

James Feenan

From: encores-fence.04@icloud.com
Sent: Wednesday, November 29, 2023 1:50 PM
To: pbscommissions
Subject: Public Comment Letter - U_2021-0016/V_2021-005 Faizan Corporation
Attachments: GRI Letter to Planning Commission (Faizan) - Final.pdf

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Planning Commission,

Attached please find our letter to the Commission regarding the above noted application for a Minor Use Permit. Please post this letter along with the other gathered comments regarding this issue which is coming before the Commission on December 7. Thank you.

Don Hess
For the GrassRoots Institute, Climate Crisis Workgroup

Mendocino County

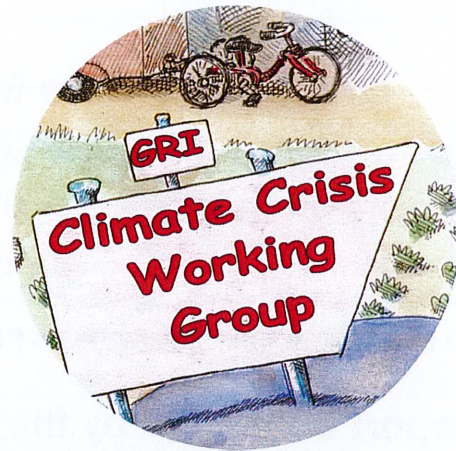
NOV 29 2023

Planning & Building Services

GrassRoots Institute
PO Box 1607
Mendocino, CA 95460

November 29, 2023

Diana Wiederman, Chair
Mendocino County Planning Commission
501 Lowgap Rd.
Ukiah, CA 95482



RE: U 2021-0016/V 2021-0005 – FAIZAN CORPORATION & 898 MAIN STREET LLC

Dear Chair Wiederman and Commission Members,

In a careful review of the above Minor Use Permit application by Mahmood Alam and the Faizan Corporation, the Grassroots Institute has found more than sufficient grounds for the Commission to deny approval. Aside from the noted opposition by local citizens, the thin business justification for a gas station at the chosen location and the urgent need to reduce greenhouse gas emissions, we have concluded that the public record alone is sufficient to disqualify and deny the application as it unequivocally shows that the applicant has acted over the years with flagrant disregard for adhering to state laws and regulations concerning gasoline storage tank safety, as well as pricing and labeling regulations. We invite you to read our complete report, which follows below. Thank you.

The GrassRoots Institute, Climate Crisis Workgroup

Carrie Durkee
Esther Faber
Alicia Gilbert
Don Hess
Peter McNamee
Eileen Mitro
George Reinhardt
Jim Schoonover
Marcy Snyder
Sandy Turner
Merry Winslow

Cc: Julia Krog, Director Planning and Building Services
Supervisor Glenn McGourty
Supervisor Dan Gjerde
Supervisor John Haschak
Supervisor Ted Williams
Supervisor Maureen Mulheren

GRI Calls on the Mendocino County Planning Commission to deny the Minor Use Permit application to establish and operate a new Chevron gas station in Redwood Valley

Re: U_2021-0016/V_2021-0005 – FAIZAN CORPORATION & 898 MAIN STREET LLC

Report Submitted by the GrassRoots Institute of Mendocino County, Climate Crisis Workgroup

There are so many problems with this application and the owner/applicant, it is hard to know where to begin. So, we will start by just listing some of the major problem areas that really stand out to us, followed by a more detailed description and elaboration further down. And finally, we will provide a summary conclusion and a list of references and documentation we have used in our research for the Planning Commission to refer to, as needed. We above all want the Commission to understand that we are not anti-business. Rather, our focus is on the development of business projects in Mendocino County that are sustainable, that avoid unnecessary environmental and health risks, that provide a needed service to County residents and visitors into the future and that respect local community development concerns.

6 Compelling Reasons to Deny the Minor Use Permit

1. In 2019 Mahmoud Alam and Farah Alam were the subject of a Cleanup and Abatement order by the Regional Water Control Board as a result of Underground Storage Tank (UST) leaks contaminating groundwater in Ukiah. Then, in 2023 the applicant, Mahmoud Alam and Faizan Corporation, was ordered to pay a \$500,000 fine as part of a Permanent Injunction they agreed to after being charged in 2022 with failure to comply with a host of UST safety standards & other violations at 12 gas stations owned or managed by the applicant in Northern California.
2. The applicant has admitted in the Minor Use Permit application that the proposed site in Redwood Valley presents difficulties for a business, which may ultimately increase the risk of failure and possible publicly-financed remediation. Required traffic safety mitigation measures insisted upon by CalTrans will create additional challenges for access to the site.
3. The proposed Chevron gas station will be competing with 2 existing gas stations in Redwood Valley, one of which is operated by the Pomo Tribe a mere 3/4 mile away.
4. Some of the evaluations made in the Mitigated Negative Declaration are questionable and others fail to take into account information that we feel is entirely relevant.
5. Both the local Redwood Valley Municipal Advisory Council (RVMAC), the local tribe and others in the community have firmly come out against this proposed new gas station.
6. Approval of this Minor Use Permit would directly fly in the face of and contradict Mendocino County's Climate Emergency Declaration passed by the Board of Supervisors unanimously in 2020, which calls for a "just transition away from fossil fuels."

1. Faizan Corporation investigated by multiple jurisdictions for violating State environmental regulations and fined \$500,000

From the Sonoma County District Attorney's Press Release:

“On January 5, 2023, Alameda County Superior Court Judge Charles Smiley entered a \$500,000.00 stipulated judgment against Mahmoud Alam, and Faizan Corporation, a California corporation of which Alam is the chief executive officer, in Case No. 22CV023017. This judgment settles allegations that Alam and Faizan Corporation failed to follow state laws governing the operation of retail gas stations at locations in Sonoma, Alameda, Contra Costa, Lake, Marin, Mendocino, and Yolo Counties. In Sonoma County, this involved the Chevron gas station located on Cleveland Avenue in Santa Rosa which is operated by the defendants. Owners and operators of underground storage tanks (USTs) at retail gas stations in California are subject to fair yet stringent environmental rules and requirements, designed to prevent underground petroleum releases to surface and ground waters.

Prosecutors alleged that Alam and Faizan Corporation failed to adequately install, monitor, operate, and calibrate important equipment on-site designed to detect leaks, and failed to comply with laws regulating hazardous wastes and hazardous materials at certain stations. Additionally, prosecutors alleged defendants failed to label fuel dispensers with the correct octane rating and price per gallon, and falsely advertised the sale of lower-octane gasoline as higher-octane at certain stations.” ^[1]

Read the full 2023 Court judgment and Permanent Injunction here:

https://www.grassroots-institute.org/files/ugd/a1fa14_185bc1671a184a6dae198e385839ec1c.pdf

From the Complaint for a Permanent Injunction and Civil Penalties, filed by Alameda County District Attorney Nancy O'Malley:

“Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, brings this law enforcement action to protect public health and the environment from harm due to releases of hazardous substances, including harm from groundwater and surface water contamination and indoor air impacts from leaking Underground Storage Tanks (UST's), and from other violations, including unfair and unlawful business practices ...”

Read the the original 2022 Complaint and list of charges here:

https://www.grassroots-institute.org/files/ugd/a1fa14_7c143ca2aa764e37bec66870ea2ed7f4.pdf

Astonishingly, Planning and Building Services has recommended approval of the Mitigated Negative Declaration for this Minor Use Permit application despite the demonstrated record of systematic violations of rules and regulations designed to protect the public and the environment from petroleum-based pollution. District Attorneys in 7 Counties in Northern California were involved in the investigation of 12 gas stations, including 5 stations in Mendocino County. Mahmood Alam, a resident of Alamo in Contra Costa County and CEO of Faizan Corporation, was charged with no fewer than 64 Health and Safety Code violations, mostly involving petroleum storage tank operational safety and monitoring. It is important to

note that even a small amount of gasoline leaking from an underground storage tank (UST) can lead to serious ground and water pollution and is difficult and expensive to clean up.^[2] And, needless to say, not complying with numerous state-mandated storage tank safety standards while selling the less expensive 89 octane gas and claiming it is the more expensive 91 octane (a direct injury suffered by consumers) most likely lowered the applicant's operating expenses and therefore increased net profits.

Cleanup and Abatement Order

Furthermore, earlier in 2019 Mahmood Alam and Farah Alam, the Dischargers, were subject to a Cleanup and Abatement order by the Regional Water Quality Control Board, which detected gasoline in groundwater at their gas station at 390 Gobbi St. in Ukiah causing the City of Ukiah to remove from service a nearby public water supply well. The Dischargers were also charged with failing to properly handle contaminated soil removed from the site. At the time, the Mendocino County Environmental Health Division (MCEHD) was involved in the investigation of these Health and Safety Code violations.

Read the Full Cleanup and Abatement Order here:

https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2019/19_0014_Express_Mart_CAO.pdf

Remarkably, there is not a single word that we could find in the application, associated attachments, the CEQA Initial Study nor the Mitigated Negative Declaration about these charges filed against the applicant, the subsequent permanent injunction nor the Cleanup and Abatement Order. This raises legitimate questions about transparency on the part of Planning and Building Services. Why were these 3 highly relevant documents related to applicant's past, deplorable performance as a Gas Dispensing Facility operator not initially included in the materials provided to the Public and to the Commission along with the Mitigated Negative Declaration?

2. Applicant readily admits it is a difficult business location

In the applicants original Minor Use Permit application, the applicant states “Historically businesses have had trouble succeeding in this location. At least part of the problem is communication with the traveling public and getting them to slow and turn off the highway.”

And furthermore, the applicant states, “Time has proven that unless a special approach is deployed to communicate with passing motorists and a special effort is made to attract neighboring residents that this cycle will continue to repeat itself.” Hence, the request for a variance for an enormous 65 ft. sign. However, PBS has recommended denial of the requested variance for a 65 ft. sign in place of a less visible 25 ft. sign that is typically approved for this type of project. Without the requested 65 ft. sign - vehemently opposed by members of the local community, is the financial viability of the project already doomed? The applicant states, “obtaining the sign height variance is vital for the growth and prosperity of our gas station and the entire strip center.”

In addition, the applicant states, “approximately 80% of our potential business would come from the highway 101 Southbound traffic.” Yet, CalTrans will insist on the permanent closure of the Southbound left turn onto N. State St. (at UVA drive) by the installation of a median barrier due to known safety issues (2 motorists have been killed using this crossing several years ago, according to CalTrans). This, for all intents and purposes, leaves this new fossil fuel station for the most part dependent on Northbound traffic, unless Southbound travelers choose to take the longer route to the proposed station via the West Rd. interchange.

There is also a curious dependency on “Hope” for this project to succeed. Hope, however, is not generally a solid strategy for business success. The applicant states, “The hope is to attract and establish other businesses that could benefit and market to the same public community and travelers as well.” There is no guarantee that building a new gas station in this location will attract other businesses, especially given the access challenges once required highway changes are implemented. And, customers at gas stations typically only spend a few minutes filling up and then move on to their destinations. If the goal is to attract customers who will spend more than just a couple minutes filling up their gas tanks, then a much more attractive option would perhaps be to build a more future-oriented, state-of-the-art EV Charging facility which necessarily involves customers spending a minimum of 20 minutes, if not a bit longer, charging their vehicles. This would provide ample time for customers to relax a bit and spend some time in nearby, local businesses. But, alas, applicant has shown no interest in an EV charging proposal for this location, according to RVMAC.

The Planning Commission needs to seriously take into consideration the consequences of a failed business, but not based on any concern about financial ramifications for the applicant. The fact that the type of business being considered here is not just a typical or anodyne business operation but one in which hazardous and flammable materials are stored underground and dispensed above ground should give the Commission pause. A gas station business failure inevitably leads to clean-up and remediation actions or - worst case scenario - an abandoned brownfield site requiring public funds for clean-up.

3. Redwood Valley already has 2 community gas stations. Do we really need another gas station here, or in Mendocino County?

Redwood Valley already has a community gas station at 7751 N. State St., a mere 3/4 of a mile from the applicant’s proposed site and also a second one a little further away at 8551 East Rd. The closest existing station is owned by the local Native American Tribe, the Redwood Valley Rancheria. A new Chevron gas station so close to this existing station will necessarily create competition and may jeopardize the existing station’s profitability. While competition in a normal business environment can be a positive thing, when there is competition by similar businesses ultimately vying for a shrinking customer base (given the ongoing transition to EVs) what could happen is that one business may choose to abandon operations rather than continue to lose money.

The decline in demand for petroleum based fuel is inevitable and the State of California is actively planning for this eventuality. Legislative bill SBX1-2 passed this year and signed by Governor Newsom mandates state agencies to “Prepare a Transportation Fuels Transition Plan” by the end of 2024. Furthermore, these state agencies are tasked to “Monitor progress toward the state’s reliable, safe, equitable, and affordable transition **away from petroleum fuels in line with declining instate petroleum demand.**”^[3] All this on top of stated California goals to have 250,000 EV chargers by 2025, 5 million EVs on the roads by 2030 and an end to new combustion engine vehicle registrations in 2035.^[4,5]

The writing is on the wall for all to see clearly as California sets a new EV sales record.^[6] Allowing a third gas station to be constructed in an area that, going forward, likely can only support the two existing stations just does not add up and perhaps is unfair to the existing stations. And furthermore, the construction of any new gas station in Mendocino County as we enter a transition period of prolonged decline in petroleum demand makes little sense.^[7] Mendocino County currently has 60 fuel outlets according to the California Energy Commission (CEC), a number that, compared with Sonoma County, is twice as many based on population. Finally, gasoline sales in Mendocino have declined by 18% since 2019, again according to the CEC.^[8]

County	Population (2020)	Fuel Outlets	Outlets per 10,000
Mendocino	91,601	60	6.5
Sonoma	488,863	160	3.25
Humboldt	136,463	79	5.8

Formula used: Fuel Outlets / (Population/10,000) = Fuel Outlets per 10k habitants

Estimated Gas Sales in Mendocino County (in millions of gallons):

2019: 44
 2022: 36

4. Community Opposition

Going all the way back to 2016, the Redwood Valley Municipal Advisory Council (RVMAC) has been reviewing this proposal, listening to local citizens, posing questions and expressing reservations and finally, voting unanimously in both 2022 and 2023 in opposition to the application for a Minor Use Permit in its recommendation to the Planning Department. The GrassRoots Institute thinks that community opposition to such a project should be given considerable weight in the deliberations of the Planning Commission. Imposing an unwanted and unneeded hazardous materials business project such as a gas station on a community that has expressed, in no uncertain terms, its opposition would only serve the narrow, mercantile interests of the applicant and not the interests of the community.

Among the many concerns expressed by RVMAC are the following:

1. Potential for hazardous material runoff into riparian habitat and Forsythe Creek
2. Light pollution at night from the large sign and station canopy
3. Local air pollution from idling diesel trucks
4. Alcoholic beverage sales at the proposed convenience store
5. Lack of adequate parking if trucks are permitted to spend the night
6. Increased noise pollution from big rigs slowing down to use the station
7. Traffic safety for vehicles either exiting 101 or entering 101 from N. State St.
8. Lack of any consideration for EV charging at the proposed station
9. Belief that there are already enough gas stations in Redwood Valley
10. Questions as to whether or not Faizan Corporation is a local business entity.

The Redwood Valley Rancheria is also reportedly opposed to the project, in 2021 citing concerns about the proposed signage and the lack of EV charging stations.

5. Some concerns about Mendocino County's Mitigated Negative Declaration and Transportation Impact Study (TIS)

Note: text in italics are quotations or statements directly from the Mitigated Negative Declaration (MND) or other related documents with text in bold for our emphasis.

Zoning Consistency: Both parcels are within the Limited Commercial (C-1) zoning district defined in Chapter 20.088 of the Mendocino County Code (MCC). The Limited Commercial district is intended...

*“...to create and enhance areas where public facilities and services are available. It is also intended to facilitate a balance between jobs and housing, provide for the possibility of live/work spaces, and provide additional opportunities for affordable housing. A limited number of retail commercial goods and services are desired **primarily to meet day to day needs of local residents** and to facilitate livable/walkable communities and live/work opportunities. Typically this district would be applied in conjunction with residential uses and **would permit only those uses which do not significantly increase traffic, noise or other impacts.**”*

It is difficult for us to see how the granting of a Minor Use Permit for a Chevron gas station here is compatible when commercial projects in a C-1 zoning district are required “*primarily to meet day to day needs of local residents.*” As CalTrans notes in its letter of August 11, 2023, “*The discussion in the TIS, indicating that the project is local-serving, is problematic for a large gas station or truck stop adjacent to a US Highway, as the majority of the trips are clearly not local. Gas stations primarily attract pass-by trips and the primary purpose for non-pass-by trips are generally limited to employee trips or to the convenience store.*”

Furthermore, one could qualify as a “stretch” for the County to argue that the project does “not significantly increase traffic, noise or other impacts.” Necessarily, there will be increased traffic and potentially noise as well, especially if large trucks are breaking from highway speeds to stop at the station.

Even CalTrans, in its Feb. 18th, 2022 letter to PBS, states: “*This project does not appear to conform with the C-1 Limited Commercial District zoning, as defined by the Mendocino County Code, Chapter 20.088*”

And, the County has somehow determined that there would be “*Less than significant impact*” for the following questions:

Section 3.8 Greenhouse Gas Emissions

Would the project ... Generate greenhouse gas emissions (GHG), either directly or indirectly, that may have a significant impact on the environment?

Would the project ... Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

It is our position that total GHG emissions from a fossil fuel (gas) station (direct and indirect) need to take into consideration all stages of the gasoline product's life cycle, from extraction,

to transportation (pipeline or otherwise), to the refinery, to storage tanks to tanker trucks and finally to the fossil fuel station and the combustion of the product(s) once sold to the consumer. Perhaps this is not the way it is looked at by the CEQA Initial Study, but arguably it should be viewed this way.

For the second question, see further below for a discussion of Mendocino County's Climate Emergency Declaration and how we argue that it clearly applies here.

One other curious observation is the County's apparent willingness to accommodate the applicant's desire to keep open the median at the intersection of Hwy 101 and North State Street, as expressed in the Transportation Impact Study (TIS). However, CalTrans convincingly disabuses the County of this idea in its letter of August 11, 2023:

"The Revised TIS suggests alternatives to a median closure and constructs arguments that claim that the US 101/North State Street intersection is not currently experiencing collision rates above the Statewide average, therefore it is not expected to result in a safety risk with project trips added to the system identified in the analysis. The following reactions to the Revised TIS **identify the flaws** in the premise that keeping the US 101 median open will continue to operate safely ..." It is worth reading the entire CalTrans letter, however, to fully appreciate the arguments made by the State challenging the conclusions of the County's TIS.

One might reasonably think that the County, at this point, with some of the questionable findings in the MND and its TIS, is inexplicably bending over backwards to justify the granting of the Minor Use Permit for Mahmood Alam and the Faizan Corporation. Frankly, the reasons for this are not clearly understood by us at this time.

6. Mendocino County calls for a “just transition away from fossil fuels”

In 2019 the Mendocino County Board of Supervisors (BoS) created the Mendocino County Climate Action Advisory Committee (MCCAAC). One of the enduring acts of this committee was the drafting of a Climate Emergency Declaration,^[9] which was subsequently passed unanimously by the BoS in 2020. This document spells out in no uncertain terms the intent of the County to support a transition away from a dependency on fossil fuels. The combustion of these fuels, being the principal cause of greenhouse gas emissions and a warming planet, have resulted in catastrophic fires, extended drought, power outages and increasingly intense, damage-causing storms in Mendocino County and throughout California.

Here are a few key paragraphs from the Mendocino County Climate Emergency Declaration:

*WHEREAS, the County of Mendocino **must do everything in its power** to encourage a swift conversion to an ecologically, socially, and financially sustainable economy.*

*NOW, THEREFORE BE IT RESOLVED, the COUNTY OF MENDOCINO declares that a **climate emergency threatens humanity** and the natural and built environments; and*

*BE IT FURTHER RESOLVED, that the COUNTY OF MENDOCINO joins a worldwide call for a **just transition away from fossil fuels** and an urgent collaborative climate mobilization effort focused on enacting policies that dramatically reduce heat-trapping emissions, and rapidly catalyzing a mobilization at all levels of government to restore a safe climate; and*

*BE IT FURTHER RESOLVED, the COUNTY OF MENDOCINO commits to ongoing education and **active engagement of all County staff, members of committees and commissions**, contractors, consultants, residents and independent community groups in alignment with the goals of mitigation, drawdown and adaption; and*

*BE IT FURTHER RESOLVED that the Board of Supervisors commits to **addressing the climate implications of all policies and actions that come before the Board** that have the potential to impact greenhouse gas emissions, ...*

And on a somewhat related matter, last September, the State of California filed a lawsuit against all of the major oil companies, including Chevron, in a move to hold these companies liable and accountable for the alleged lies and deceptions perpetrated on the public related to fossil fuels and climate change.^[10]

“Oil and gas companies have privately known the truth for decades — that the burning of fossil fuels leads to climate change — but have fed us lies and mistruths to further their record-breaking profits at the expense of our environment. Enough is enough,” said Attorney General Rob Bonta.

Given this context, it is not hard to conclude that granting a Minor Use Permit to green-light the construction of yet another, “business as usual” fossil fuel infrastructure project in Mendocino County flies in the face of both the spirit and the intent of the County’s Climate Emergency Declaration.

Conclusion

The Planning Commission now has an opportunity to do the right thing and use its discretionary powers to deny the approval of this unneeded, unwanted and ill-conceived fossil fuel infrastructure project. Even without the dubious history of the applicant being charged with countless violations of petroleum storage tank safety regulations, the project should be denied on the merits alone. Knowing this history of safety violation accusations, however, now makes denial of this application an absolute public health and safety imperative.

Furthermore, well into the 21st century with humanity facing a climate emergency^[11] and as the State of California methodically moves forward with an aggressive transition to emissions-free transportation, the construction of yet another 20th century style, fossil fuel infrastructure project destined to eventually become obsolete makes no sense.

And finally, operating a hazardous materials site such as a Chevron gas station means being entrusted by public entities such as the Planning Commission to faithfully follow all safety laws and requirements. Those who repeatedly fail to take this responsibility seriously and instead systematically avoid or ignore State mandated health and safety measures end up putting the public and the environment at risk. Projects like this should not warrant approval just because the applicant somehow receives the blessing of Planning and Building Services. The Planning Commission has a much greater responsibility in these matters and needs to act with the broader public interest in mind.

So in conclusion, for the multitude of reasons set forth in this document and the various statements made by others elsewhere in opposition to this project over the years, the requested Minor Use Permit for this new Chevron gas station in Redwood Valley should be denied, with prejudice.

References

1. **Sonoma County DA** - *Faizan Corp. fined \$500,000 for Environmental Safety Violations*
<https://da.sonomacounty.ca.gov/faizan-corporation-and-mahmoud-alam-to-pay-500000-to-settle-violations-at-numerous-retail-gas-stations-in-california>
2. **EPA** - *Underground Storage Tanks*
<https://www.epa.gov/ust>
3. **State of California** - *SBX1-2*
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320241SB2
4. **California Assembly** - *Text of the California Climate Crisis Act (AB 1279)*
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1279
5. **State of California** - *Executive Order N-79-20*
<https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf>
6. **Autoweek** - *California Sets New EV Sales Record*
<https://www.autoweek.com/news/a44773527/california-ev-sales-record-2023/>
7. **BCG** - *Is There a Future for Service Stations?*
<https://www.bcg.com/publications/2019/service-stations-future>
8. **California Energy Commission** - *Retail Fuel Outlet Annual Reporting*
<https://www.energy.ca.gov/data-reports/energy-almanac/transportation-energy/california-retail-fuel-outlet-annual-reporting>
9. **Mendocino Co. BoS** - *Declaration of Climate Emergency (unanimous vote in 2020)*
<https://www.cedamia.org/wp-content/uploads/2020/08/Mendocino-County-Declaration-of-Climate-Emergency.pdf>
10. **State of California** - *California files Lawsuit against Big Oil*
<https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-lawsuit-against-oil-and-gas-companies>
11. **BioScience** - *Entering uncharted territory. 15,000 scientists recognize climate emergency.*
<https://academic.oup.com/bioscience/advance-article/doi/10.1093/biosci/biad080/7319571>