



# County of San Diego

**MARK WARDLAW**  
DIRECTOR

PLANNING & DEVELOPMENT SERVICES  
5510 OVERLAND AVENUE, SUITE 310, SAN DIEGO, CA 92123  
(858) 505-6445 General • (858) 694-2705 Codes • (858) 565-5920 Building Services  
[www.SDCPDS.org](http://www.SDCPDS.org)

**KATHLEEN A. FLANNERY**  
ASSISTANT DIRECTOR

July 17, 2020

TO: Planning Commission

FROM: Mark Wardlaw, Director  
Planning & Development Services

SUBJECT: **Request to Appeal KA Shell Gas Station and Convenience Store**

## Purpose

This is a request for the Planning Commission to consider accepting an appeal of the June 5, 2020 Director's decision approving a Site Plan and Boundary Adjustment with a Certificate of Compliance for the KA Shell Gas Station and Convenience Store (Project). An appeal has been filed by a party who is located beyond 300 feet from the exterior boundaries of the property, and the Zoning Ordinance (Section 7166(a)(3)) require those persons receive permission from the Planning Commission to file an appeal. This memorandum provides background on the Project, the request to appeal, and the appeal processes established by the Zoning Ordinance and the San Diego County Code of Regulatory Ordinances.

## Background

On June 5, 2020, the Director of Planning & Development Services (PDS) approved a Site Plan and a Boundary Adjustment with a Certificate of Compliance for the Project. The Project includes the demolition of an existing patio furniture store and the construction of a 3,500 square-foot gas station convenience store, a 5,983 square-foot canopy with a total of 16 gas pump spaces, and 19 parking spaces. The Boundary Adjustment with a Certificate of Compliance changes the acreage of two lots. The Project is located at the Southwest Corner of Deer Springs Road and North Centre City Parkway, and is within the Hidden Meadows Community of the North County Metropolitan Subregional Plan Area and the Interstate 15 (I-15) Design Review Corridor.

The Project was found in conformance with the California Environmental Quality Act (CEQA) in accordance with Section 15183, and the environmental findings were adopted by the Zoning Administrator at a previous hearing on May 21, 2020. The proposed use is consistent with the Zoning Use Regulation as well as the General Plan Land Use Designation, and no peculiar impacts would result from implementation of the Project.

Planning Commission

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The Director's decision of approval of the Project was sent to interested parties including Julie Hamilton, attorney on behalf of Mesa Rock Road, LLC. Mesa Rock Road, LLC. owns and operates a ARCO gas station and convenience store which is located approximately 950 feet west of the proposed Project on the western side of I-15. On June 12, 2020, Ms. Hamilton on behalf of Mesa Rock Road, LLC filed an appeal of the Director's decision of approval for the Project (Attachment A). The appellant is located more than 300 feet from the Project site.

The Zoning Ordinance (Section 7166(a)(3)) requires a written petition to be evaluated by the Planning Commission for any interested parties located more than 300 feet from a project site seeking to file an appeal of a Director's decision. Although the Mesa Rock Road, LLC property is located more than 300 feet away from the project site, it is within the noticing of land use hearings for the project in accordance with Board Policy I-49 which requires expanding the standard noticing buffer of 300 feet to reach the nearest 20 property owners if 20 property owners are not located within 300 feet of the project site. Property owners within 950 feet of the project site were notified of the Zoning Administrator Hearing for review and evaluation of the project in accordance with Section 15183 of CEQA.

Ms. Hamilton has been in regular contact with the County since the filing of the application for the proposed Project. Ms. Hamilton has attended community meetings, requested documents from PDS, commented on the CEQA documents during the 15183 public disclosure process, and provided testimony during the Zoning Administrator hearing for the 15183 findings. The appeal focuses on concerns with the CEQA documents and studies associated with the Project, specifically about the lack of access to sanitary sewer and use of an on-site wastewater treatment system, traffic impacts, inadequate stormwater improvements, and greenhouse gas emissions.

Following the submittal of the appeal, Walter Rusinek attorney on behalf of KA Enterprises (Applicant), submitted one letter addressed to the Planning Commission and the Director of PDS as well as a second letter addressed to the Planning Commission contesting the validity of the appeal and the processing of the appeal (Attachment B). The two letters request the Planning Commission not hear the appeal for several reasons mainly focusing on the appeal not being submitted in an appropriate form, and the justification for the appeal being based on a CEQA determination that the Board of Supervisors is the intended decision-making body for an appeal in accordance with Sections 86.401 through 86.406 of the San Diego County Code of Regulatory Ordinances.

PDS responded to Mr. Rusinek stating: 1. The form of the request to appeal is not specified in the Zoning Code, PDS policies, or on the standard appeal form and the request to appeal was submitted as a timely filed full appeal application, and that staff did not identify the need for a different form; 2. PDS is obligated to accept the appeal request to the Planning Commission for a decision; and 3. PDS is not taking a position as to the merits of the appeal by taking the appeal request to Planning Commission (Attachment C).

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### **Actions to Consider**

The Planning Commission can choose to either accept or not accept the appeal application of the Director's Decision of the Project. If the Planning Commission chooses to accept the appeal application, the formal appeal will be noticed for a public hearing on the next regular Planning Commission agenda on July 31, 2020. PDS recommends that the Planning Commission accept and grant permission for the appeal to be heard at a future Planning Commission hearing because the appellant filed the appeal documents within the time allowed and has expressed concerns regarding the Project throughout the processing of the project and has provided comments during the public disclosure and hearing processes.

Regardless of whether the Planning Commission chooses to consider or not to consider the appeal of the Director's Decision, any interested parties may appeal the 15183 environmental determination of the Project to the Board of Supervisors. Section 86.403(b)) requires that all appeal processes be "exhausted" including the appeal of the Director's decision of a Site Plan and Boundary Adjustment with a Certificate of Compliance prior to the ability for an appellant to appeal a CEQA determination to the Board of Supervisors. If the Planning Commission chooses not to consider the appeal, the appeal of the environmental determination must be filed no later than Monday, July 27, 2020 at 4:00 p.m.

All relevant environmental documents associated with the processing of the Project can be found at the following link: <https://www.sandiegocounty.gov/pds/ceqa/STP-17-028.html>

### **Attachments:**

Attachment A	Request to appeal received June 12, 2020 from Julie Hamilton on behalf of Mesa Rock Road, LLC
Attachment B	Letters dated June 19, 2020 and June 22, 2020 from Walter Rusinek on behalf of KA Enterprises
Attachment C	Response to appeal application validity dated July 2, 2020 from Mark Wardlaw, Director of PDS to KA Enterprises

## **Attachment A**



County of San Diego, Planning & Development Services  
**APPEAL APPLICATION**  
 ZONING DIVISION

**APPEAL TO:**

- ☐ Board of Supervisors  
☒ Planning Commission  
☐ Administrative Appeal  
 (Requires Deposit & [PDS-346](#))

FOR OFFICIAL USE ONLY		
1089 DB	Code _____	PDS 2017-STP-17-028
Thomas Guide Map	Fee _____	Record ID _____
North county Metro		
Community Plan Area		
General Commercial		C36
General Plan Designation		Zone

**APPELLANT FILL IN BELOW THIS LINE, THIS SIDE ONLY – PLEASE PRINT OR TYPE**

Deer Springs Rd/Mountain Meadows Rd, Hidden Meadows				186-093-23,23,37; -092-10	
Site Address	Number	Street	City	Zip	Assessor's Parcel Number
Mesa Rock Road, LLC c/o Julie M. Hamilton				KA Enterprises - Applicant	
Appellant's Name	Last	First	Middle	Owner's Name	Last
501 W. Broadway, Suite 800				First	
Mailing Address				Number	Street
San Diego, CA 92101				City	
(619) 278-0701				Zip	
Telephone				Telephone	

**REQUEST:** Clearly define all items requested in the appeal. Submit plans if necessary, to illustrate request.

Deny Site Plan Approval and Lot Line Adjustment

CEQA Determination (S.S.)

**JUSTIFICATION:** Attach additional sheets if necessary.

See Attachment A

  
 Signature of Appellant

Managing member  
 If Company Officer – indicate Company Name and function  
 (Please print)

----- OFFICIAL USE ONLY -----  
 SDC PDS RCVD 6-15-20  
**STP17-028**





Attachment A

Mesa Rock Road LLC Appeal of KA Enterprises Site Plan and Lot Line Adjustment

Justification:

- The proposed gas station/convenience store does not qualify for a categorical exemption because the lack of sanitary sewer for commercial development is an unusual circumstance that could cause significant impacts to soil and groundwater.
- Traffic impacts will not be mitigated by payment of TIF because it is unlikely the traffic improvements identified in the Mobility Element will be built.
- The Traffic Impact Analysis fails to fully consider the increase in traffic on Center City Parkway and Deer Springs Rd/Mountain Meadow Rd caused by patrons entering and exiting the gas station/convenience store.
- The stormwater improvements are inadequate, and the project fails to minimize impervious surfaces.
- The GHG analysis is inadequate and relies on the CAP that has been set aside by San Diego Superior Court.

## **Attachment B**

**Rusinek Law Office**

440 Stevens Avenue, Suite 200  
Solana Beach, CA 92075  
858-395-3609  
rusinekgroup@outlook.com

June 19, 2020

Mr. Mark Wardlaw, Director  
Dept. of Planning and Development Services  
and  
Douglas Barnhart, Chairman  
San Diego County Planning Commission  
5510 Overland Ave.  
San Diego, CA 92123

**Re: Appeal of the Approvals for the KA Shell Gas Station and Convenience Store – Case/File No.  
PDS2017-STP-17-028; PDS2017- BC-17-0069; PDS2017-ER-17-08-008**

Dear Messrs. Wardlaw and Barnhart:

This letter is submitted on behalf of our client, KA Enterprises (“KA”), which seeks to construct a gas station/mini mart at Deer Springs Road and Interstate 15 (“Project”). On June 5, 2020, the Director of Planning and Development Services approved the Site Plan and boundary adjustment for the Project (“Approval”). KA’s position is that, in accordance with Section 7162(c) of the County Zoning Ordinance, the Approval became effective, as a matter of law, on June 16, 2020, the eleventh day following the Approval.<sup>1</sup>

The Approval became effective that day because no valid appeal of the Approval was filed in a timely manner. The “Appeal Application” filed on behalf of Mesa Rock Road, LLC (“Mesa Rock”), on June 15, 2020, failed to comply with the procedural requirements established by the County Zoning Ordinance. Specifically, in that submission, Mesa Rock did not “petition” the Planning Commission for permission to file an appeal as required by Section 7166(a)(3) of the Zoning Ordinance. No words on the form or on its attachment in any way requested that the Planning Commission grant Mesa Rock permission to file an appeal. Instead, the documents constitute the appeal itself, simply asking that the Planning Commission “Deny Site Plan Approval and Lot Line Adjustment” with the words “CEQA Determination” handwritten in as well. That request to “deny” the Approval makes clear that the filing was the actual appeal of the Approval decision, not a request for permission to file an appeal.

As discussed below, the law is clear on the procedures that must be followed for appealing a Site Plan approval. Those procedures were not followed. However, we have been informed orally by the

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<sup>1</sup> Unless otherwise stated, all references to “Sections” in this letter are references to the Zoning Ordinance.



Office of County Counsel that the County has chosen to ignore the clear language of the law and accept the filing as a valid request for permission to file an appeal.<sup>2</sup>

By improperly ignoring the clear language of the Zoning Ordinance, the County effectively is benefitting a business competitor of KA. Although the Appeal Application does not provide any information showing that Mesa Rock has an interest in property anywhere,<sup>3</sup> Mesa Rock does own property that is cattycorner from the Project site across Interstate 15 where it operates an Arco gas station and mini mart. Mesa Rock appealed the Approval because the Project would directly compete with the Arco station and mini mart. The appeal process and likely subsequent lawsuit if the Site Plan and the CEQA review are approved would significantly delay the ability of KA to begin construction and operation of the Project. That delay will cause KA financial harm and benefit Mesa Rock.

That should not be the case. The procedures for appealing a Site Plan approval in Section 7166 are crystal clear. In relevant part, Section 7166 allows appeals by three limited classes of persons with an interest in property. Sections 7166 (a)(1) and 7166(a)(2) clearly state that only two classes of persons have the right, as a matter of law, to file an appeal, persons with an interest in either (1) the property at issue (“subject property”) or (2) property located within 300 feet of the subject property. Mesa Rock has no interest in the subject property, and as the attached map shows, Mesa Rock is not a person that has an interest in property within 300 feet of the subject property.

Rather, Mesa Rock is in the third class of persons with an interest in property. In equally clear language, Section 7166(a)(3) allows a person “not having an interest in property located within 300 feet from exterior boundaries of the subject property” to appeal only if that person “after written petition to the Planning Commission, filed within 10 days of the date on which the decision being appealed was rendered, receives permission to file an appeal.” The requirement that a “petition” be filed first requesting permission from the Planning Commission to file the actual appeal is confirmed by the language of Section 7166(b). That subsection states that, if the Planning Commission grants the petition and gives that person permission to file an appeal, the applicant must file the actual appeal “within 10 days of the date of Planning Commission permission to file an appeal under Section 7166.a.3.” While there are two separate 10-day periods involved, because the 10-day period for filing a petition seeking permission to file an appeal has expired, the Site Plan approval became effective as a matter of law on June 16, 2020.

The rules for interpreting an ordinance are the same as those for interpreting a statute. (*Save Our Heritage Organisation v. City of San Diego* (2015) 237 Cal.App.4th 163, 174.) The first step in interpreting an ordinance is to look at the “actual words of the statute, giving them a plain and common-sense meaning” [citation omitted] and to “give effect and significance to every word and phrase of a statute.” (*Id.*) Applying this standard, the language of Section 7166 clearly established different appeal

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<sup>2</sup> The attempted “appeal” of the boundary adjustment approval also was improper. Section 81.904 of the County Zoning and Land Use Regulations, which applies here, only allows the “applicant” to appeal, and only allows it to appeal a “Director’s decision conditionally approving or disapproving the lot adjustment” not a denial. No other person is granted the right to appeal a boundary adjustment approval so the boundary adjustment is final.

<sup>3</sup> The only address listed on the Appeal Application is a suite in a downtown San Diego building that appears to be the address of Ms. Hamilton, Mesa Rock’s attorney. Mesa Rock did not file any written comments opposing the Project during the approval process or other documents that identify its ownership interests. The only comments opposing the Project were submitted by Ms. Hamilton on behalf of Mesa Rock, LLC. That entity filed a Certificate of Cancellation with the California Secretary of State on June 23, 2003, and so did not even legally exist at the time the comments were filed on its behalf.

procedures for three separate classes of persons having an interest in property. Section 7166(a)(3) explicitly requires that a person having interest in property located more than 300 feet from the subject property first obtain permission from the Planning Commission before filing an appeal.

County Policy I-49 (“Policy”), titled “distribution of Notification of Land Use Hearings” does not change those requirements. The Policy expands the provision of public notice for certain land-use matters to an area beyond the standard 300-foot notice area if there are not 20 different property owners within 300 feet of a project site. But the fact that the Policy provides that notice of a project be provided to additional area property owners in certain circumstances does not amend the explicit Site Plan appeal requirements of Section 7166(a)(3) that apply to persons having an interest in property located more than 300 feet from a subject property. The Policy does not even mention Section 7166 and Section 7166 does not mention the Policy.

In addition, the section of the Policy titled “Policy,” which is where the expanded-notice policy that the Board of Supervisors actually adopted is described, clearly states that the requirements of the Policy apply only to “Specific Plans and Amendments, Tentative Subdivision Maps, Tentative Parcel Maps, Zone Reclassifications, Major Use Permits and Modifications and Minor Use Permits.” The Policy does not even state that Site Plans are subject to the expanded-notification requirements of the Policy. Consequently, even if it legally could, the Policy by its own terms did not amend the appeal requirements of Section 7166(a)(3) applicable to Site Plans as they are not included in the Policy. The Board of Supervisors would need to amend the Zoning Ordinance to change the requirements of Section 7166(a)(3) if it wanted that section to reflect the Policy. It has not done so.

Mesa Rock’s failure to request permission from the Planning Commission to file an appeal within the 10-day period established by Section 7166(a)(3) was fatal, and the failure to meet that deadline automatically made the Site Plan approval effective. The County cannot simply ignore the clear language of the Zoning Ordinance to the benefit of a commercial competitor of the Project that is represented by qualified legal counsel. The County has no obligation to counsel the attorney for a project opponent how to properly appeal a project approval, especially when the language on what is required is so clearly stated. Rather, the County has the obligation to enforce the law as written, not to unilaterally misinterpret the law to expand the right of a project opponent to appeal an approval.

This Project complies with the General Plan and the Zoning Ordinance and has been subject to detailed and time-consuming environmental and project reviews. It is time for it to move forward. The County should confirm that (1) the Appeal Application was not a request for permission to file an appeal and so was not filed in a timely manner, and (2) the Approval is effective and the process for KA to obtain any additional approvals needed for the Project can proceed.

Sincerely,

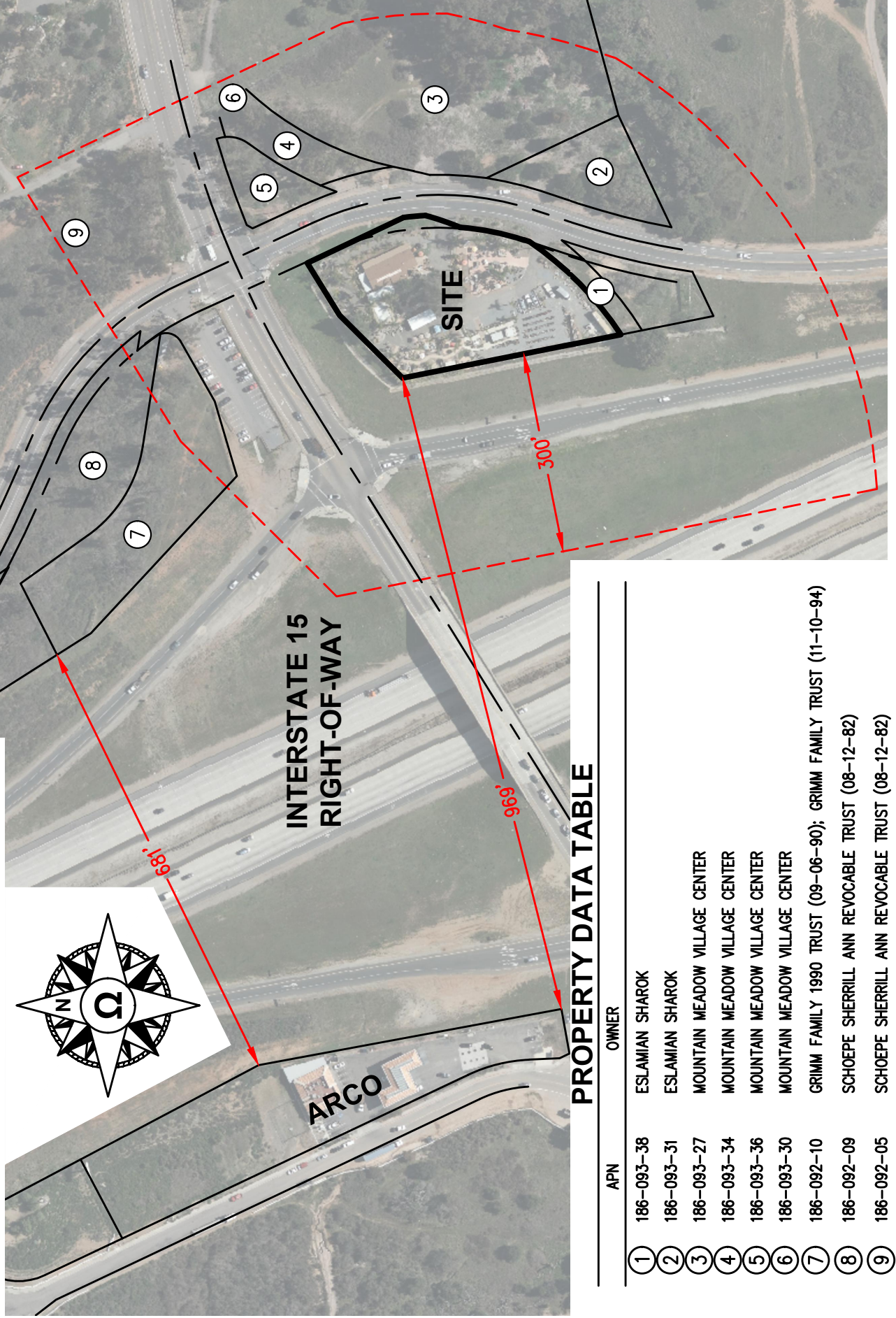
*Walter Rusinek*

Walter Rusinek

cc: Eugene Marini, KA Enterprises

# KA SHELL GAS STATION

PDS 2017-STP-17-028



## PROPERTY DATA TABLE

APN	OWNER
① 186-093-38	ESLAMIAN SHAROK
② 186-093-31	ESLAMIAN SHAROK
③ 186-093-27	MOUNTAIN MEADOW VILLAGE CENTER
④ 186-093-34	MOUNTAIN MEADOW VILLAGE CENTER
⑤ 186-093-36	MOUNTAIN MEADOW VILLAGE CENTER
⑥ 186-093-30	MOUNTAIN MEADOW VILLAGE CENTER
⑦ 186-092-10	GRIMM FAMILY 1990 TRUST (09-06-90); GRIMM FAMILY TRUST (11-10-94)
⑧ 186-092-09	SCHOEPE SHERRILL ANN REVOCABLE TRUST (08-12-82)
⑨ 186-092-05	SCHOEPE SHERRILL ANN REVOCABLE TRUST (08-12-82)

**Rusinek Law Office**

440 Stevens Avenue, Suite 200  
Solana Beach, CA 92075  
858-395-3609  
rusinekgroup@outlook.com

June 22, 2020

Douglas Barnhart, Chairman  
San Diego County Planning Commission  
5510 Overland Ave., Suite 110  
San Diego, CA 92123

**Re: Request to Reject Appeal of the Approvals for the KA Shell Gas Station and Convenience Store – Case/File No. PDS2017-STP-17-028; PDS2017- BC-17-0069; PDS2017-ER-17-08-008**

Dear Chairman Barnhart and the County of San Diego Planning Commissioners:

In a letter to you dated June 19, 2020, KA Enterprises (“KA”) challenged the propriety of the appeal filed by Mesa Rock Road, LLC, on June 15, 2020, because the filing was not a “petition” to the Planning Commission requesting permission to file an appeal of the Site Plan approval for KA’s gas station/mini mart project (“Project”). As that letter showed, the Appeal Application filed by Mesa Rock, which owns a competing gas station/mini mart across Interstate 15 from the KA site, was an actual appeal of the Site Plan approval not a petition requesting permission to file an appeal as required by Zoning Ordinance Section 7166(a)(3).<sup>1</sup> Mesa Rock’s failure to request that permission within the 10-day deadline under Section 7166(a)(3) was fatal and requires that the appeal be rejected as untimely. Mesa Rock failed to comply with those requirements even though the Site Plan approval documents explicitly described the appeal process and provided a website link to Section 7166.

The Appeal Application did not seek permission to file an appeal. But, even if the Planning Commission ignores that fact (and the law) and accepts the filing as a “petition” for permission to file an appeal, that request should be denied. That is because the Appeal Application not only violated Section 7166(a)(3), but none of the “justifications” for the appeal listed in the attachment to the Appeal Application identified any issue related to the Site Plan. The appeal did not challenge the Director’s findings on the Site Plan or any of the 20 pages of Site Plan conditions.

Rather, all the “justifications” listed in the Appeal Application challenged the Director’s environmental determination that the Project is exempt from CEQA under Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183. The Director determined that the Project qualifies for that exemption because it complies with the County’s General Plan and Zoning Ordinance and there are no effects on the environment which are “peculiar to the parcel or project” and which were not

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<sup>1</sup> Unless otherwise stated, all references to “sections” are to sections of the Zoning Ordinance.

addressed in the environmental impact report for the General Plan. Although the Project is exempt from CEQA, we note that a lengthy environmental review of the Project was conducted that included traffic impact, air quality, greenhouse gas, and other studies. The “justifications” merely repeat the comments submitted by Mesa Rock, LLC, a different entity and a defunct LLC, in opposition to the Project prior to the Site Plan approval. None of those comments challenged the Site Plan, and they were the only opposition comments filed. Mesa Rock itself filed no comments prior to the Site Plan approval.

Section 7166 establishes a bifurcated Site Plan appeal process. Under that process, issues concerning the Director’s environmental determination must be addressed in an appeal to the Board of Supervisors. That is because CEQA requires that an environmental determination made by a nonelected body be appealable to an elected body. Having the Planning Commission screen out those projects which do not even meet the standards for a proper Site Plan limits the need for the Board to address those issues itself or to make unnecessary CEQA decisions on a project that should not have been approved in the first place.

Because the Appeal Application raised no issues concerning the Site Plan, the Planning Commission has nothing specific to review. The Director approved the Site Plan in accordance with the requirements of Section 7162(a)(1), which, in relevant part, allows the Director to “make such findings as are required by Section 7160 and approve the Site Plan.” The Section 7160 findings that support a Site Plan approval are that the project “meets the intent and specific standards and criteria prescribed in pertinent sections of the Zoning Ordinance” and “is compatible with the San Diego County General Plan.” The Director made those findings for the Project and did not waive any standards or criteria.

Section 7166 allows an appeal of a decision under Section 7162. If an appeal is filed (in this case, that would be only if permission is granted), Section 7166(g) states that the Planning Commission “may sustain the decision of the Director; or may approve or modify the site plan subject to specified conditions it imposes pursuant to Section 7164; or may revoke or deny the Site Plan, as is appropriate.” Section 7166(g) also requires that the Planning Commission, if requested, “adopt findings which specify all facts relied upon it in reaching its decision and their relation to the requirements of Section 7160, and which state the reasons for any conditions imposed by it.”

Because Section 7166(g) only grants the Planning Commission authority to review and take action on the approval or conditions of a Site Plan, not the underlying CEQA decision, an appeal is not justified if no issues are raised within that jurisdictional purview. CEQA issues alone do not satisfy the review criteria identified in Section 7166(g). Rather, under the bifurcated review system established by the Zoning Ordinance, CEQA issues are reviewed only by the Board of Supervisors. To make that clear, Section 7166(h)(3) states that “where an appeal of an environmental determination is filed, the procedures specified in Chapter 4 (commencing with Section 86.401 of Division 6 of Title 8 of the San Diego County Code) shall be followed.”

The CEQA review procedures in the Ordinance cited in Section 7166(h)(3) define the term “environmental determination,” in relevant part, as including a “decision by any nonelected County decision maker” that a project is exempt from CEQA, which this Project is. The Ordinance defines a “lower decision maker” as the “nonelected County decision maker whose environmental determination” is being appealed and the “project decision” as a decision made by a lower decisionmaker “to approve, conditionally approve or deny an application or proposal for which an environmental determination is a prerequisite under CEQA.” (Ordinance § 86.402(a)-(c).)



In this case, all the decisions cited in the Ordinance were made by the Director, not by the Planning Commission. It is the Director's "environmental determination" that the Board can uphold or can vacate and require that the Director reconsider. (Ordinance § 86.406(c)-(d).) Only the Board, not the Planning Commission, can uphold or vacate an environmental determination. No language in the Ordinance or in Section 7166 gives the Planning Commission any role in the review of the environmental determination. The Planning Commission's duty under Section 7166 is to review the approved Site Plan and its conditions.

This appeal should not be heard by the Planning Commission because the petition for permission to appeal was not filed in a timely manner. That means any appeal is barred entirely, and selectively granting the Project's competitor the right to appeal under those circumstances would be improper. But, if the Planning Commission chooses to interpret the Appeal Application as a request for permission to appeal (which it is not), then the fact that no issues related to the Site Plan itself were raised before the approval was issued or in the invalid Appeal Application is simply another reason that the Planning Commission should reject any request for permission to file an appeal. The Site Plan approval for this Project should be considered final.

Sincerely,

*Walter Rusinek*

Walter Rusinek

cc: Eugene Marini, KA Enterprises



## **Attachment C**



## County of San Diego

**MARK WARDLAW**  
DIRECTOR

PLANNING & DEVELOPMENT SERVICES  
5510 OVERLAND AVENUE, SUITE 310, SAN DIEGO, CA 92123  
(858) 505-6445 General • (858) 694-2705 Codes • (858) 565-5920 Building Services  
[www.SDCPDS.org](http://www.SDCPDS.org)

**KATHLEEN A. FLANNERY**  
ASSISTANT DIRECTOR

July 2, 2020

Eugene Marini  
KA ENTERPRISES  
5820 Oberlin Drive, Suite 201  
San Diego, CA 92121

Dear Mr. Marini:

Thank you for contacting me to discuss the appeal filed against your project approval. The environmental review for the project under Section 15183 of the California Environmental Quality Act ("CEQA") regulations was approved at the Zoning Administrator hearing on May 21, 2020. I approved the site plan on June 5, 2020. Julie Hamilton submitted the appeal on behalf of her client on June 12, 2020, using the Department's standard appeal form.

Per Section 7166(a)(3) of the Zoning Code, a party that intends to file an appeal against a site plan approval and which is located more than 300 feet from the project site must request approval for the appeal to proceed within 10 days of the site plan approval. The form of that request to appeal is not specified in the Zoning Code, by Department policy, or on the Department's standard appeal form. It could be a simple request by letter or email to satisfy this requirement. In this case, the entire appeal was timely submitted, which exceeds any simple written request. Further, Ms. Hamilton was not told that the appeal form that was submitted was insufficient to make the request. I have also evaluated the validity of the application and found no errors of substance. Mesa Rock Road, LLC, is valid per the California Secretary of State's website and is the owner/operator of the nearby Arco gas station based on the information the Department has. Denying the appeal now would not be consistent with the Zoning Code requirements. The Department is obligated to take the appeal request to the Planning Commission for a decision, and the Department is not taking a position as to the merits of the appeal by so doing.

Accordingly, the Planning Commission will be presented with a brief statement about the project and the appeal that was filed. You will have the opportunity to make your arguments as to why the Planning Commission should deny the request to proceed with the appeal. The Commissioners will then vote on the request. If the appeal is permitted

Mr. Eugene Marini  
July 2, 2020  
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to proceed, it will be noticed for the same or following meeting, depending on when we can schedule the next Planning Commission meetings.

If the Planning Commission either denies the request to appeal or denies the appeal on the merits, the approval of the site plan will be final. Nonetheless, please be aware that an appeal of an environmental document to the Board of Supervisors is permitted in accordance with Section 86.401 et seq. of the San Diego County Code of Regulatory Ordinances within 10 days of the site plan decision becoming final. Ms. Hamilton has already indicated her intent to file such an appeal. If it is submitted, you will be notified immediately.

Let me know if you have any questions about this process. The call-in information to the Planning Commission will be provided to you.

Sincerely,



MARK WARDLAW, Director  
Planning & Development Services