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Mendocino County

**From:** Gretchen Anderson <ganderson@vmm-law.com>  
**Sent:** Tuesday, December 5, 2023 1:30 PM  
**To:** pbscommissions  
**Cc:** Julia Krog; Liam Crowley; Brian Momsen; Haji M.Alam  
**Subject:** Faizan Corporation U\_2021-0016, V\_2021-0005  
**Attachments:** LtrPlanningCommission12.5.23.pdf

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Planning & Building Services

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Attached please find correspondence regarding the above-referenced matter.

Thank you

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Thank you

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December 5, 2023

Mendocino County Planning Commission  
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RE: Faizan Corporation U\_2021-0016, V\_2021-0005

Dear Planning Commissioners:

This office represents Faizan Corporation and Mahmood Alam regarding the above-referenced applications. This letter shall address and oppose conditions of approval 33 and 34 of the draft resolution prepared by Building and Planning Staff, as well as the proposed denial of the requested variance for sign height. Please make this letter part of the public record for the hearing on this matter currently scheduled for December 7, 2023.

## **Exactions Requiring Public Improvements to U.S. 101**

Proposed Condition 33 requires the applicant, at its sole expense, to permanently close the median on U.S. 101 between N. State St. and Uva Dr. Proposed Condition 34 requires the applicant, at its sole expense, to construct acceleration/deceleration lanes on U.S. 101 adjacent to the N. State St and Uva Dr. exits, neither of which currently have on ramps or off ramps. Both these conditions were suggested by Caltrans and if adopted, would necessitate the applicant to apply for additional permits from Caltrans. Neither of these conditions was suggested by the County Department of Transportation.

Notably, Faizan applied to the County of Mendocino for a similar project with four fewer pumps in 2016 which the County approved without either of these conditions. While there was concern regarding North State Street's interface with U.S. 101 in the 2016 planning process, Caltrans and County Staff were satisfied with conditions of approval prohibiting left turns. No condition of approval required the applicant to obtain additional permits for work on U.S. 101.

The reason Faizan did not develop the project after the 2016 application was approved was because a neighboring resident who had committed to granting a parking easement at the public hearing, reneged on that commitment. Faizan has since resolved that issue, but in the meantime, the 2016 permit expired such that a new application was submitted in 2021.

As shown in Attachment G to the current Staff Report, on February 18, 2022, Caltrans submitted a letter in response to Staff's request for comments on this application which in relevant part asked that the traffic study prepared for the 2016 project application be updated because of both the passage of time and the fact that the current application proposed a ten-pump station instead of six pumps. It is my understanding from discussions both with the applicant and County Staff that Caltrans, at least initially, did not request that the traffic study address the N. State St/Uva Dr interface with U.S. 101 because Caltrans had already approved its own project to construct a cable median barrier which, when finished, would prevent cross traffic over the freeway.

Faizan paid for the updated traffic study. Thereafter, on March 3, 2023, Caltrans submitted an updated letter to County Staff which is attached as Exhibit H to the Staff Report which in relevant part states that after a meeting with its Traffic Safety Branch the previous week, Caltrans determined that its cable median project that originally proposed to block cross traffic and left turns over U.S. 101 between N. State St and Uva Dr "cannot be extended further north" and will end a few hundred feet south of the intersection. The letter then demands that Faizan update the traffic study again to include an analysis of the N. State St/Uva Dr interfaces with U.S. 101 and the cross traffic. Faizan paid its consultant to perform this scope of work. The updated study does not recommend that the median be closed but does recommend the acceleration/deceleration lanes. Not surprisingly, Caltrans in later correspondence requests that the applicant pay for both measures. County Staff, going along with Caltrans, is now recommending Conditions 33 and 34.

The U.S. Supreme Court in the decisions of *Nollan v. California Coastal Commission* 483 U.S. 825 (1987) and *Dolan v. City of Tigard* 512 U.S. 374 (1994) applied the "heightened scrutiny" level of judicial review to examine certain conditions cities or other government entities apply to development projects. In contrast to a more deferential standard, heightened scrutiny places the burden of proof on the city to establish an "essential nexus" and a "rough proportionality" between a project's impacts and the particular requirement imposed. If the regulation goes too far, courts have held that such regulations are a "taking" in violation of The Fifth Amendment of the U.S. Constitution such that the government must pay just compensation to the property owner.

In *Dolan*, a hardware store owner applied to expand the size of its parking lot which would have resulted in a larger paved surface and increased traffic. The City conditioned approval on the property owner dedicating roughly 10% of its property to be used as a floodplain between the proposed parking lot and an adjacent creek and as a bike path. The U.S. Supreme Court held that these conditions did have an essential nexus to the project's impacts as they mitigated increased run-off and increased traffic. However, the Supreme Court also held that these conditions were not "roughly proportional" to the project's impacts and that the property owner was shouldering too much of the burden for public improvements such that proposed conditions were an unconstitutional taking.

In this case, a local contractor with experience with construction work on US 101, Ernie Wipf will appear at the hearing and testify that applicant satisfying conditions 33 and 34 will cost roughly \$2 million and significantly delay the gas station project. Caltrans suddenly cutting their proposed cable barrier project a few hundred feet short of the Uva Dr./N. State St interface

on March 3, 2023, after initially not even requesting that the applicant's traffic study consider this intersection, does not pass the "smell test." Caltrans had planned to close the median between N. State St. and Uva Dr. and construct the deceleration/acceleration lanes all along before seeing a golden opportunity to stick these construction costs on a private party. Any other assumption is naive. But for Faizan's permit application, Caltrans likely would have completed this scope of work already.

The costs of public improvements should not be borne solely by a private property owner. Of course, left turns and cross traffic over a four-lane freeway is a not a desirable condition and never has been. The traffic from Faizan's project may increase the risk of collisions to some degree but so do other factors such as the large newly constructed casino a mile to the south and population growth in general. Eventually the U.S. 101 median between N. State St. and Uva Dr. will have to be closed as has been the case all over the state on this highway when population and development in a once rural area reaches a certain threshold. This burden should not be put on one gas station project because the proposed number of pumps has increased from six to ten. This is not Costco.

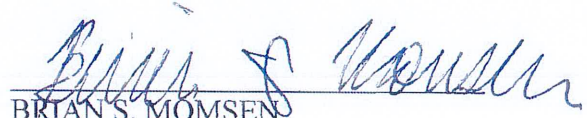
### **Requested Sign Variance**

A variance is a permit issued to a landowner to build a structure or engage in some action not otherwise permitted under the current zoning regulations. The statutory justification for a variance is that the owner would otherwise suffer a unique hardship under general zoning regulations because a particular parcel is different from the others to which the regulation applies due to its size, shape, topography location or surroundings. (Government Code 65906) In this case, as will be shown by photographs at the hearing, Faizan's parcel has a depressed elevation, and a hillside obscures the view of any low height sign to traffic on U.S. 101 driving north to south. These factors are nowhere to be found in the Staff's Report's analysis. The Staff report also only looks at Starbucks on Perkins St and the Coyote Valley Casino to the north as it's "comps" so to speak, for similarly situated properties with signage higher than 35 feet. The Report has a photo of the gas station sign for Jensen's Truck Stop as an exhibit but does not discuss Jensen's Truck Stop. There is a sign over 35 feet at Jensen's Truck stop and that parcel, unlike this project, is not depressed in elevation, nor is there a hill obstructing the view of drivers on 101.

There is not much of a sample size for similarly situated gas station properties along U.S. 101 in Mendocino County and Staff should consider comparing properties from other counties. It is common all over the State that gas stations adjacent to US 101 like Faizan's herein display a sign taller than 35 feet.

Very truly yours,  
VANNUCCI MOMSEN MORROW

BY:

  
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