds very much like the Sundstrom case, where the county took virtually the same position and in rejecting it the court made it clear that the public has the right to participate in the decisionmaking process vis a vis the selection, evaluation, etc., of mitigation measures. This is precisely why we filed the appeal, to preserve the public's rights.

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Use just a little bit of common sense. Can it be that between the time when we filed the appeal and now -- that Placer County has totally solved this fire flow water problem? How likely is that -- just given the few documents we have submitted? There are many more, and we might suggest that it is incumbent on the County Board of Supervisors to do the proper and total investigation and report truthfully back to the people, especially those of us who live within this highly dangerous area.

Here is the language that was to cover this issue as approved by a 6-0 Planning Commission vote:

“Mitigation Measure PA-AA Provides proof of adequate fire flow capacity to serve the site prior to issuance of building permit”

We complained about that at the hearing, and we have clearly lined out what we believed to be wrong with this statement in our appeal. Did anyone hear us? Apparently so, because Attorney Moose wrote in this 32 page letter:

“Home Depot and the County have recently agreed on revised language to clarify Mitigation Measure PS-AA, with the intent of eliminating whatever sliver of doubt might have existed with respect to the County’s commitment to require adequate fire flows. (FEIR, p. 4-5.)

The revised Mitigation Measure PS-AA provides:

Provide proof of adequate fire flow capacity to serve the site prior to issuance of building permit. Adequate fire flow capacity shall be established by the Placer County Fire Department (“PCFD”) consistent with the requirements set forth in Appendix III-A of the Uniform Fire Code, as adopted by Placer County. Based on the Uniform Fire Code Appendix 111-A requirements and current project specifications, the PCFD currently calculates that the Applicant will be required to demonstrate 4,000 gallons per minute of fire flow capacity.”

This is a quantum leap forward, and is one of the important reasons why we are withdrawing our appeal. Finally, someone in the county is waking up to the realities of the situation, and this language is much more comprehensive than the paltry one line in the FEIR. It is not all that is needed but it sure is a step in the right direction.

However, we question this Moose statement: “Importantly, the revised language simply clarifies the performance standard that was implicit in the original mitigation measure on point. The new language does not embody a wholly new mitigation measure; nor does it change the EIR’s conclusions the project’s impacts relating to fire flow capacity are less than significant. The record demonstrates that the language included in revised mitigation measure has always been a requirement for the project.”

In the few documents were we able to secure in this very short time, we find the experts on water, the PCWA and the NID in agreement that:

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“ . . . the North Auburn area fire flows have diminished with increased water use due to growth. Fire flows are now less than adequate for commercial and medium to high density residential.”

We do not believe that Mr. Jim Moose was in possession of this information when he wrote his letter of June 23, 2006. We know him to be a man of great integrity and it seems inconceivable that he had any of these documents because they all bring out extremely serious questions from the experts on this issue of fire flow water in North Auburn, NID & PCWA, the ONLY suppliers of water here.

One of Moose's positions was that deferred mitigation is acceptable in CEQA. Generally speaking, under the "Sundstrom doctrine," the formulation, evaluation, adoption and implementation of mitigation measures may not be deferred to the future. There are some exceptions. But, at the very least, even if this was a case where such exceptions apply, the agency must establish detailed performance criteria to be used when the mitigation measures are dealt with in the future. Again, the public is entitled to participate in the process of the formulation, etc., of those performance criteria, and in the present case this doesn't appear to have taken place.

We found all of this to be most amazing, bringing up important questions as to how this situation has arisen, and why the public does not know anything about it. Not a single person in Placer government that we have talked to had ever heard of a lack of **“ . . . fire flow water to the North Auburn Area.”**

If Placer County fails to thoroughly investigate this matter and make its findings public, there is grave concern by many citizens who know bits and pieces of this puzzle. It is amazing to hear experienced County Staff express concern about this, people who do not dare speak out for fear of repercussion.

We asked in several of our letters about meetings held by PCWA, Placer County and NID on fire flow issues as to whether Fire Department representatives were present. We had one response from the PCWA, and they wrote:

“Brian Martin attended a meeting in the County concerning fire protection of the County's land development building. Mr. Martin recalls that at that meeting Brad Albertazzi , Battalion Chief for the Placer Consolidated Fire District was present. PCWA has no minutes from that meeting in its file. That meeting took place in 2005.”

The undated letter of Chief Randy Smith sent Certified Mail to the FPCC on 6-14-06 did nothing to enlighten us about the real work done by any of the Fire Departments that we did not already know, but was full of language exactly the same as that from County Counsel's office telling us that our request was “objectionable” and many documents were “protected” under law.

This is still another reason for the FPCC to withdraw from this appeal. It would take a battery of attorneys and experts and weeks of research to get to the bottom of this, but it ought to be done, and these records do preserve information that might one day be quite important should a legal situation come up.

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The Fire Department sent us a half-inch or more of worthless documents some dating back to 1991. The fulfillment of a CPRA request is not based on volume but on content, and most of the documents supplied by the Fire Department were meaningless.

Another issue is that of a projected NID 14 or 16-inch line to come from Locksley Lane up to Cottage way along the West Side of Highway 49 in documents in May 2006.

"We expected your N Auburn 14" project to include a lot more pipe and possibly larger diameter, and made it into consultant design. The timing is to have it in place by 2006 4th qtr. Don't get the consultant start on it until after the budget is approved, then it will take a budget transfer because its not in the budget. You can start preparing the RFP. See my memo routed to you"

We asked NID - (S-3-Q-4) - What is the authority of the Supervising Engineer to give orders to the Project Engineer as is done here? It seems to the FPCC that such an important project must have gone through the approval process of the NID Board of Directors, but there are no NID Board Meeting Minutes included in your materials, even though we specifically asked for them in our original CPRA request.

Please provide the operational authority for this project as handed down by the Board.
The NID response is quite revealing:

"(S-3-Q-4). No documents requested. Fire flow calculations were provided, represented by Mr. Smith's letter of June 8, 2006."

NID did not answer the question, and to this time we have not seen any documents that show exactly what happened. We were invited to go to the NID offices in Gras Valley to review documents, but we did not have time to do this prior to our decision to withdraw from the matter.

That June 20, 2006 letter is full of the same statement: No documents requested. It is totally different than the previous response letter from the NID and is not a faithful interpretation of our request for documents, one of several examples of how the pressures put on by someone, changed the attitude of the public agencies.

NID did respond with a statement on the 16-inch line in response to our questions about CEQA and CalTrans permissions. We cannot understand how they could start such a job on a State Highway without the CEQA review and CalTrans studies and permission. Their response:

"20. (S6-Q-1). All documents pertaining to the 16-inch main line for North Auburn have been provided to you. Please be advised that no CEQA documents have been completed, and no CalTrans permits and Planning and Public Works permits have been issued."

There are literally dozens of questions we could ask about all of this, but a decision has been made and we are sticking to it. However, one word of caution I wish to give to the Board of Supervisors. Fifty years of experience in the public sector, business, overseas missions and the broadcast industry

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has uniquely equipped me to look at things very analytically and systematically, and I've been at this one for ten years. Three times we forced this project back to the drawing board, and only after spending several million dollars on a new DEIR and FEIR was Home Depot able to bring it back with strong hope of getting in approved this time.

I am not a wild eyed fanatic environmentalist, nor am I a tree-hugger, except maybe if a bear were after me, then not only a hugger but a climber, a fast one. I do love my community and I know enough about all of this to know that this will be one of the greatest mistakes any Board has ever made in Placer County, and for a lot of reasons that will not be written here. They are already in the administrative record, one of the most complete ever-assembled in Placer County, great material if any legal issues ever come up.

Should there be a major disaster, and they do happen, and if those of us living in the near vicinity of that Home Depot are put in extreme danger, it is the five members of the Board that are ultimately responsible. No wonder Supervisor Holmes is so concerned; he only lives 4 blocks from me. Our families and we are in the danger zone.

Our limited investigation makes us believe that there is serious doubt about the amount of fire flow water available in North Auburn to accommodate the demands represented by all this growth. Just the enlargement of the facilities at DeWitt Center puts hundreds more in danger, not to mention the many hundreds more in the medical community, the five elderly care centers, the Hospital, the three elementary schools, the various medical clinics, the senior center and others of us living in that immediate area. It all adds up to thousands of people in possible jeopardy.

Thank God I live west of there and it is possible that I could escape going down Bell Road, but that could even be a huge problem with other traffic headed out in a disaster. But I would not escape a toxic cloud, a very real possibility.

It is our firm conviction that in addition to the Board requiring adequate fire flow water and the Home Depot meeting all the fire precautions included in the DEIR and FEIR and what comes out this exercise, that the Board should also require an area-wide evacuation plan and program in the event of any kind of disaster, and such a disaster could even come from a falling airplane or helicopter.

There is one document that we will attach as the last page of this withdrawal letter. It is June 8, 2005 from the NID to Dennis Salter, Placer County Improvements and it has one three line paragraph that you ought to carefully consider.

"The District does not assume liability or responsibility for the provision or supply of water for fire protection, and review of fire flow requirements is not an assumption of responsibility or liability for fire flow design criteria."

Finally, I personally wish to express my appreciation of the efforts of Supervisor Jim Holmes who has listened very carefully to our concerns and has been a great help to us in making a final decision as to our concluding move in this issue.

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One of the factors that played an important part in my decision to close up this era in my life is a strong warning from my personal physician who is painfully aware of the dangers involved with a Home Depot practically in his front lobby. He said for the sake of my health, I must stop the activity that is endangering my health. “Cut out the major stress,” was his order. The demands of the Friends of Placer County Communities, Inc., and this Home Depot were that major stress. Once this decision was made less than a week ago, I am remarkably better.

Our Board will make the next decisions as to what comes next, but my time is over. Ten years of intense community service is quite enough, and at 75 with all those great salmon and steelhead out there, I'll soon be gone a'fishing.



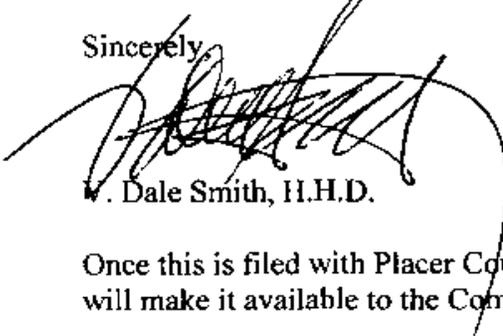
But first, Clariss and I leave for Romania, Hungary and Ukraine for our mission, East West Fellowship on August 15th for six weeks of organizational work as many new doors are open for our medical, business training, HIV Children's work and year-round Christian camp ministries. We worked there for over 35 years so it's **going home** also. It will be a joy to concentrate on working only for Jesus for a few weeks.

I am also moving my office to my home to concentrate on my consulting and the mission work, still another reason to wrap up this appeal by withdrawing.

The FPCC leaves a strong administrative record on this issue of the health, safety and general welfare of the citizens, especially those who live & work in or pass through North Auburn.

As the Vice Chair/Administrator of the Friends of Placer County Communities, Inc., I respectfully request the Placer County withdraw our appeal of the Conditional Use Permit (PCPB T20060166) and Tentative Parcel Map (PMLD T20060173) filed on May 5, 2006 – Home Depot, DeWitt.

Sincerely,



D. Dale Smith, H.H.D.

Once this is filed with Placer County it becomes public record, so after a reasonable period of time, I will make it available to the Community.

See one NID letter attached.

NID Nevada Irrigation District

1036 W Main St • PO Box 459003 • Grass Valley, CA 95945 • (530) 273-6185
From Auburn & Lincoln: 1-800-222-4102 FAX: 477-2646 www.nid.dst.ca.us

June 8, 2005

FAX 889-6863 and Regular mail

Dennis Salter
Placer County Capital Improvements
11476 C Avenue
Auburn, CA 95603

RE: NID Service to Land Development Building in DeWitt

Dear Mr. Salter:

Per our phone conversation May 31, here is the information you requested. I understood that you would like pressure and flow data based on the assumption that NID would serve only the Land Development building through a master meter on Bell Road at the northwest corner of DeWitt.

I have estimated a maximum day demand of 20 gpm and peak hour demand of 40 gpm. You may want to confirm that the estimated demand is adequate. If you would like me to consider another demand scenario just let me know.

Fire flows are based on a private fire service at the same location as the master meter and pressures are not adjusted for friction losses through the private fire service.

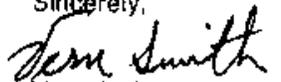
NID System Flow Condition	Max Day Demand (gpm)	Peak Hour Demand (gpm)	Fire Flow (gpm)	Pressure at Intersection of Bell Rd & Richardson Dr (psi)
Peak Hour	n.a.	40	n.a.	35
Peak Hour with 14" from Locksley Ln to Quartz Dr	n.a.	n.a.	n.a.	40
Max Day + Fire Flow	20	n.a.	1,150	30*
Max Day + Fire Flow with 14" from Locksley Ln to Quartz Dr	20	n.a.	1,700	30*

* The California Health and Safety Code requires that the water system be designed to maintain an operating pressure, under fire flow conditions, of not less than 20 psi at all service connections. Although the pressure is greater than 20 psi at the site, this is the maximum fire flow that can be delivered to the site while maintaining 20 psi residual at all service connections in the water system.

The District does not assume liability or responsibility for the provision or supply of water for fire protection, and review of fire flow requirements is not an assumption of responsibility or liability for fire flow design criteria.

We are open to continuing our discussions regarding service to parts of DeWitt. We now have a service area agreement with PCWA and will collaborate on this proposed change in service providers. If you have questions or comments, please call me at 530-271-6862.

Sincerely,


Vern Smith
Supervising Engineer

VS/cp

vs salter ltr pressures serve land dev bldg only 5-31-05.doc

The District will provide a dependable, quality water supply, strive to be good stewards of the watersheds and conserve the available resources.

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