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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JOHN TEIXEIRA, STEVE
NOBRIGA, GARY GAMAZA,
CALGUNS FOUNDATION (CGF),
INC., SECOND AMENDMENT
FOUNDATION (SAF), INC., and
CALIFORNIA ASSOCIATION OF
FEDERAL FIREARMS LICENSEES
(Cal-FFL),

Plaintiffs,

vs.

COUNTY OF ALAMEDA, ALAMEDA
BOARD OF SUPERVISORS (as a
policy making body), WILMA CHAN
in her official capacity, NATE MILEY
in his official capacity, and KEITH
CARSON in his official capacity,

Defendants.

CASE NO.: 3:12-CV-03288 - SI

COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF and/or
DECLARATORY JUDGMENT

28 USC §§ 2201, 2202

42 USC §§ 1983, 1988

SECOND AMENDMENT AND FOURTEENTH
AMENDMENT

JURY TRIAL DEMANDED
(For Damages Only)

INTRODUCTION

This suit seeks damages and injunctive relief (and/or declaratory relief) to compensate plaintiffs for damages and force the defendants to refrain from policies, practices and customs that are hostile to the United States Constitution. In spite of recent Supreme Court precedent, the County of Alameda remains among a handful of jurisdictions in the nation that refuses to treat the rights protected by the Second and Fourteenth Amendments with the constitutional dignity required by law.

PARTIES

1. Plaintiff JOHN TEIXEIRA is an individual who is a citizen of the United States and a resident of Alameda County.
2. Plaintiff STEVE NOBRIGA is an individual who is a citizen of the United States and a resident of San Joaquin County.
3. Plaintiff GARY GAMAZA is an individual who is a citizen of the United States and a resident of Alameda County.
4. Plaintiff THE CALGUNS FOUNDATION, INC., (CGF) is a non-profit organization incorporated under the laws of California with its principal place of business in San Carlos, California. The purposes of CGF include supporting the California firearms community by promoting education for all stakeholders about California and federal firearms laws, rights and privileges, and defending and protecting the civil rights of California gun owners. As part of CGF's mission to educate the public – and gun-owners in particular – about developments in California's firearm laws, CGF maintains a website at <http://calgunsfoundation.org> and contributes content to various print and online media. On their website CGF informs its members and the public at large about pending civil and criminal cases, relating to developments in federal and California gun law. The website hosts forums and publishes notices that document the concerns that California gun owners

threats to their Second Amendment rights. CGF expends financial and other resources in both litigation and non-litigation projects to protect the interests of their patrons, members and the public-at-large. CGF brings this action on behalf of itself and its supporters, who possess all the indicia of membership.

5. Plaintiff SECOND AMENDMENT FOUNDATION, INC., (SAF) is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. SAF has over 650,000 members and supporters nationwide, including California. The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right to privately owned and possess firearms, and the consequences of gun control. SAF expends financial and other resources in both litigation and non-litigation projects to protect the Second Amendment rights its members and the public-at-large. SAF brings this action on behalf of itself and its members.

6. Plaintiff CALIFORNIA ASSOCIATION OF FEDERAL FIREARMS LICENSEES, INC., (Cal-FFL) is a non-profit industry association of, by, and for firearms manufacturers, dealers, collectors, training professionals, shooting ranges, and others, advancing the interests of its members and the general public through strategic litigation, legislative efforts, and education. Cal-FFL expends financial and other resources in both litigation and non-litigation projects to protect the interests of their members and the public-at-large. Cal-FFL brings this action on behalf of itself and its members.

7. Defendant COUNTY OF ALAMEDA is a state actor located in the State of California. Defendant COUNTY OF ALAMEDA is responsible for setting policies and procedures relating to land use regulations within the County of Alameda – including but not limited to promulgating and interpreting land use regulations and granting conditional use permits and variances to those regulations. Alameda County has an established pattern and practice of

1 hostility to persons, businesses and organization that seek to advance,
 2 expand and enforce the fundamental, individual “right to keep and bear
 3 arms” and has historically and aggressively sought to enact local legislation
 4 inimical to that right.

5 8. The ALAMEDA BOARD OF SUPERVISORS is a government body that sets
 6 land use policies in the County of Alameda through their power of legislative
 7 rule making, oversight of administrative agencies and the power to review
 8 appeals of land use decisions by subordinate administrative agencies.

9 9. Supervisor WILMA CHAN was a member of the ALAMEDA BOARD OF
 10 SUPERVISORS when they took actions that deprived the plaintiffs of
 11 constitutionally protected rights. She is sued in her official capacity.

12 10. Supervisor NATE MILEY was a member of the ALAMEDA BOARD OF
 13 SUPERVISORS when they took actions that deprived the plaintiffs of
 14 constitutionally protected rights. He is sued in his official capacity.

15 11. Supervisor KEITH CARSON was a member of the ALAMEDA BOARD OF
 16 SUPERVISORS when they took actions that deprived the plaintiffs of
 17 constitutionally protected rights. He is sued in his official capacity.

18 12. The names of any possible co-actors in the scheme to deprive plaintiffs of
 19 their constitutional rights are unknown at this time. Plaintiffs reserve the
 20 right to amend this complaint to add defendants if/when their identities are
 21 discovered.

22 23 **JURISDICTION AND VENUE**

24 13. This action arises under the United States Constitution, this Court also has
 25 jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1983 and 1988.

26 14. As the Plaintiffs are seeking declaratory relief, this Court has jurisdiction
 27 over this action pursuant to 28 U.S.C. §§ 2201 and 2202.

28 15. Venue for this action is properly in this District pursuant to 28 U.S.C. § 1391.

16. All conditions precedent, including exhaustion of administrative remedies where required, have been performed, have occurred, are futile or unnecessary where the government infringes on a fundamental right.

FACTS

Facts Common to All Licensed Retail Gun Stores

17. Businesses offering gun smithing services and retail firearm sales are strictly licensed and regulated by state and federal law. Thus all employees working at a gun store, and all clients/customers are required to be law-abiding citizens who must pass a criminal background check to be employed at or make a purchase from a licensed gun store.

18. The mere presence of firearms, albeit privately owned rather than as business inventory, in a residential district is beyond the control of local governments under California's preemption doctrine (Government Code § 53071) and statutory law. See: *Doe v. City and County of San Francisco*, 136 Cal. App. 3d 509 and *Fiscal v. City and County of San Francisco*, 158 Cal. App. 4th 895. In other words, there is nothing in federal or state law that prohibits a law abiding gun owner, who might be a collector or shooting enthusiast, from owning and keeping scores of firearms and ammunition at his residence. Therefore local governments like the County of Alameda cannot prevent a law-abiding gun owner from collecting and storing an unlimited number of firearms (and/or ammunition) in his home. Therefore, a residence, and by extension, a residentially zoned district, cannot be a designated as a sensitive place with respect to the mere presence of firearms. See also: *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 561 U.S. ___, 130 S.Ct. 3020 (2010).

19. The transportation of firearms is particularly and strictly regulated by state law. For any person not licensed to carry concealed firearms, all firearms

1 must be transported unloaded and handguns must be transported in a locked
2 container. See CA Penal Code § 25300 *et seq.*

3 20. Furthermore, properly transported firearms may even be transported
4 through the thousand foot radius of a presumptively sensitive Gun-Free
5 School Zone. CA Penal Code § 626.9.

6 21. The State of California strictly regulates who may purchase/acquire firearms.
7 Some form of mandatory training is a required showing before a licensed
8 firearm dealer and transfer a firearm. For example:

9 a. Fish and Game Code section 3050 and the California Code of
10 Regulations, Title 14, section 710, provide that no hunting license shall
11 be issued unless the applicant presents:

- 12 i. evidence that he or she has held a hunting license issued by this
13 state in a prior year; or
- 14 ii. evidence that he or she holds a current hunting license issued by
15 another state or province; or
- 16 iii. a certificate of completion of a course in hunter safety, principles
17 of conservation, and sportsmanship, as provided in this article,
18 with a hunter safety instruction validation stamp affixed
19 thereto; or
- 20 iv. a certificate of successful completion of a hunter safety course in
21 another state or province; or
- 22 v. evidence of completion of a course in hunter safety, principles of
23 conservation, and sportsmanship, which the commission may, by
24 regulation, require.

25 b. Effective January 1, 2003, any person who wishes to receive a handgun
26 through a sale or transfer must have a valid Handgun Safety
27 Certificate (HSC) or a qualifying exemption. Any person who wishes to
28 obtain an HSC must pass a written test that includes, but is not

limited to, laws applicable to carrying and handling firearms, particularly handguns; responsibilities of ownership of firearms, particularly handguns; the law related to the private sale/transfer of firearms; the law as it relates to the permissible use of lethal force; safe firearm storage; and issues & prevention strategies associated with bringing firearms into the home. (CA Penal Code § 26800 *et seq.*) A DOJ Certified Instructor may charge each HSC applicant a fee of up to \$25 to cover the costs of providing the test and issuing the certificate. (CA Penal Code §§ 31645, 31650.)

c. Any person who takes delivery of a handgun from a firearms dealer must first successfully demonstrate to a DOJ Certified Instructor that he or she is able to handle that handgun safely and that he or she can properly operate all of the safety features. Any person who has an exemption to the HSC requirement is also exempt from this requirement. (CA Penal Code §§ 26850(a)-(b), 26853, 26856, 26859)

22. Furthermore gun stores are partners with federal, state and local law enforcement agencies on the issues of gun safety and helping to stop gun crimes. For example, in California private party transfers of all firearms must occur through a licensed dealer unless the transfer is subject to very narrow exceptions (e.g., antique, curio, relic, long-gun transfers between immediate family members) (CA Penal Code §§ 16130, 16400, 16550, 16810, 17110, 26700-26915 (inclusive), 27500-27590, 28050-28070).

23. Licensed gun stores are one of only two places (firearm dealer and law enforcement agency) where someone subject to a “domestic violence restraining order” can turn in their guns in order to comply with federal and state law. See CA Family Code § 6389 *et seq.*

24. Thus licensed gun stores facilitate making sure that appropriate safety training has occurred, that the person is not prohibited from acquiring

firearms, and that consumers are advised of their duties of safe storage of firearms. They also act as a temporary repository for the safe-keeping of firearms during domestic disputes.

25. Far from being a necessary evil, licensed gun stores are a net positive to the communities they serve. They not only provide the means of exercising a fundamental right, but they ensure that transfer laws are complied with and government mandated safety programs are effective.

Case Specific Facts

26. In the Fall of 2010, plaintiffs JOHN TEIXEIRA , STEVE NOBRIGA and GARY GAMAZA formed a business partnership named VALLEY GUNS AND AMMO (VGA) for the purpose of opening a gun store in Alameda County.

The products and services to be offered at VGA include but are not limited to:

- a. Training and certification in firearm safety. (e.g., state-mandated Hunter Safety Classes, Handgun Safety Certificates, etc...)
- b. General gun-smithing services.
- c. Sale and advice regarding reloading equipment and their components.
- d. Consignment sale of used firearms.
- e. Sale of new and used firearms.
- f. Sale of Ammunition.
- g. Offering classes in gun safety, including safe storage of firearms in accordance with state law.

27. As part of their plan for opening a gun store VGA conducted market research among gun enthusiasts in and around Alameda County and obtained feedback from approximately 1,400 people indicating that a full service gun store located in San Lorenzo would be a success, in part, because existing retail establishments (e.g., general sporting good stores) do not meet customer needs and demands. In fact, gun stores that can provide the level

1 of personal service contemplated by VGA are a central and important
 2 resource for individuals trying to exercise their Second Amendments rights.
 3 Not only do smaller retail establishments provide arms and ammunition for
 4 exercising Second Amendments, they also provide personalized training and
 5 instruction in firearm safety and operation. Plaintiffs therefore bring this
 6 action on behalf of their actual and prospective customers, as well as
 7 themselves. *Craig v. Boren*, 429 U.S. 190 (1976).

8 28. A licensed gun store like the one VGA contemplate opening, would facilitate
 9 making sure that appropriate safety training has occurred, that the
 10 prospective gun-buyer is not prohibited from acquiring firearms, and that
 11 consumers are advised of their duties of safe storage of firearms. They also
 12 act as a temporary repository for the safe-keeping of firearms during
 13 domestic disputes.

14 29. Plaintiff TEIXEIRA had previously owned a gun store in Castro Valley, both
 15 he and Plaintiff NOBRIGA either already hold valid Federal Firearms
 16 Licenses or would easily qualify to hold such a license.

17 30. Plaintiffs TEIXEIRA, NOBRIGA and GAMAZA either already hold valid
 18 licenses from the State of California to engage in the business of selling
 19 firearms or would easily qualify to hold such a license.

20 31. Plaintiff TEIXEIRA, NOBRIGA and GAMAZA set about the process of
 21 contacting the Alameda County Planning Department for advice on obtaining
 22 the appropriate land use permits to open their store in the Fall of 2010.

23 32. In November of 2010, plaintiffs TEIXEIRA, NOBRIGA, and GAMAZA were
 24 informed that their business location would have to meet a requirement that
 25 gun stores must not be located within 500 feet of any school, liquor store or
 26 residence. (Alameda County Land Use Regulations – Conditional Uses –
 27 Firearms Sales. 17.54.131)

28 33. From Alameda Ordinance § 17.54.131, those requirements are:

- 1 a. That the district in which the proposed sales activity is to occur is
- 2 appropriate;
- 3 b. That the subject premises is not within five hundred (500) feet of any of
- 4 the following: Residentially zoned district; elementary, middle or high
- 5 school; pre-school or day care center; other firearms sales business; or
- 6 liquor stores or establishments in which liquor is served;
- 7 c. That the applicant possesses, in current form, all of the firearms dealer
- 8 licenses required by federal and state law;
- 9 d. That the applicant has been informed that, in addition to a conditional use
- 10 permit, applicant is required to obtain a firearms dealer license issued by
- 11 the county of Alameda before sale activity can commence, and that
- 12 information regarding how such license may be obtained has been
- 13 provided to the applicant;
- 14 e. That the subject premises is in full compliance with the requirements of
- 15 the applicable building codes, fire codes and other technical codes and
- 16 regulations which govern the use, occupancy, maintenance, construction
- 17 or design of the building or structure;
- 18 f. That the applicant has provided sufficient detail regarding the intended
- 19 compliance with the Penal Code requirements for safe storage of firearms
- 20 and ammunition to be kept at the subject place of business and building
- 21 security.
- 22 34. This 500 foot zoning rule is a recent land use regulation. The 500 foot zoning
- 23 regulation has no basis in empirical studies or criminological science. It is
- 24 NOT a long-standing rule/regulation with respect to retail firearm sales.
- 25 35. The County of Alameda only requires Conditional Use Permits (CUP) for
- 26 Firearm Sales and "Superstores." (Alameda Ordinance §§ 17.54.131,
- 27 17.54.132) Thus retail stores selling firearms – even though they are already
- 28 strictly regulated by state and federal law – are treated differently from other

1 retail stores selling similar products without any reasonable basis for
2 believing that the CUP will advance public safety.

3 36. Plaintiffs allege on information and belief, that as of February 2013, there
4 are 29 Federal Firearm Licensees (FFLs) in Alameda County. Many of these
5 FFLs are not located in commercial buildings open for retail firearm sales.

6 37. Plaintiffs further allege on information and belief, that the CUP
7 requirements of Alameda Ordinance § 17.54.131, have not been imposed
8 against many of these 29 FFLs, who either: (A) are not currently in
9 compliance with the restrictions imposed against VGA, or (B) were never
10 required to comply with the restrictions imposed against VGA.

11 38. In attempting to assess a proposed site for compliance with the CUP, VGA
12 was informed by the Alameda County Planning Department that the 500 foot
13 measurement should be taken from the closest door in the subject property to
14 the front door of any disqualifying property. VGA relied upon this
15 information – the only information provided by county authorities – in
16 seeking an appropriate commercial location to open their gun store.

17 39. In April of 2011, plaintiffs TEIXEIRA, NOBRIGA, and GAMAZA located a
18 suitable property at 488 Lewelling Blvd., in San Leandro. They met with the
19 landlord and formed an agreement to lease the property. They obtained the
20 landlords permission to conduct preliminary preparations to comply with
21 federal and state requirements for operating a gun store. (e.g., building
22 security studies, commissioning architectural drawings, etc...)

23 40. The subject property has only one door which faces Lewelling Blvd.

24 41. Plaintiffs TEIXEIRA, NOBRIGA, and GAMAZA obtained a survey which
25 shows the distance to one residential property on Albion Ave, located across
26 Hesperian Blvd., measured 534 feet from the front door of the subject
27 property (facing Lewelling Blvd.) to the front door of the residential property
28 on Albion Ave. The same survey showed a distance of 532 feet and 560 feet,

1 respectively, to the two front doors of the next closest residential properties
2 located across 12 lanes of Interstate 880 in the San Lorenzo Village.

3 42. There are no other buildings located within a 500 foot radius of the front door
4 of the subject property that would disqualify the subject property from use as
5 a gun store under the County's land use regulations.

6 43. Based on these surveys and assurances from the Alameda County Planning
7 Department, Plaintiffs TEIXEIRA, NOBRIGA, and GAMAZA incurred
8 contractual obligations and expenses to begin preparing the subject property
9 for their gun store.

10 44. Notwithstanding the fact that the property at 488 Lewelling Blvd., did not
11 come within 500 feet of any disqualifying property, a hearing was scheduled
12 by the West County Board of Zoning Adjustment on or about November 16,
13 2011 to take up the issue of a Conditional Use Permit and a Variance of the
14 subject property. Said hearing was continued to December 14, 2011. The
15 staff reports issued for both hearings recommended a denial of the
16 (unnecessary) variance based (erroneously) on the proposition that the
17 subject property was less than 500 feet from a disqualifying property.

18 45. Plaintiffs allege on information and belief, that in order to disqualify the
19 property at 488 Lewelling Blvd., Defendants or some co-actor working with
20 them, sought to defeat the variance, and caused the measurements to be
21 taken from the front doors of the disqualifying residential properties to the
22 closest possible part of the building that was to become the Plaintiffs' gun
23 store. The end-point used to defeat the variance at the subject property was
24 a brick wall with no door. This trick of moving the end-points to defeat the
25 variance was done to defeat the plaintiffs' project of opening a gun store at
26 the subject property. Furthermore, this trick was also motivated by an
27 animus toward the rights of the plaintiffs and their potential customers and
28 patrons to exercise their rights to acquire – and therefore “keep and bear

arms.” The burdens on the plaintiffs and their customers’ Second Amendment rights include, but is not limited to a restriction on convenient access to a neighborhood gun store and the corollary burden of having to travel to other, more remote locations to exercise their rights to acquire firearms and ammunition in compliance with the state and federal laws requiring the purchase of these constitutionally significant artifacts from licensed stores.

46. On or about November 16, 2011 the Alameda County Community Development Agency Planning Department issued its Staff Report on the CUP and Variance for our store. A true and correct copy is attached as **Exhibit A**. Please note the following adoptive admissions and/or undisputed facts regarding the Planning Department’s findings. (page numbers refer to the PDF page number of the Exhibit, not the page number of the report):

a. Heading: **SITE AND CONTEXT DESCRIPTION**,

i. Pg. 2: Sub-Heading: Physical features: “The only access to the property is the frontage on Lewelling Boulevard.”

ii. Pg. 2: Sub-Heading: Adjacent area: “The residential properties are across Highway 880 to the southwest, and across Hesperian Boulevard to the east.

b. Heading: **PROJECT DESCRIPTION**, Pg. 3:

i. Alameda County claims that the distance from the gun shop to the nearest residential district is 446 feet.

ii. The County admits that it measured the distance from the closest building exterior wall of the gun shop to the property line of the residentially zoned district.

iii. By negative admission, there are no other disqualifying properties within a 500 foot radius from any point of measurement from the proposed gun shop.

c. Heading: **REFERRAL RESPONSES,**

- i. Pg. 3: Most of the other “stake-holders” only wanted to be sure that the gun store would comply with existing federal and state laws regarding firearms sales, safe-storage and licenses.
- ii. Pg. 4: This is the part of the staff report that repeats the extraordinary claims by the San Lorenzo Village Home Association, none of which specifically addressed why a gun store located 500 feet away from disqualifying property would be safe for the community, but a gun store located an (alleged) 446 feet away would not be safe for the community. Similar vague and ambiguous complaints are lodged against the variance by the Cherryland Community Association, and the Ashland Area Community Association.
- iii. Pg. 4: The City of San Lorenzo took no position on the proposed variance to allow the gun store to open.

d. Heading: **STAFF ANALYSIS,**

- i. Pg. 4 - 6: Sub-Heading: Conformance with the General Plan: This section of the report deals with the entirely arbitrary and subjective opinion of Staff as to whether a gun store would be a “questionable use” when guided by the *Eden Area General Plan*.
- ii. Pg. 6: Sub-Heading: Conformance with the Specific Plan: In this sections Staff admits that firearm retail sales are “illustrative examples of the types of general commercial and land uses along busy streets that access from freeways.”
- iii. Pg. 7: Sub-Heading: Conformance with the Zoning Ordinance: Here the report sets out the text of §§ 17.54.131 and 17.54.141 regarding Conditional Use Permits for gun stores.

e. Heading: **GENERAL DISCUSSION,**

- i. Pg. 7: The report notes that applicants have 38 years of firearm retail experience and knowledge. That they are owner/operators who will personally attend the shop five days a week, Tuesday through Saturday, 10:00 a.m. to 6:00 p.m.
- ii. Pg. 8: confirms that VGA's business partners collected 1,200 individually signed letters of support from the general public and 113 letters were from police officers and a personal letter of endorsement from the former Sheriff of Alameda County – Charles C. Plummer.
- iii. Pg. 8: Sub-Heading: **SERVICES PROVIDED**, notes that VGA was set to provide more than just gun and ammunition sales. The business was also set to provide:
 - (1) firearm instruction,
 - (2) classes in hunter safety by certified instructors,
 - (3) handgun safety certificate testing (as required by law),
 - (4) repairs,
 - (5) consignment sales and appraisals,
 - (6) sales of gun safes,
 - (7) hunting and fishing tags and licenses,
 - (8) and although they are currently illegal to buy or sell to the general population in California, VGA agreed that no ASSAULT WEAPONS would be sold at the store.
- iv. Pg. 8: Sub-Heading: **DISTANCE FROM OTHER BUSINESSES & NON-RESIDENTIAL SENSITIVE USES**, Here the County admits that there are no other disqualifying property uses within 500 feet of VGA's proposed gun store. (e.g., elementary, middle or high school; pre-school or day care center, other firearms sales business or liquor store.)

- v. Pg. 8: Sub-Heading: **DISTANCE FROM RESIDENTIAL ZONED PROPERTY**, Here the County admits that it uses more than one endpoint to measure distances to residentially zoned properties.
- (1) The County measured a distance of 446 feet from the closest exterior wall to the property at Albion Avenue. (The current resident at this property has no objection to the store.)
- (2) It measured the same 446 foot distance from the closest exterior wall, to a another property across 12 lanes of Interstate 880 and concrete barriers, located at Paseo del Rio in San Lorenzo Village.
- vi. Pg. 8: Sub-Heading: **PARKING**. The County admits that there is adequate parking for the proposed gun store.
- f. Heading: **TENTATIVE FINDINGS BASED ON INFORMATION AVAILABLE PRIOR TO THE PUBLIC HEARING**
- i. Pg. 9: Sub-Heading: Conditional Use Permit:
- (1) To the question: "Is the use required by the public need?" The County answers: Yes.
- (2) To the question: "Will the use properly relate to other land uses and transportation and service facilities in the vicinity?" The County answers: Yes.
- (3) To the question: "Will the use, if permitted, under all circumstances and conditions of this particular case, materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood?" The County

1 answers: No.

2 (4) To the question: "Will the use be contrary to the specific
3 intent clauses or performance standards established for
4 the District in which it is to be considered?" The County
5 answers: Yes, citing the 500 foot rule and noting that a
6 variance would be required and that a variance
7 application has been made.

8 ii. Pgs. 9 - 10: Under a section of additional findings,

9 (1) The County again raises the wholly subjective opinion
10 about whether a gun store is desirable under the *Eden*
11 *Area General Plan*.

12 (2) The County again notes the 500 foot requirement but
13 concedes that the one of disqualifying properties is 446
14 feet across the 880 freeway. However the County
15 erroneously states that the other residential property that
16 is also 446 feet from the proposed gun shop is easily
17 accessed. But that can only be true if the person is able to
18 walk through existing fences as the crow flies. The
19 walking distance is well over 500 feet.

20 (3) The County concedes that VGA has all required licenses
21 and knowledge to run a gun store and that plaintiffs can
22 meet the additional requirements imposed by the Sheriff
23 and Fire Marshall, in addition to bringing the building up
24 the modern code requirements for wheel chair access and
25 other building codes.

26 g. Heading: **TENTATIVE FINDINGS BASED ON INFORMATION**
27 **AVAILABLE PRIOR TO THE PUBLIC HEARING.**

28 i. Pgs. 10 - 11: Nevertheless, staff recommended a denial of the

request for a variance based solely on the alleged less-than 500 foot distance between the gun store property and the Albion Way property, based on the ease of traversal from the gun store to the disqualifying property. (The one where the current resident has no objection to a gun store and where it would require someone to walk through fences to get from the gun store to the Albion Way property.)

ii. The County made a finding that the residential properties located across the 12 lanes of Highway 880 **would not** be detrimentally effected by the proposed gun store due to the physical barrier of the highway. These were the properties located in the San Lorenzo Village Homes Association.

h. The rest of **Exhibit A** are the County's exhibits attached to the Staff Report.

47. It so happened that the November 16, 2011 Hearing did not take place and was postponed to December 14, 2011. A true and correct copy of the revised STAFF REPORT is attached as **Exhibit B**:

a. The only substantive changes from the November 16, 2011 Report are the insertion of various pages under a Heading: **CURRENT CHANGES**, starting at page 4 and continuing to page 6.

b. This appears to be an insertion dealing with the different ways in which the 500 foot rule was to be implemented.

c. For the record, the County appeared to acknowledge that different distances could be obtained if the one used a different starting point from the gun store premises. By using the Plaintiffs' equally rational definition of a starting point, the distances to residential properties would measure, respectively, 560 feet, 532 feet and 534 feet.

d. There do not appear to be any other substantive changes to the STAFF

REPORT or their conclusions. (i.e., Staff still recommended against granting the variance.)

48. Despite the Staff recommendation that the variance be denied, THE WEST COUNTY BOARD OF ZONING ADJUSTMENTS granted both the Conditional Use Permit and Variance in their December 14, 2012 meeting. See Exhibit C.

49. VGA has been ready, willing and able to comply with all of the requirements of RESOLUTION NO. Z-11-70. (Which is also part of Exhibit C.)

50. In a letter dated December 16, 2011, plaintiffs TEIXEIRA, NOBRIGA, and GAMAZA were informed that the resolution would be effective on the eleventh day following December 14, 2011 unless an appeal was filed with the Alameda County Planning Department.

51. In an email dated February 23, 2012, plaintiffs TEIXEIRA, NOBRIGA, and GAMAZA were informed that the San Lorenzo Village Homes Association filed an appeal with the Planning Department challenging the West County Board of Zoning Adjustment Resolution Z-11-70.

52. Plaintiffs TEIXEIRA, NOBRIGA, and GARY GAMAZA allege on information and belief that the appeal by the San Lorenzo Village Homes Association was filed on or after December 29, 2011. To be timely, under the eleven-day rule, the appeal was required to be filed on or before December 26, 2011.

53. All plaintiffs allege on information and belief that the late appeal and the illegal consideration of the late appeal by the San Lorenzo Village Homes Association was orchestrated and encouraged by a person or persons hostile to the civil rights of the plaintiffs as guaranteed by the SECOND AND FOURTEENTH AMENDMENTS to the United States Constitution.

54. On February 28, 2012, the Board of Supervisors, acting through Supervisors CHAN, MILEY and CARSON voted to sustain the late-filed appeal by the San Lorenzo Village Homes Association and overturn the decision of the West

County Board of Zoning Adjustment in Resolution Z-11-70. Thus the CUP and Variance granted to VGA by the Board of Zoning Adjustment was revoked.

55. The Alameda County Board of Supervisors appeared to be acting with deliberate indifference to the rights of the Plaintiffs and overt hostility to the fact that it was a gun store, rather than attempt to address any identifiable public safety interest in a reasonable way. Indeed, the Staff Report indicated there were no public safety concerns if the Variance and CUP were granted (as long as VGA ensured compliance with the terms of RESOLUTION NO. Z-11-70). The Staff Report only made the tautological argument that the proposed gun store was allegedly less than 500 feet away from a disqualifying property; without making any argument as to how this wholly arbitrary distance is somehow relevant to land use regulations involving gun stores.

56. Both the “500 Foot Rule” on its face and the erroneous and unreasonable methodology of taking measurements from other than the front door of the subject property have deprived plaintiffs TEIXEIRA, NOBRIGA, and GAMAZA of the ability to open their gun store at the subject property and are thus the proximate cause of the violation of their rights.

57. The gun store that Plaintiffs TEIXEIRA, NOBRIGA and GAMAZA seek to open at 488 Lewelling Blvd., is essential to them assisting their patrons and customers in exercising their SECOND AMENDMENT rights.

58. The gun store that TEIXEIRA, NOBRIGA and GAMAZA seek to open is essential to them exercising their own SECOND AMENDMENT rights.

59. Furthermore, a well and reasonably regulated market for firearms and ammunition is essential to the safety and liberty of all residents in any given community. The proliferation of retail firearm dealers, reasonably regulated in a way that confines gun ownership to law-abiding persons who receive the competence tests and safety training required by state law is an effective

- 1 means of curbing violent crime through exercising the right of self-defense.
- 2 Defendants' red-lining of gun stores out of existence burdens this right.
- 3 60. Subsequent to filing this law suit, in part to mitigate their damages,
- 4 plaintiffs TEIXEIRA, NOBRIGA, and GAMAZA have investigated at least
- 5 three (3) additional properties in Alameda County that would otherwise be
- 6 suitable (location, building security, parking, etc...) for a gun store. All
- 7 prospects were disqualified by either the "500 Foot Rule" or some other
- 8 insurmountable obstacle.
- 9 61. Subsequent to filing this law suit, plaintiffs commissioned a study to
- 10 determine if any prospective gun store could satisfy the CUP based solely on
- 11 having to comply with the "500 Foot Rule." Their conclusion is that it is
- 12 virtually impossible to open a gun store in unincorporated Alameda County
- 13 while complying with this rule due to the density of disqualifying properties.
- 14 Specifically, the study indicates that there is only one parcel in the entire
- 15 unincorporated county that is greater than 500 feet from a residentially
- 16 zoned property, and that parcel is also unavailable as it lies within 500 feet of
- 17 an establishment that sells alcohol. Thus, according to the plaintiffs'
- 18 research, which is based primarily on government agency data, there are no
- 19 parcels in the unincorporated areas of Alameda County which would be
- 20 available for firearm retail sales.
- 21 62. Plaintiffs TEIXEIRA, NOBRIGA, and GAMAZA have incurred damages in
- 22 the form of expenses and costs in securing the use of the subject property and
- 23 for lost profits due to the delay in opening their store.

24

25 *Facts Relating to the "500 Foot Rule"*

- 26 63. Alameda's "500 foot rule" for firearm retail sales is not reasonably related to
- 27 any possible public safety concerns a retail gun store might raise, especially
- 28 when that gun store is otherwise in compliance with all federal, state and

1 local laws relating to firearm sales. Nor does Alameda County articulate
 2 how the “500 Foot Rule” is narrowly tailored to achieve any legitimate
 3 government interest.

4 64. The “500 foot rule” appears to be exclusively designed to limit gun stores by
 5 red-lining (or zoning) them out of existence and thus establishing a condition
 6 that is practically impossible to satisfy in metropolitan areas.

7 65. This pretext of land-use regulations is not unlike the pattern and practice of
 8 local governments using these same regulations to restrict retail
 9 establishments selling constitutionally protected adult-oriented material as
 10 described in a line of U.S. Supreme Court Cases that began with: *Young v.*
 11 *American Mini Theatres, Inc.*, 427 U.S. 50 (1976); and *Schad v. Borough of*
 12 *Mount Ephraim*, 452 U.S. 61 (1981), and continuing through with the cases:
 13 *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Barnes v. Glen*
 14 *Theatre, Inc.*, 501 U.S. 560 (1991). These latter cases developed what has
 15 come to be known as the *secondary effects* doctrine.

16 66. There is no justification for red-lining gun stores. Unlike adult bookstores,
 17 adult live-entertainment establishments and liquor stores, the employees and
 18 patrons of gun stores are – by definition and force of law – law-abiding
 19 citizens. No one can work in a gun store, buy a gun (or ammunition), possess
 20 a gun (or ammunition), or transport a gun (or ammunition) if they are:

- 21 a. A convicted felon,
- 22 b. A misdemeanor convicted of various enumerated crimes of violence,
- 23 including domestic violence,
- 24 c. A person subject to terms of probation that prohibit the possession of
- 25 weapons,
- 26 d. A person subject to a restraining order,
- 27 e. A person found to be a danger to themselves or others due to mental
- 28 illness,

- f. A person addicted to narcotics,
- g. A person under indictment in any court for a crime punishable by imprisonment for a term exceeding one year,
- h. A person who has been discharged from the military under dishonorable conditions,
- i. A person who is a fugitive from justice

67. Plaintiffs allege on information and belief that the County has not conducted (or cited) any *secondary effects* study to back up any claim that the “500 foot rule” serves any compelling, let alone any important, government interest which is required when courts look at “land-use” regulations impacting First and Second Amendment rights. See generally: *Ezell v. City of Chicago*, 651 F.3d 684, 2011 U.S. App. LEXIS 14108. (7th Cir., July 6, 2011).

**FIRST CLAIM FOR RELIEF
(Equal Protection - As Applied)**

68. Plaintiffs repeat and reallege each of the allegations set forth above in paragraphs 1 through 67 above, and incorporate them by reference as though fully set forth herein.
69. Plaintiffs TEIXEIRA, NOBRIGA and GAMAZA have been denied equal protection of the law under the Fourteenth Amendment to the United States Constitution in that the Defendants have intentionally discriminated against them and engaged in unreasonable conduct by enacting and enforcing regulations that are inapplicable or unenforced against similar situated parties. Particularly, Defendant’s singling out the plaintiffs business as one that is subject to requirements, including the necessity of a Conditional Use Permit and the particulars of obtaining such a permit, but not requiring the same of similar situated parties violates the Constitution’s guarantee of equal protection.
70. Plaintiffs are engaged in, or assisting others in exercising a core fundamental

right, the Government's actions infringe on a fundamental right.

71. As Plaintiffs have been singled out for different treatment they are a class of one in a matter where land use regulations are infringing their rights.

72. The government's actions lack a proper basis and are constitutionally impermissible.

SECOND CLAIM FOR RELIEF
(Equal Protection - Facial Challenge)

73. Plaintiffs repeat and reallege each of the allegations set forth above in paragraphs 1 through 67 above, and incorporate them by reference as though fully set forth herein.

74. Alameda's Land Use Regulations, including but not limited to its requirement that Retail Firearm Businesses are required to obtain a Conditional Use Permit, and the subordinate requirements for obtaining such permit such as the "500 Foot Rule," different treatment from other similarly situated retail businesses.

75. The requirement that a gun store obtain a Conditional Use Permit and the subordinate requirements for obtaining such permit such as the "500 Foot Rule" have no proper basis and are constitutionally impermissible.

THIRD CLAIM FOR RELIEF
(Second Amendment - Facial Challenge)

76. Plaintiffs repeat and reallege each of the allegations set forth above in paragraphs 1 through 67 above, and incorporate them by reference as though fully set forth herein.

77. Alameda's zoning laws requiring that gun stores obtain a Conditional Use Permit and be located 500 feet away from residential zones are unreasonable on their face and cannot withstand any form of constitutional scrutiny under the Second Amendment to the United States Constitutional as that right is

1 applied through the Fourteenth Amendment's due process clause.

2 78. The requirement that a gun store obtain a Conditional Use Permit and the
3 subordinate requirements for obtaining such permit such as the "500 Foot
4 Rule" have no proper basis and are constitutionally impermissible.

5
6 **FOURTH CLAIM FOR RELIEF**
7 **(Second Amendment – As Applied)**

8 79. Paragraphs 1 through 67 are incorporated by reference as though fully set
9 forth herein.

10 80. Alameda's zoning laws requiring that gun stores be located 500 feet away
11 from residential properties is irrational as applied to the facts of this case
12 and cannot withstand any form of constitutional scrutiny under the SECOND
13 AMENDMENT to the United States Constitutional as that right is applied
14 through the FOURTEENTH AMENDMENT'S Due Process Clause.

15 81. The requirement that a gun store obtain a Conditional Use Permit and the
16 subordinate requirements for obtaining such permit such as the "500 Foot
17 Rule" have no proper basis and are constitutionally impermissible.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs prays that this Court will enter judgment as follows:

20 A. Declaratory and injunctive relief that the appeal granted to the San Lorenzo
21 Village Homes Association by the Alameda Board of Supervisors was
22 improperly granted and that the subject property located at 488 Lewelling
23 Blvd., intended for use by Plaintiffs TEIXEIRA, NOBRIGA and GAMAZA as
24 a gun store, may open under the conditions set forth in the West County
25 Board of Zoning's Resolution Z-11-70.

26 B. Declaratory and injunctive relief that Alameda's zoning requirements that
27 gun stores be located 500 feet away from residential properties is
28

1 unconstitutional on its face as to all Plaintiffs and as applied to Plaintiffs
2 TEIXEIRA, NOBRIGA and GARY GAMAHA. Furthermore, that the
3 requirement that a gun store obtain a Conditional Use Permit and the
4 subordinate requirements for obtaining such permit such as the “500 Foot
5 Rule” have no proper basis and are constitutionally impermissible.

6 C. Damages, including pre-judgment interest, for costs, expenses, and lost
7 profits for Plaintiffs TEIXEIRA, NOBRIGA and GARY GAMAHA in an
8 amount according to proof.

9 D. Award Plaintiffs their reasonable attorney fees and costs under 28 U.S.C. §
10 2412, 42 U.S.C. §§ 1983, 1988.

11 E. Such other and further relief as this Court deems just and proper.

12 Respectfully Submitted on April 1, 2013,

13 /s/ Donald Kilmer

14 Attorney for Plaintiffs
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**ALAMEDA COUNTY COMMUNITY
DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

STAFF REPORT

TO: WEST COUNTY BOARD OF ZONING ADJUSTMENTS

HEARING DATE: NOVEMBER 16, 2011

GENERAL INFORMATION

**APPLICATION
TYPE AND**

NUMBER: PLN2011-00096, Conditional Use Permit and Variance

**OWNER/
APPLICANT:**

Valley Guns & Ammo//Nobriga, Steve

PROPOSAL: To allow the operation of a gun shop, and at a distance of less than 500 feet from a residentially zoned district, where 500 feet is required.

**ADDRESS AND
SIZE OF PARCEL:**

488 Lewelling Boulevard, south side, 140 feet west of Hesperian Boulevard, Ashland area of unincorporated Alameda County, with County Assessor's Parcel Number: 413-0097-001-03. The parcel is approximately 14,800 square feet (0.34 acres) in area.

ZONING: FA (Freeway Access) District according to the *Ashland and Cherryland Business District Specific Plan*, allowing large scale, general commercial land uses that benefit from freeway access and exposure.

**EDEN AREA
GENERAL PLAN
DESIGNATION:**

Eden Area General Plan of Alameda County designates this property as GC, (General Commercial). The General Commercial designation allows for a wide range of commercial uses that encompass small offices, local and regional retail establishments and automobile-oriented uses to meet the needs of Eden Area residents, employees and pass-through travelers. Offices are particularly encouraged in commercially designated areas to enhance the employment base of the area. Commercial parcels have a maximum FAR of 1.0.

ENVIRONMENTAL

REVIEW: This project is Categorically Exempt from the requirements of the *California Environmental Quality Act*; Article 19, Section 15303, Class 3, New Construction or Conversion of Small Structures. Consisting of construction and location of limited numbers of new, small facilities or structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

RECOMMENDATION

The recommendation to the West County Board of Zoning Adjustments is to determine that the proposed location of the firearms sales is within 500 feet of the residential district. Staff is unable to make the findings herein for the Conditional Use Permit and Variance, and recommends denial of the application, PLN2011-00096.

PARCEL ZONING HISTORY

In 1954, the first zoning regulations were applied to the areas in the northwest Eden Township. The 49th Zoning Unit designated a C-2 (General Commercial) District for this area.

October 10, 1966, Variance V-3876 approved expansion of a nonconforming use (residence in a commercial district, structures encroaching into Special Building Line, required amount of off-street parking not provided) and to construct a building so as to (1) encroach 20 feet into an established Special Building Line and (2) reduce off-street parking spaces from the required 17 spaces to 7 spaces.

January 9, 1967, Variance V-3989 approved: (1) the location of a sign in a Special Building Line; (2) sign extends above the roof line; (3) sign contains 70 sq. ft. (double faced sign with 35 sq. ft. on each side) where the Ordinance limits the area to 68 Sq. ft. and no one sign exceeding 40 sq. ft.

October 16, 1974, Variance V-6509 was approved on appeal to retain a nonconforming outdoor advertising sign. Expiration December 2, 1978.

In 1995, the Board of Supervisors adopted the *Ashland and Cherryland Business District Specific Plan* for the commercial districts of the Ashland and Cherryland communities. The *Specific Plan* promotes transit oriented development as well as development that takes advantage of existing highway and freeway access. There are six identified business districts which include mixed-use development along Lewelling/East Lewelling Boulevard between Hesperian Boulevard and Mission Boulevard.

SITE AND CONTEXT DESCRIPTION

Physical features: This is a triangular shaped site with 150 feet of frontage on Lewelling Boulevard, 165 feet of width at the back, bordering on Highway 880, and 140 feet of width adjacent to the corner property to the east. The only access to the property is the frontage on Lewelling Boulevard. The 2,237 square foot, single story building, built in 1947, is a currently vacant store front space with two small offices and a bathroom. The building is located at the southeastern corner of the site, set back from the street. There is a second building on the parcel that is an upholstery shop use. Parking for 18 cars makes up the remainder of the property. There is a billboard sign facing Highway 880, behind the upholstery shop.

Adjacent area: The property is located on the south side of Lewelling Boulevard, along a mixed use commercial and residential corridor along Lewelling Boulevard in the Ashland area of unincorporated Alameda County. The north side of Lewelling Boulevard is within the City of San Leandro. A Kelly Moore Paint store is located on the adjacent property to the east. The property is in close proximity to an In-N-Out Burger restaurant, Walmart, Rasputin's Records, and a Big Five Sporting Goods store in a strip mall development across the Lewelling/Hesperian intersection. A Kragen's Auto Supply store is across Hesperian Boulevard. The residential properties are across Highway 880 to the southwest, and across Hesperian Boulevard to the east.

PROJECT DESCRIPTION

This petition is to allow firearms sales (gun shop), and at a distance of less than 500 feet from a residentially zoned district, where 500 feet is required. The distance from a residential district has been determined to be approximately 446 feet in two directions. The distance was measured from the closest building exterior wall of the gun shop to the property line of the residentially zoned district. The business is proposed to be located within an existing building that has historically been used for retail business. No additional floor area or building expansion is proposed as part of this project. This application at this location requires the Conditional Use Permit public hearing process to allow legal sales of firearms in this zoning district, and a variance when located closer than 500 feet to the nearest residentially zoned district; elementary, middle or high school; pre-school or day care center; other firearms sales business; or liquor stores or establishments in which liquor is served.

REFERRAL RESPONSES

Alameda County Building Department: Responded September 16, 2011. The Building Department has no comment for the proposed Conditional Use Permit. A Building Permit will be required for site work associated with the proposed use. General Conditions for Building Permit Applications will apply.

Alameda County Land Development: Responded on August 31, 2011. Staff reviewed the referral and attachments and stated that its office has no comment at this time with regard to this application based on what they could determine from the plans submitted at the time.

Public Works Agency, Traffic: Has not responded as of this writing.

Alameda County Sheriff's Office: Responded on August 23, 2011. Staff reviewed the referral and attachments and requests the following:

- Like to see additional security features added to the building including/hold up alarm, video surveillance system, additional exterior lighting, heavy security doors and locks, also shatter resistant windows.
- Compliance with applicable laws and regulations, such as the Office of the Attorney General California Department of Justice, Dangerous Weapons Control Laws Title 2, Part 4.
- U.S. Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives, Federal Firearms Regulations.
 - ✓ Gun Control Act, 18 United States Code, Chapter 44.
 - ✓ National Firearms Act, 26 United States Code, Chapter 53.
 - ✓ Arms Export Control Act, 22 United States Code, Chapter 2778.
 - ✓ National Instant Criminal Background Check, Title 28 CFR, Chapter 1.
- Requires a Retail Firearms Dealer License, per Penal Code 12071.
- Requires compliance with Firearms and Dangerous Weapons, Chapter 9.12.

Zoning Enforcement: Has responded on August 15, 2011. Staff reviewed the referral and attachments and stated that its office has no comment at this time.

California Highway Patrol: Has not responded as of this writing.

Alameda County Health Agency: Has not responded as of this writing.

Alameda County Fire Department: Responded on September 8, 2011. Correspondence from the Fire Department stated that the Applicant must address five items with a required re-submittal prior to the

issuance of a Building Permit and Fire Clearance for occupancy:

- How much Smokeless power will be stored on site?
- Provide Manufactures Specifications on the ATF approved Container.
- Indicate the Occupancy load of the facility as two exits may be required and only one is shown.
- Provide details on the security gate installed across the display area. Is there an emergency release device to prevent people from becoming stranded?
- During the Building Permit Process, Emergency Lighting and Exit signs shall be required. Show the locations on the plans.

San Lorenzo Village Home Association: Has responded on October 31, 2011. Without a majority of residence at the meeting there were the two factions that spoke – the right to own firearms, and those generally opposed to guns. The concerns related to this particular gun shop at this location were:

- The fact that the use is a gun shop should not be factored into the decision, rather the ordinance regulations.
- The proximity to an already existing sporting goods store that sells guns and ammunition.
- The proximity to a bar was stated as a concern.
- Concern that the gun shop would be located near the headquarters of a motorcycle club that has ties to the Hells Angels.
- Concerns were raised about the type of weapons that would be sold.
- The mention that, if the gun shop was to serve Castro Valley, Ashland, Cherryland, why can't it be located closer to the population center of the targeted business community.

Cherryland Community Association: Has responded on September 19, 2011. The community association board states that it is split on this project:

- The business is not an asset to the community.
- The Association wants to attract the kind of business we want and need in the community.
- Police and Sheriff officers should purchase their weapons in their own community.
- This business is not locally owned.
- There are already other gun stores in the area.

Ashland Area Community Association: Has responded on September 26, 2011. The community association board states that it is not in support of the project, and that Zoning laws are in place to preserve neighborhoods and protect residents. The association states: Just follow the law and say no.

City of San Leandro Planning: Has responded on August 11, 2011. Staff reviewed the referral and attachments and stated that its office has no comment at this time.

STAFF ANALYSIS

Conformance with the General Plan

Eden Area General Plan.

3. Land Use Element

A.1. Commercial: Commercial land uses include parcels that contain a number of business types including retail, office, and medical facilities. Commercial development is predominantly

located along arterial roadways such as East 14th Street/Mission Boulevard, Hesperian Boulevard, Foothill Boulevard and Lewelling Boulevard, and at key intersections of collector streets. Commercial development in the Eden Area consists of a mixture of strip and stand-alone commercial buildings, often set back from the street and having limited relationship to one another or adjacent land uses.

D.1. General Goals, Policies and Actions: This section provides general goals, policies, and actions that apply to the Eden Area as a whole. D.3. Corridors: Corridors are linear areas with a mix of uses along major roadways that provide a variety of needs for surrounding neighborhoods. This section provides guidance about the County's plan for the Corridors in the Eden Area.

E.1a Specific Guidance Areas: 1.a. Four Corners

1.a.1. The Four Corners area of Lewelling Boulevard shall be developed as a District with a diverse mix of uses that serves as a community meeting and gathering place, through the development of public and private partnerships.

1.a.2. The intersection of Interstate 880 with Lewelling Boulevard should be designed as a gateway into the Eden Area. Special attention should be given to the types of uses and design of this area to ensure that development is visually attractive.

1.a.3. The County should explore designating Four Corners as a historic district due to its significance in the development of the Eden Area.

1.a.4. Historic buildings and sites in Four Corners should be identified and preserved.

The proposed firearms sales store could be a questionable use when guided by the *Eden area General Plan*. The current structures are vintage 1947 and are in need of façade improvement. Generally, the location of the property, and existing site and context, make the proposed use difficult to match with this property. The *General Plan* states that: "special attention should be given to the types of uses and design of this area to ensure that development is visually attractive." This proposal does not include physical improvements to the building or site, in addition to exterior paint and planter boxes. The proposed improvements do not rise to the level of "visually attractive". Also, the subject property is located within the Lewelling Boulevard corridor, part of the *Eden Area General Plan*. For the Lewelling Corridor, the Eden General Plan promotes a "variety of uses". However, the General Plan goal to promote a "variety of uses" did not consider "gun store/firearms sales" as part of that desirable mix of uses.

Following are excerpts from the *Eden Area General Plan* that guide and inform the review and consideration of this application for Conditional Use Permit. Compatibility with existing neighborhood character is a consistent theme reflected in the land use policies.

Eden Area General Plan (2010)

Goal LU-1	Establish a clearly defined urban form and structure to the Eden Area in order to enhance the area's identity and livability.
Policy 7	On parcels that have a viable use in place when this General Plan is adopted, the uses may remain in place until such time as the property is redeveloped. When a property is redeveloped, the new use shall be required to conform to the land use designations in this General Plan.
Goal LU-7	Create attractive Corridors with a mix of uses throughout the Eden Area.
Policy 1:	The redevelopment of corridors shall be a priority for the County as it is a key to revitalizing the Eden Area.
Policy 7:	The County shall utilize its Design Guidelines as an implementation tool to require higher quality and more appropriately scaled development in the Eden Area.

This request for a gun shop may not comply with the “gateway” concept into the Eden Area. There are no substantial modifications proposed to the existing buildings on the subject property.

Design Guidelines include: maintain the desirable qualities and character of existing neighborhoods; consider creating existing corridors to preserve the look and feel of existing neighborhoods; collaborate the County Redevelopment Agency to promote neighborhood identity and beautification; work with existing Neighborhood Associations in the referral process for projects in their areas; consider the establishment of neighborhood-level design review boards.

The proposal would only involve internal tenant improvement work on an existing building located at the back of this small property, and would not change the exterior of the building as seen from the street, except for the addition of potted plants. The project remains questionable as to conforming to the guidelines.

Conformance with the Specific Plan

This site is within the *Ashland Cherryland Business District Specific Plan* adopted by the Alameda County Board of Supervisors on June 1, 1995. The *Ashland Cherryland Business District Specific Plan*, designation of FA (Freeway Access) cites examples of land uses allowed, it does not specifically exclude retail gun shops as a land use.

The subject property is located in the FA (Freeway Access) land use designation of the *Ashland and Cherryland Business District Specific Plan*. The FA *Specific Plan* designation allows for large scale, general commercial land uses along busy streets that have access from freeways. Firearms sales are conditionally permitted in some Specific Plan land use designations such as the FA land use designation. Currently, “retail (firearms) sales, equipment sales general store” are illustrative examples of the types of general commercial land uses that could benefit from freeway access and exposure. The surrounding areas along Lewelling and Hesperian Boulevards are a mix of commercial and residential uses.

Conformance with the Zoning Ordinance

Title 17 of the Zoning Ordinance states the following:

17.54.131 – Conditional uses---Firearms sales.

In addition to the findings required of the board of zoning adjustments under Sections 17.54.130 and 17.54.140, no conditional use permit for firearms sales shall issue unless the following additional findings are made by the board of zoning adjustments based on sufficient evidence:

- A. That the district in which the proposed sales activity is to occur is appropriate;
- B. That the subject premises is not within five hundred (500) feet of any of the following: residentially zoned district; elementary, middle or high school; pre-school or day care center; other firearms sales business; or liquor stores or establishments in which liquor is served;
- C. That the applicant possesses, in current form, all of the firearms dealer licenses required by federal and state law;
- D. That the applicant has been informed that, in addition to a conditional use permit, applicant is required to obtain a firearms dealer license issued by the county of Alameda before sale activity can commence, and that information regarding how such license may be obtained has been provided to the applicant;
- E. That the subject premises is in full compliance with the requirements of the applicable building codes, fire codes and other technical codes and regulations which govern the use, occupancy, maintenance, construction or design of the building or structure;
- F. That the applicant has provided sufficient detail regarding the intended compliance with the Penal Code requirements for safe storage of firearms and ammunition to be kept at the subject place of business and building security.

17.54.141 – Conditional uses---Action---Firearms sales.

In order for a conditional use permit for firearms sales to become effective and remain operable and in full force, the following are required of the applicant:

- A. A final inspection from appropriate building officials demonstrating code compliance;
- B. Within thirty (30) days of obtaining a conditional use permit, and prior to any sales activity, a firearms dealer license shall be secured from the appropriate county agency;
- C. The county-issued firearms dealer's license be maintained in good standing;
- D. The maintenance of accurate and detailed firearms and ammunition transaction records;
- E. Transaction records shall be available for inspection as required by the California Penal Code;
- F. Compliance with all other state and federal statutory requirements for the sale of firearms and ammunition and reporting of firearms transactions, including, but not limited to Section 12070 et seq. of the California Penal Code.

GENERAL DISCUSSION

This application is to allow a firearms sales (Valley Guns and Ammo) business operation at the proposed site on Lewelling Boulevard. The ordinance states that this business requires prior consideration for approval of a Conditional Use Permit through the public hearing process and a Variance because the firearms sales would be located fewer than 500 feet from established residences.

The applicants have 38 years of firearm shop business ownership experience and knowledge. There are three owner/operators that will attend the shop five days a week, Tuesday through Saturday, 10:00 am to 6:00 pm.

The applicant has provided staff with a collection of 1,200 individually signed letters of support from the general public and 113 individually signed letters of support for the shop from police officers, as well as a personal letter of endorsement from Alameda County Sheriff Emeritus Charles C. Plummer.

SERVICES PROVIDED

The operation would generally be described, as above, as the sales of firearms and supplies. Beyond that, the store owners state that they will offer: firearms instruction; classes in hunter safety by certified instructors; handgun certificates (required); firearms repairs; catalog sales; gun cases and safes; vintage and collectibles (early 1800's to the present); new and used hand gun and sporting rifles and shot guns, B-B, pellet, and air rifles. Services will include consignment and appraisals. NO ASSAULT WEAPONS will be sold from the store. They would also sell hunting and fishing tags and licenses, and hand gun safety certificates would be issued.

DISTANCE FROM OTHER BUSINESSES & NON-RESIDENTIAL SENSITIVE USES

The ordinance language requires that a firearms sales business be located 500 feet from the nearest residentially zoned district; elementary, middle or high school; pre-school or day care center; other firearms sales business; or liquor stores or establishments in which liquor is served. The Big 5 Sporting Goods store that is located in the strip shopping center to the northeast across Hesperian Boulevard sells firearms, but is beyond the 500 foot radius from building to building. The Walmart store across Lewelling, to the north, sells ammunition, but not firearms. There are over 600 feet to a business where liquor is served. A private school is located approximately 1,100 feet from the subject site.

DISTANCE FROM RESIDENTIAL ZONED PROPERTY

The Zoning Ordinance requires that to sell firearms the premises must be more than 500 feet from residentially zoned districts. That measurement is taken from the building wall of the subject use (firearms sales shop) to the property line of the residentially zoned districts.

The measurement taken from the closest exterior wall of the gun shop to the closest property line of a residentially zoned district in this case is less than 500 feet in two directions. The closest is to the southeast to the residences 446 feet away across Hesperian Boulevard and behind Kragen Auto Parts store on Albion Avenue. Because of the unconventional wedge shape of the nearest property, this measurement is taken from the proposed gun shop to a usable location inside the property line to remove any doubt of the distance measured. The other distance is to the southwest from the proposed gun shop location, 446 feet to the residentially zoned properties on Paseo del Rio in San Lorenzo Village. The 446 foot distance is measured to the property line with Highway 880 in between.

PARKING

Parking for the retail shop is required by Section 17.52.930 to be one (1) parking space for each 300 square feet of floor area. There would be approximately 1,875 square feet of floor area in the shop. That would figure out to be parking spaces required for 7 cars. There are 12 on-site parking spaces, including one handicapped space on the property. The existing number of parking spaces, therefore, meets the required number of spaces per the zoning ordinance.

TENTATIVE FINDINGS BASED ON INFORMATION AVAILABLE PRIOR TO THE PUBLIC HEARING

CONDITIONAL USE PERMIT:

1. Is the use required by the public need?

Yes. There is a need to provide the opportunity to the public to purchase firearm sales in a qualified, licensed establishment. Unincorporated Alameda County currently has four (4) licensed firearms sales businesses. The necessary number of firearms sales establishments to serve the public need is left up to the market.

2. Will the use be properly related to other land uses and transportation and service facilities in the vicinity?

Yes. The firearms sales shop is located in a mixed use retail/commercial area on a major thoroughfare where the surrounding public streets, and freeway access are adequate and all necessary improvements and services are available.

3. Will the use, if permitted, under all circumstances and conditions of this particular case, materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood?

No. The firearms sales shop will be properly licensed, inspected, and security installed and shall meet all applicable life-safety, and fire code requirements, with proper inventory security devices, and no adverse effects are otherwise anticipated.

4. Will the use be contrary to the specific intent clauses or performance standards established for the District in which it is to be considered?

Yes. The Zoning Ordinance requires a Conditional Use Permit for firearms sales, and does not allow firearms sale within 500 feet of a residentially zoned district; elementary, middle or high school; pre-school or day care center; other firearms sales business; or liquor stores or establishments in which liquor is served. The site proposed with this application is approximately 446 feet from a residentially zoned district. An approved Variance would be required to make this finding. A Variance application has been submitted and is part of this application.

In addition to the findings required of the Board of Zoning Adjustments under Sections 17.54.130 and 17.54.140, no conditional use permit for firearms sales shall be issued unless the following additional findings are made by the board of zoning adjustments based on sufficient evidence:

- A. That the district in which the proposed sales activity is to occur is appropriate;

This could be a questionable site. The *Eden Area General Plan* calls for “Mixed uses” in the “General Commercial” designation, which is where this site is located. However, the General Plan goal to promote a “variety of uses” did not consider “gun store/firearms sales” as part of that desirable mix of uses.

- B. That the subject premises is not within five hundred (500) feet of any of the following: residentially zoned district; elementary, middle or high school; pre-school or day care center; other firearms sales

business; or liquor stores or establishments in which liquor is served;

This finding can not be made. The proposed site is less than 500 feet from two residentially zoned districts. However, one such district is located on the other side of Highway I-880, which cannot be traversed. The other residentially zoned district can be easily accessed from the subject site.

C. That the applicant possesses, in current form, all of the firearms dealer licenses required by federal and state law;

Affirmative. The applicant has the required licenses and is knowledgeable about the firearms business operation having 38 years of prior firearms shop business ownership and experience.

D. That the applicant has been informed that, in addition to a conditional use permit, applicant is required to obtain a firearms dealer license issued by the county of Alameda before sale activity can commence, and that information regarding how such license may be obtained has been provided to the applicant;

Affirmative. Staff has discussed the licensing requirements with the applicant in meetings and he is aware of the licensing requirements.

E. That the subject premises is in full compliance with the requirements of the applicable building codes, fire codes and other technical codes and regulations which govern the use, occupancy, maintenance, construction or design of the building or structure;

If approved as to the use, the premises would undergo the required alteration to bring it into full compliance with codes, regulations, occupancy, maintenance, construction, and safety design for the gun shop use. There are no exterior design changes proposed, except for proposed exterior paint and potted plants.

F. That the applicant has provided sufficient detail regarding the intended compliance with the Penal Code requirements for safe storage of firearms and ammunition to be kept at the subject place of business and building security.

The applicant has had prior experience with the Code requirements to operate firearms and ammunition sales type of business, and as shown the firearms will be kept safe and secure.

TENTATIVE FINDINGS BASED ON INFORMATION AVAILABLE PRIOR TO THE PUBLIC HEARING

VARIANCE:

1. Are there special circumstances applicable to the property, which deprive the property of privileges enjoyed by other properties in the vicinity under identical zoning classification?

No. There are no special circumstances applicable to the property, which deprive the property of privileges enjoyed by other properties in the vicinity under the identical zoning classification when considered for firearms sales use. The property that proposed for the firearms sales is within 500 feet of a residentially zoned District. This is not allowed by the Zoning Ordinance. It should be noted that the 500 foot distance to the southwest is across the lanes of Highway 880, which cannot be traversed.

2. Will granting of the application constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone?

Yes. The granting of firearms sales at the proposed location would constitute a grant of special privileges inconsistent with the location requirements given the establishment of this use within 500 feet of residentially zoned properties. Other firearms sales shops without special circumstances would not be granted a variance in the area due to the existing residential property development within 500 feet.

3. Will granting the application be detrimental to persons or property in the neighborhood or to the public welfare?

Yes. The use will be detrimental to persons or property in the neighborhood or to the public welfare because there is less than the required distance of 500 feet from residentially zoned district in two directions.

At the southwesterly direction, the 500 foot distance is across the lanes of Highway 880, which cannot be traversed. Therefore, there is an existing physical condition that blocks access between the gun shop and residentially zoned properties and there would be no detriment to that neighborhood on the southwest side. The southeasterly direction that is less than 500 feet, however, would not be difficult to traverse. The use would therefore, be detrimental to this residentially zoned neighborhood.

PRE-HEARING RECOMMENDATION

Based on the distances measured from the proposed firearms sale shop to the residentially zoned district measuring less than the required 500 feet the recommendation is for denial.

ATTACHMENTS

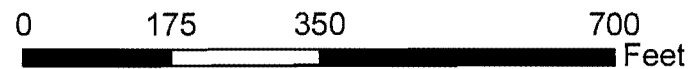
Exhibits
Referral Responses
Correspondence
Photographs
Distance Study

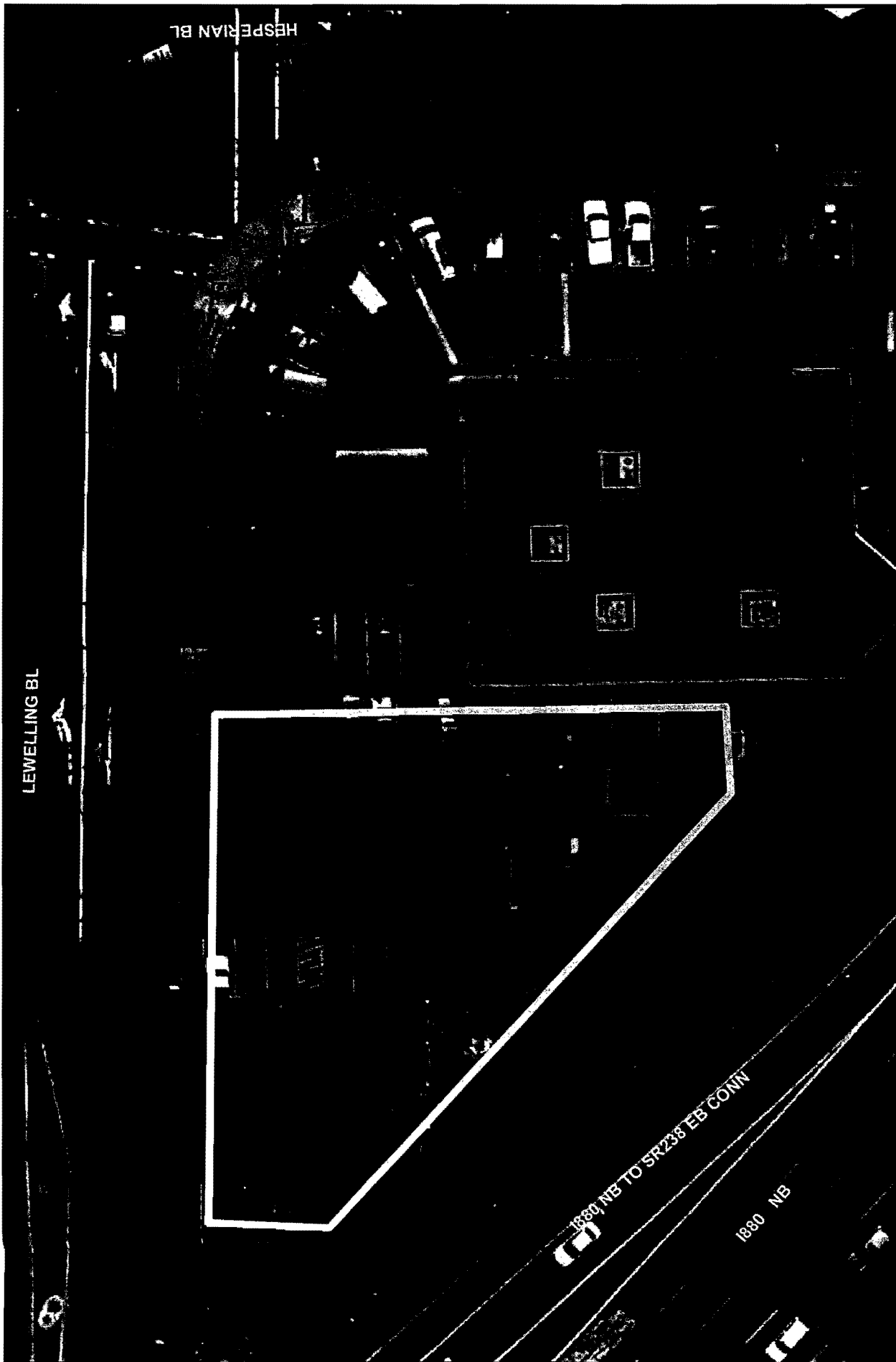
PREPARED BY: Richard Tarbell, Planner
REVIEWED BY: Rodrigo Orduña, Senior Planner



PLN2011-00096
DISTANCE STUDY

Alameda County CDA - Planning Department





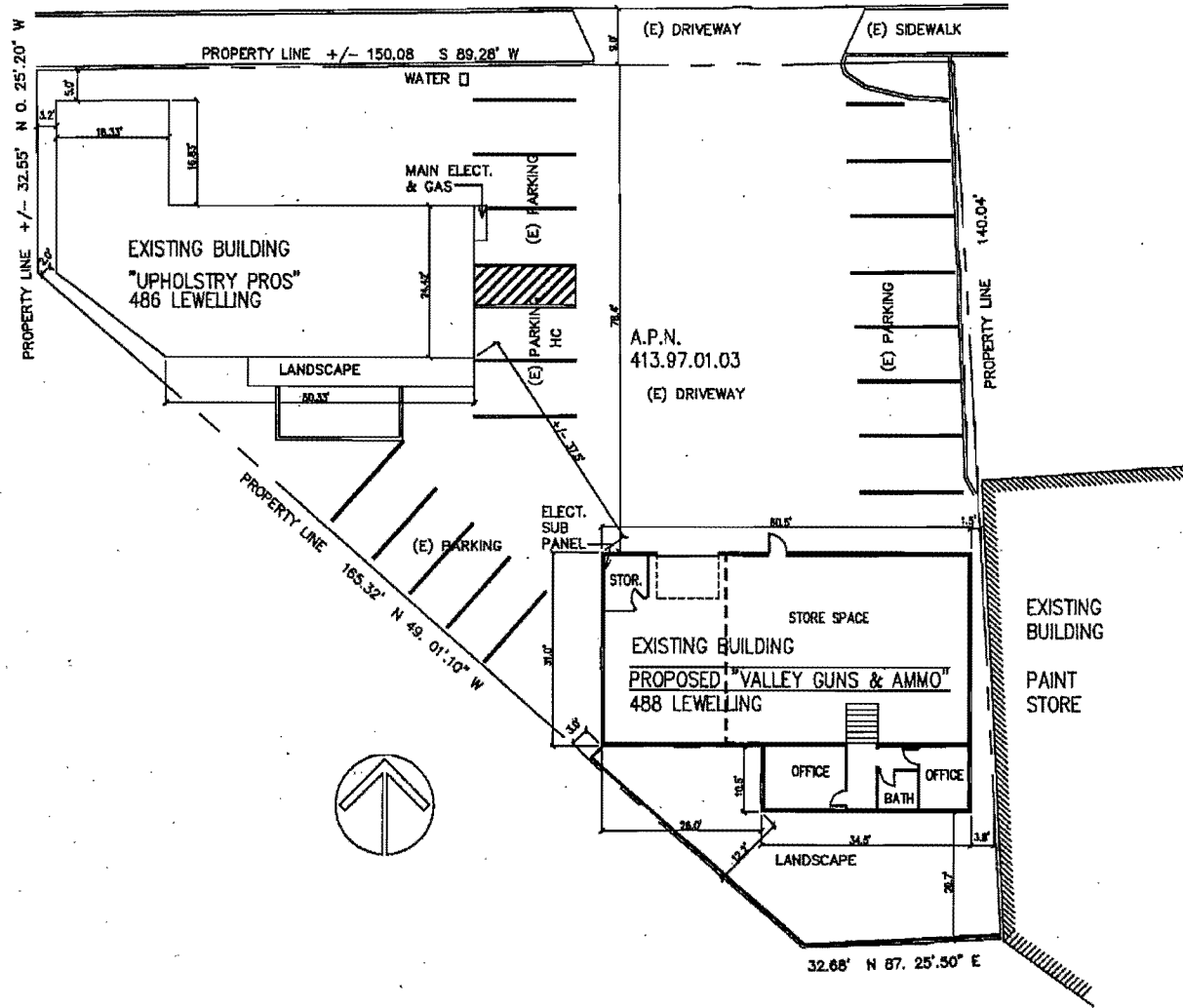
PLN2011-00096
AERIAL PHOTO

Alameda County CDA - Planning Department

0 15 30 60 90 120 Feet



LEWELLING BLVD. SAN LORENZO, CA.



SITE PLAN & FLOOR PLAN

SCALE: 1/20

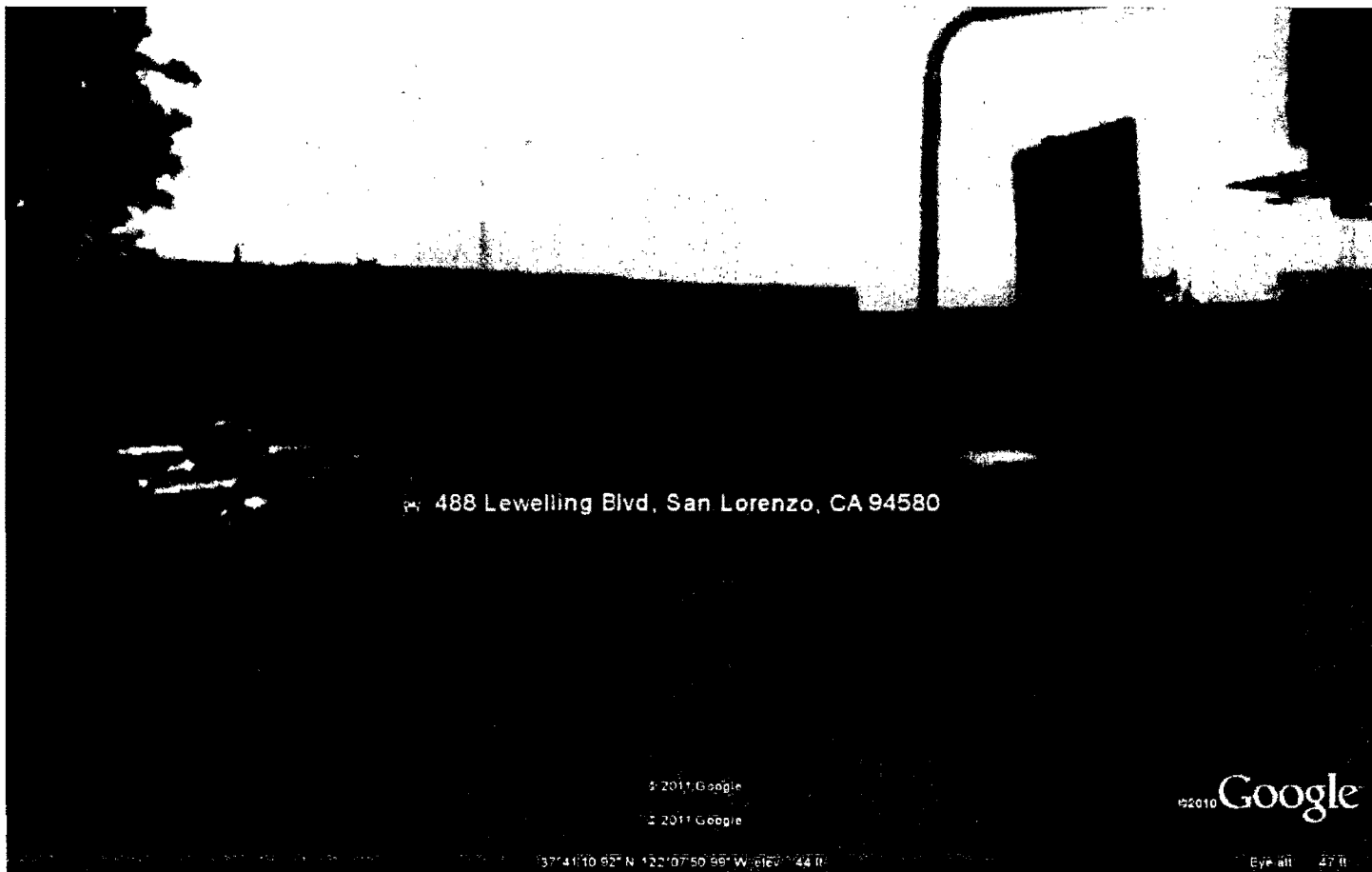
PLN2011-00096

SITE PLAN

Alameda County CDA - Planning Department







FILE COPY

EXHIBIT A

JUL 01 2011

CUP

PLN 2011-00096



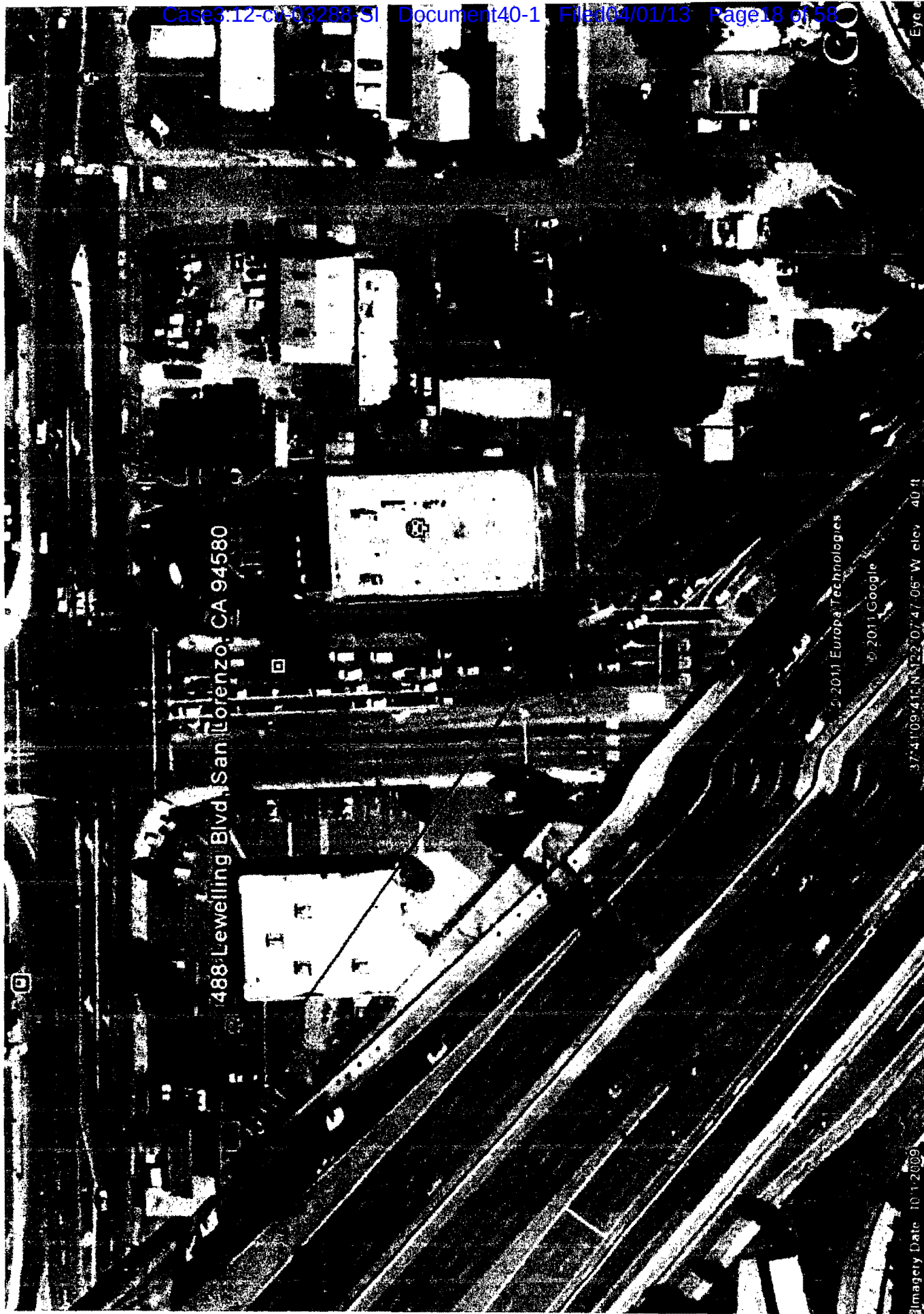
SUBJECT PROPERTY

EXHIBIT A

JUL 01 2011

CUP

PLN 2011-00096



488 Lewelling Blvd, San Lorenzo, CA 94580

© 2011 Europa Technologies

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37°41'09.41"N 122°07'47.06"W elev. 40 ft

Imagery Date: 10/12/09

504.63 ft

Single Family Res



630. FT
Multi Family Res

488 Lewelling Blvd, San Lorenzo, CA 94580

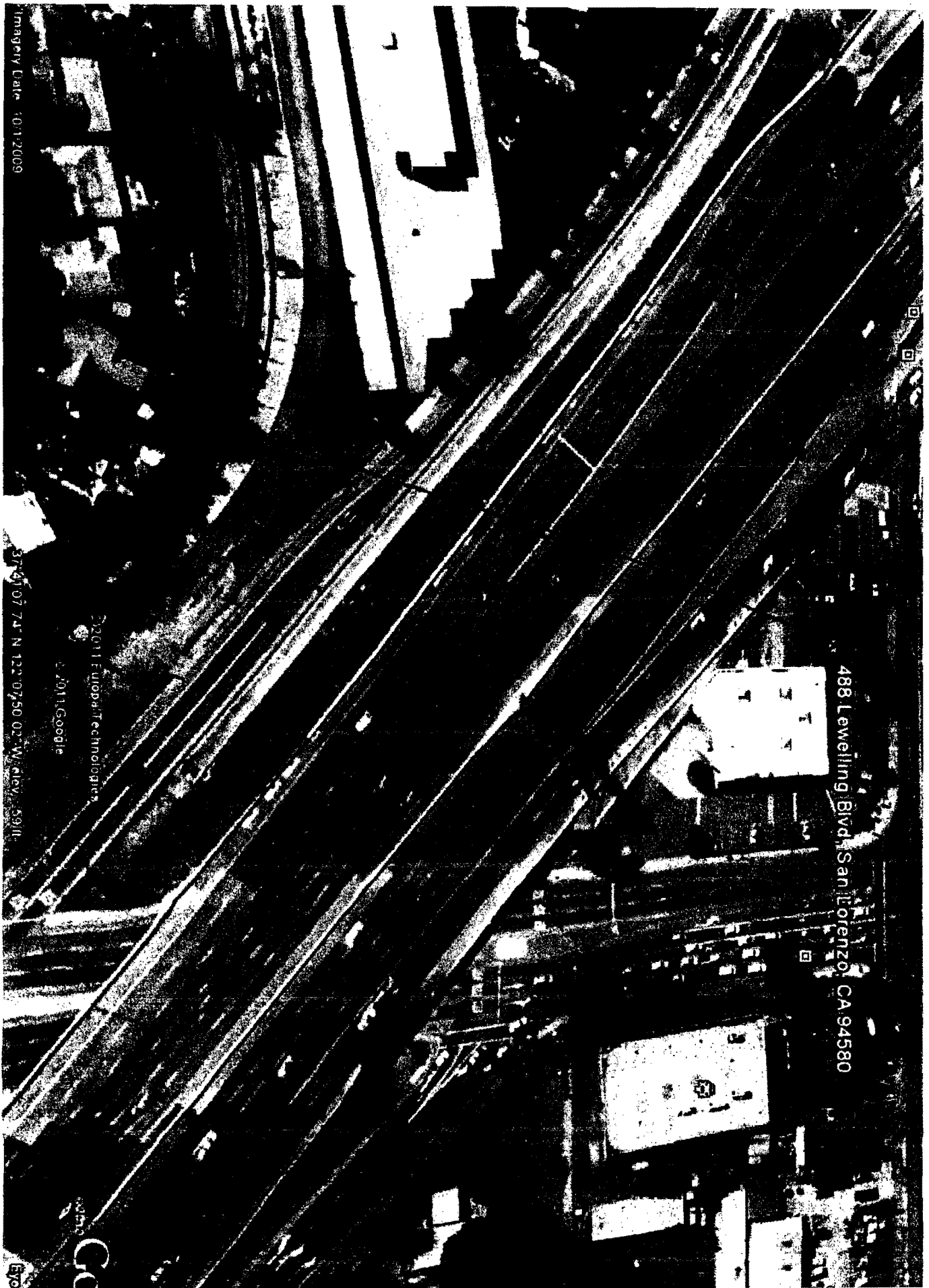
© 2011 Europa Technologies

© 2011 Google

37°51'07.74" N 122°07'50.02" W elev 59 ft

Imagery Date 10/12/2009

Shop To Property line



WALMART

505.6 FT

488 Lewelling Blvd San Lorenzo CA 94580

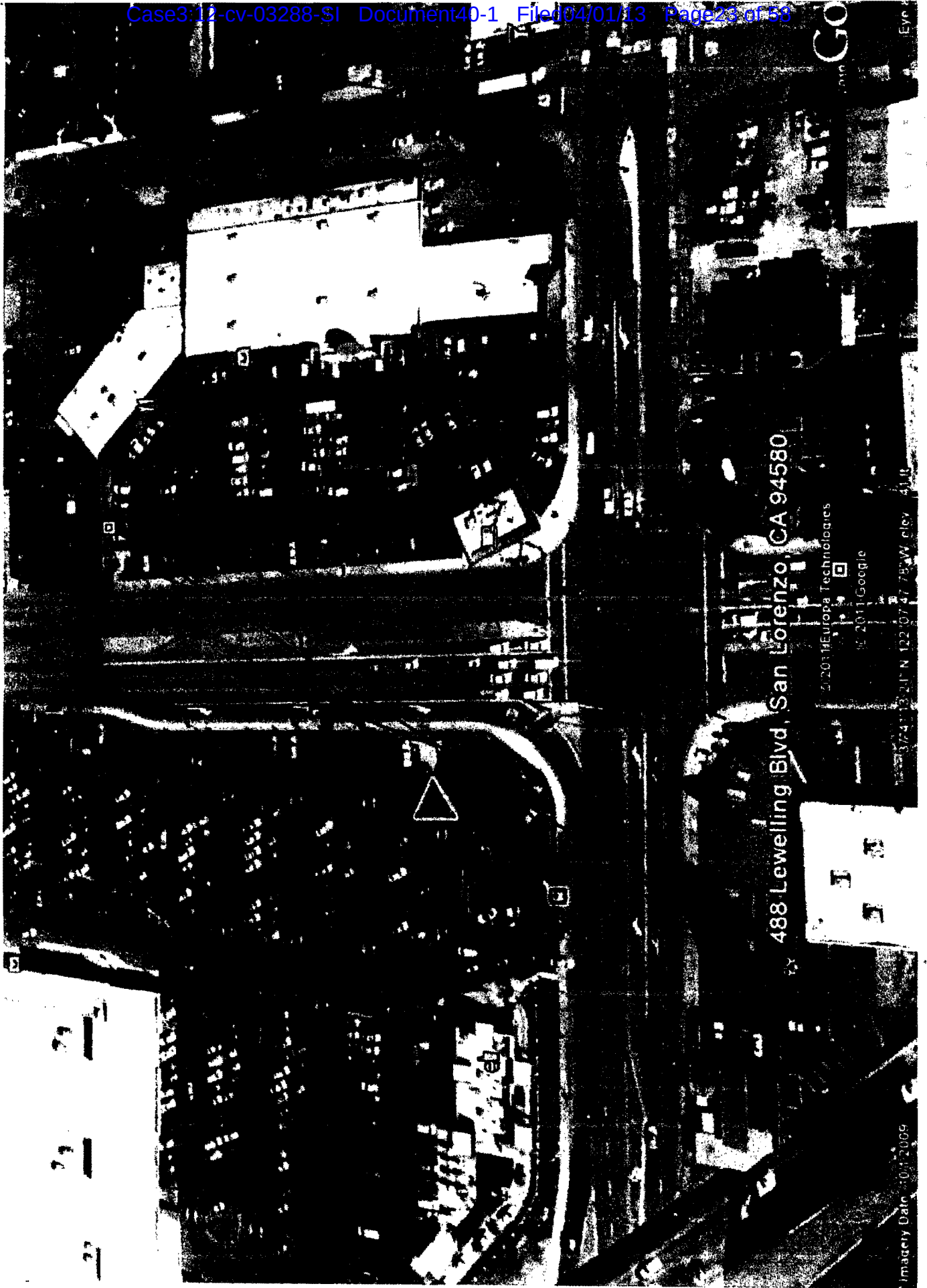
© 2011 Google

Imagery Date: 10/12/09



660, 91 FEET

SHOP TO INN.



488 Lewelling Blvd, San Lorenzo, CA 94580

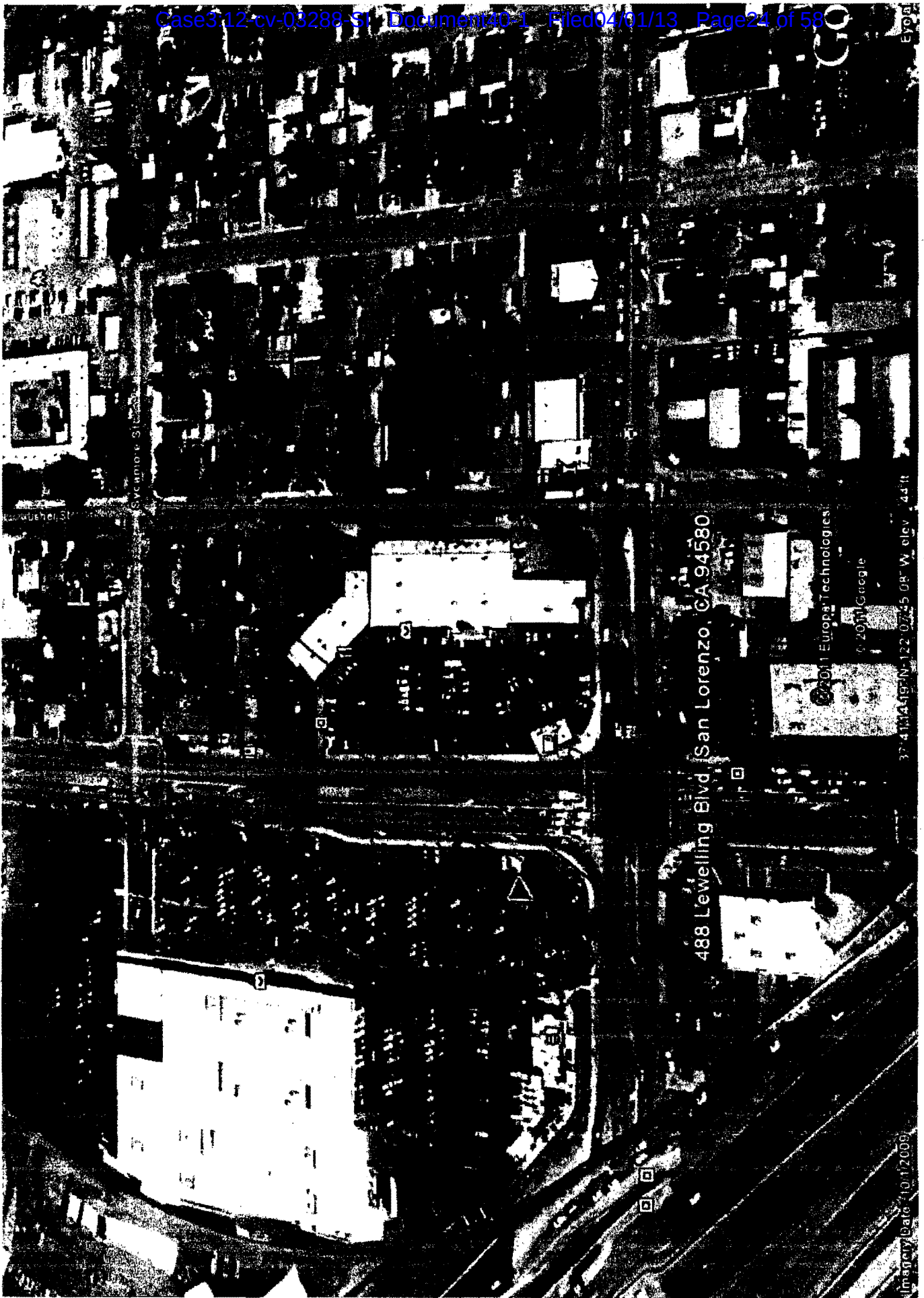
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© 2011 Google

37°41'13.21"N 122°07'47.75"W elev 41 ft

Imagery Date: 01/2009

SHOP TO BIGS
620.95 FEET



1066.8 FT SCHOOL MAIN YARD

THE COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY
HAYWARD, CALIFORNIA

V-3876

RESOLUTION NO. 7802 - At meeting held October 10, 1966

Introduced by Commissioner Harry W. Spencer
Seconded by Commissioner John P. Gardella

WHEREAS Mary K. Gravas and Lawrence A. Ratti, (V-3876) have filed with the Alameda County Planning Commission an application for an adjustment to expand a nonconforming use (residence in a commercial district, structures encroaching into Special Building Line, required amount of off-street parking not provided) and to construct a building so as to (1) encroach 20' into an established Special Building Line and (2) reduce off-street parking spaces from the required 17 spaces to 7 spaces, in a "C-2" (General Commercial) District, on the south side of Lewelling Boulevard, approximately 157' west of the intersection with Hesperian Boulevard, San Lorenzo Area, Eden Township, as shown on a plot plan on file with this Commission; and

WHEREAS this Commission did hold a public hearing on said application at the hour of 1:30 p.m. on the 10th day of October, 1966, in the County of Alameda Public Works Building, 399 Elmhurst Street, Hayward, California; and

WHEREAS it satisfactorily appears from affidavits on file that newspaper notice of said public hearing was given in all respects as required by law; and

WHEREAS this Commission does find that:

- (a) There are special circumstances applicable to the property which deprive the property of privileges enjoyed by other property in the vicinity under the identical zoning classification.
- (b) The granting of the application will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone.
- (c) The use will not be detrimental to persons or property in the neighborhood or to the public welfare: Now Therefore

BE IT RESOLVED that this Commission does hereby approve said application as shown on a plot plan labelled "Exhibit A" on file with this Commission, a copy of which shall be forwarded to the County Building Official, subject to the following condition:

Said adjustment shall become null and void if a building permit is not obtained by October 10, 1967.

Except as specifically stated above, the land and use of this property shall comply with all the provisions of the County Zoning Ordinance.

Said adjustment shall be subject to revocation for cause by the Planning Commission after seven (7) days notice and a hearing by said Commission.

ADOPTED BY THE FOLLOWING VOTE:

AYES: Commissioners Enos, Gardella, Kauffman, Spencer, Vaughns, and Chairman DeBernardi.

NOES: Commissioner Kuder

ABSENT: None.

WILLIAM H. FRALEY - PLANNING DIRECTOR & SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY

V-3989

THE COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY
HAYWARD, CALIFORNIA

RESOLUTION NO. 7957 - At meeting held January 9, 1967

Introduced by Commissioner Howard F. Kuder
Seconded by Commissioner Harry W. Spencer

WHEREAS San Lorenzo Glass Company, (V-3989), has filed with the Alameda County Planning Commission an application for an adjustment to (1) approve location of a sign in a Special Building Line; (2) sign extends above the roof line; (3) sign contains 70 sq. ft. (double faced sign with 35 sq. ft. on each side) where ordinance limits area to 68 sq. ft. and no one sign exceeding 40 sq. ft. in a "C-2" (General Commercial) District, located at 486 Lewelling Boulevard, south side, 157' west of the intersection with Hesperian Boulevard, San Lorenzo, Eden Township, as shown on a plot plan on file with this Commission; and

WHEREAS this Commission did hold a public hearing on said application at the hour of 1:30 p.m. on the 9th day of January, 1967, in the County of Alameda Public Works Building, 399 Elmhurst Street, Hayward, California; and

WHEREAS It satisfactorily appears from affidavits on file that newspaper notice of said public hearing was given in all respects as required by law; and

WHEREAS this Commission does find that:

- (a) There are special circumstances applicable to the property which deprive the property of privileges enjoyed by other property in the vicinity under the identical zoning classification.
- (b) The granting of the application will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone.
- (c) The use will not be detrimental to persons or property in the neighborhood or to the public welfare: Now Therefore

BE IT RESOLVED that this Commission does hereby approve said application as shown on a plot plan labelled "Exhibit A" on file with this Commission, a copy of which shall be forwarded to the County Building Official.

Except as specifically stated above, the land and use of this property shall comply with all the provisions of the County Zoning Ordinance.

Said adjustment shall be subject to revocation for cause by the Planning Commission after seven (7) days notice and a hearing by said Commission.

ADOPTED BY THE FOLLOWING VOTE:

AYES: Commissioners Enos, Gardella, Kuder, Spencer, Vaughns, and Chairman DeBernardi.

NOES: None.

ABSENT: None.

EXCUSED: Commissioner Kauffman.

WILLIAM H. FRALEY - PLANNING DIRECTOR & SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY

REF.

PAGE

V-6509

THE BOARD OF SUPERVISORS, COUNTY OF ALAMEDA, CALIFORNIA

On motion of ~~Supervisor~~ Chairman Cooper, seconded by ~~Supervisor~~ Murphyand approved by the following vote: ~~Mary Groves and Anthony and Pete Patti (owners) for a Variance (V-6509) to permit the retention of a nonconforming Outdoor Advertising Sign (not permitted within scenic route corridor) beyond that amortization period established by the Zoning Ordinance, in a C-2 (General Commercial) District, located at 486 Lewelling Boulevard, south side, adjacent easterly to the Nimitz Freeway, San Lorenzo Area, Eden Township, as shown on a plot plan on file with this Board of Supervisors, and.~~ Mary Groves and Anthony and Chairman Cooper - 3Ayes: Supervisors ~~Mary Groves and Anthony and Chairman Cooper - 3~~
Noes: Supervisors ~~Mary Groves and Anthony and Chairman Cooper - 3~~
Excused ~~Supervisors~~ Supervisors ~~Mary Groves and Anthony and Chairman Cooper - 3~~

OCT 16, 1974

THE FOLLOWING RESOLUTION WAS ADOPTED

VARIANCE GRANTED

NUMBER 165227

WHEREAS, at a hearing held on October 16, 1974, the Alameda County Zoning Administrator disapproved the application of Eller Outdoor Advertising Company of California (lessor) and Mary Groves and Anthony and Pete Patti (owners) for a Variance (V-6509) to permit the retention of a nonconforming Outdoor Advertising Sign (not permitted within scenic route corridor) beyond that amortization period established by the Zoning Ordinance, in a C-2 (General Commercial) District, located at 486 Lewelling Boulevard, south side, adjacent easterly to the Nimitz Freeway, San Lorenzo Area, Eden Township, as shown on a plot plan on file with this Board of Supervisors, and.

WHEREAS, in accordance with the provisions of Article 2 of Chapter 2 of Title 2 of the Alameda County Ordinance Code, Eller Outdoor Advertising Company of California did appeal to this Board of Supervisors from the decision of the Alameda County Zoning Administrator; and

WHEREAS, at public hearings held on December 12, 1974, January 16, 1975, March 4, 1975, June 5, 1975, August 7, 1975, December 4, 1975, May 6, 1976, July 2, 1976, and December 2, 1976, the Board did consider the appeal of Eller Outdoor Advertising Company of California; and

WHEREAS, this Board of Supervisors did find that there are special circumstances applicable to this property which justify the property of privileges enjoyed by other property in the vicinity under the identical zoning classification in that the area where this sign is located is subject to a special scenic route corridor presently being considered for revision by the County Planning Commission and this Board, with the result that the dimensions and scope of the existing boundaries presently making this sign nonconforming may be altered so as to bring this sign into conformity with such revision. Under these circumstances granting a limited variance of this type will bring this sign within the same method of treatment presently applicable to other uses subject to the same scenic route restrictions.

NOW, THEREFORE, BE IT RESOLVED that Eller Outdoor Advertising Company of California (lessor) and Mary Groves and Anthony and Pete Patti (owners) be and they are hereby granted a variance to retain a nonconforming Outdoor Advertising Sign in a C-2 (General Commercial) District, located at 486 Lewelling Boulevard, south side, adjacent easterly to the Nimitz Freeway, San Lorenzo Area, Eden Township; subject, however, to the following condition:

- (1) This Variance is valid until December 2, 1978, provided, however, that if during said term Zoning Ordinance provisions become modified to permit the filing of a Conditional Use Permit to retain the subject sign, said permit shall be filed and the provisions of that Permit shall prevail.

Except as specifically stated above, the land and use of this property shall comply with all the provisions of the Zoning Ordinance.

Said Variance shall be subject to revocation for cause in accordance with Section 8-90.3 of the Alameda County Zoning Ordinance.

ad/

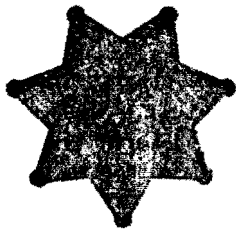
DEC 2 1976
DEC 1 4 1976

S. L. Bittencourt

Cap

RE

Chang



CHARLES C. PLUMMER

February 3, 2011

To Whom It May Concern:

SUBJECT: Mr. John Teixeira

Mr. Teixeira was the owner of a gun store at 22287 Redwood Road in Castro Valley, California for 35 years.

Without question, I found him to be the most honest gun store operator in my 54 years as a peace officer in Alameda County (24 years Berkeley Police, 10 ½ years Hayward Police Chief and 20 plus years as Sheriff of Alameda County).

On several occasions in the early 1990's, I sent undercover officers into his store to try to discover violations. Mr. Teixeira was always doing business according to the letter of the law.

I have found Mr. Teixeira to be a very fine citizen of this County. He is a man of fine character and I'm proud to call him my friend.

I highly recommend him to one and all. He is a good man.

Sincerely,

C.C. Plummer
Sheriff Emeritus
Alameda County



SAN LORENZO VILLAGE HOMES ASSOCIATION

377 Paseo Grande • San Lorenzo CA 94580
(510) 276-4554 • www.slvha.com

Position of the SLVHA on the Proposed Gun Shop

In August, the SLVHA discussed the proposed gun shop in an open meeting. Clearly, there was NOT a majority of residents at the meeting, so the following opinions represent the opinion of those who spoke at the meeting.

Without surprise, there were 2 obvious opposing factions: those who believe in their right to own firearms and therefore had no opposition to the gun shop and those who are opposed to guns and their ready availability and therefore believe that gun shops should not be located within our community. After reading about the spate of recent shootings, some who oppose guns and gun shops have a point of concern. That said, there were also members of the community that simply raised concerns about this particular gun shop, at this particular location.

Those concerns were as follows:

A gun shop should not be given either preferential or less favored treatment based solely on the fact it is a gun shop. If it meets all of the conditions set out by the County, then it should be approved.

With that in mind, one of the requirements is that it be located 500 plus feet away from a school. Apparently, this location does not meet that requirement. I have heard that since the school in question is a private school, the 500 foot rule does not apply. My thought on that is that a school is a school, students are students; whether they attend a public or private institution does not change their status as students, with all the attendant concerns that go along with schools and children.

Another concern was the proximity to an already existing sporting goods store that sells rifles and ammunition. As with every other type of business in the county, oversaturation is always a concern. The County does not permit "too many" liquor stores in any one location, so to, should it be concerned about "too many" gun stores in any one location.

Another concern is its proximity to a bar. Is it appropriate to locate a gun store in the vicinity of a bar and several other businesses that sell alcohol?

Another citizen was concerned that the gun shop would be located near to the headquarters of a motorcycle club that has ties to the Hells Angels and questioned if this was the best location for a gun shop.

Citizens raised the question of what type of weapons will be sold. We were told that the gun store will sell "hunting" oriented weapons. What is the definition of a hunting weapon? When it comes to rifles, this presupposes that weapons could be bolt action, small capacity magazines; however, which handguns are considered hunting weapons. Will the gun shop only stock revolvers of a certain caliber, or will it stock pistols and revolvers. Almost any reliable handgun (pistol or revolver) can be used for hunting.

Board Members: Art Wydler-President, Diane Wydler-Vice President
Margaret Wright-Secretary/Treasurer, Wulf Bieschke
Administrator: Kathy Martins

And will a business license limit or specify the specific type(s) of weapon(s) sold? If not, we can be promised one thing, knowing that promises can change.

Finally, is the question of what neighborhood is affected by this gun shop? Apparently, it is within the Castro Valley, Ashland/Cherry Land business jurisdiction, but it is located within or nearer the borders of the Village of San Lorenzo. If the business is to service Castro Valley, Ashland, Cherry Land, why can't it be located closer to the population center of the targeted business community.

As you can see, there was no consensus about whether this gun shop should be located at the proposed location. Before a business permit is issued, I believe the concerns raised by San Lorenzo citizens deserve to be answered. I realize that no decision will please everyone, but every question deserves an answer.

Tarbell, Richard, CDA

From: Lang, Allen
Sent: Tuesday, October 25, 2011 8:19 AM
To: Tarbell, Richard, CDA
Subject: RE: Occupancy Load for retail

One exit is enough.

Allen Lang, PE, SE
Building Official
Alameda County Public Works Agency
510-670-5557

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-----Original Message-----

From: Tarbell, Richard, CDA
Sent: Monday, October 24, 2011 5:16 PM
To: Lang, Allen
Subject: Occupancy Load for retail

Allen:

This location has been glass shop for years (488 Lewelling Blvd. Vacant at this time), the request now is for a firearms sales business and the question is does it need two exits. Can you review and determine if one or two exits would be required?

I will talk to you soon.

Thanks,

Richard Tarbell, Planner
Alameda County Community Development Agency Planning Department Phone (510) 670-5400
Fax: (510) 785-8793
Email: richard.tarbell@acgov.org

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-----Original Message-----

From: ricohscanner@acgov.org [<mailto:ricohscanner@acgov.org>]
Sent: Monday, October 24, 2011 1:56 PM
To: Tarbell, Richard, CDA
Subject: Scanned Document Attached

This E-mail was sent from "RNP01F60E" (Aficio MP C6501).

Tarbell, Richard, CDA

To: Lang, Allen
Subject: Occupancy Load for retail
Attachments: 20111024165545915.pdf

Allen:

This location has been glass shop for years (488 Lewelling Blvd. Vacant at this time), the request now is for a firearms sales business and the question is does it need two exits. Can you review and determine if one or two exits would be required?

I will talk to you soon.

Thanks,

Richard Tarbell, Planner
Alameda County Community Development Agency Planning Department Phone (510) 670-5400
Fax: (510) 785-8793
Email: richard.tarbell@acgov.org

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-----Original Message-----

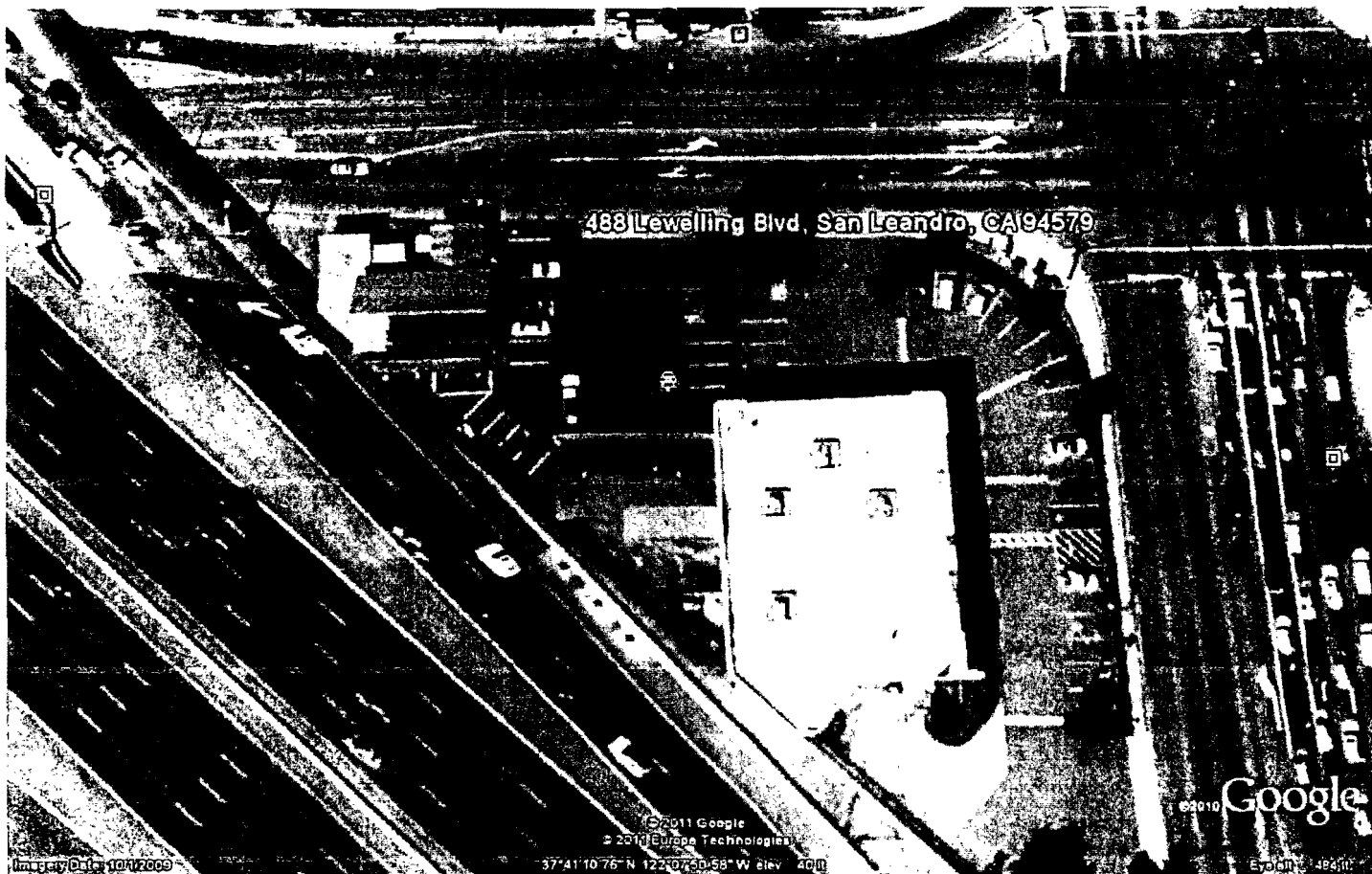
From: ricohscanner@acgov.org [<mailto:ricohscanner@acgov.org>]
Sent: Monday, October 24, 2011 1:56 PM
To: Tarbell, Richard, CDA
Subject: Scanned Document Attached

This E-mail was sent from "RNP01F60E" (Aficio MP C6501).

Scan Date: 10.24.2011 16:55:45 (-0400)
Queries to: ricohscanner@acgov.org

Scan Date: 10.24.2011 16:55:45 (-0400)

Queries to: ricohscanner@acgov.org



SUBJECT PROPERTY.

EXHIBIT A

JUL 01 2011

CUP

PLN 2011-00096



Alameda County Fire Department

*Proudly serving the Unincorporated Area of Alameda County
and the communities of San Leandro, Dublin, Newark
the Lawrence Berkeley National Laboratory and
the Lawrence Livermore National Laboratory*

Sheldon D. Gilbert, Fire Chief

ADMINISTRATION

835 E. 14th Street, Suite 200
San Leandro, CA 94577
(510) 618-3490
(510) 618-3445 Fax

EMS DIVISION

1426 164th Avenue
San Leandro, CA 94578
(510) 618-3485
(510) 276-5915 Fax

TRAINING DIVISION

1426 164th Avenue
San Leandro, CA 94578
(510) 618-3485
(510) 276-5915 Fax

ALAMEDA COUNTY REGIONAL EMERGENCY COMMUNICATIONS CENTER (ACRECC)

7000 East Avenue, L-388
Livermore, CA 94550
(925) 422-5194
(925) 422-5730 Fax

FIRE PREVENTION OFFICES:

ALAMEDA COUNTY

399 Elmhurst Street
Room 120
Hayward, CA 94544
(510) 670-5853
(510) 887-5836 Fax

CITY OF SAN LEANDRO

835 E. 14th Street
San Leandro, CA 94577
(510) 577-3317
(510) 577-3419 Fax

CITY OF DUBLIN

100 Civic Plaza
Dublin, CA 94568
(925) 833-6606
(925) 833-6628 Fax

CITY OF NEWARK

37101 Newark Blvd.
Newark, CA 94560
(510) 578-4218
(510) 578-4281 Fax

October 27th, 2011

Alameda County
Community Development Agency
Planning Department
224 West Winton Ave., Room 111
Hayward, California 94544

TO:	Richard Tarbell	CC	Graves
FROM:	County Fire Prevention		
	Alameda County Fire Prevention Office		
SUBJECT:	PLN 2011-0096, Condition Use Permit to allow the operation Of a gun shop located at 488 Lewelling Blvd. in Ashland.		

Conditions of Approval

The following conditions shall be met prior the issuance of a building permit and fire clearance for occupancy.

1. Details on the security gate installed across the display area shall be provided during the building permit process.
2. During the Building Permit Process, Exit signs and Emergency Lighting will be required. Please show the locations on the plans.
3. A Knox Box shall be provided near the entry and shall be shown on the site plan during the Building Permit Process.
4. A Fire Extinguisher shall be shown on the floor plan during the Building Permit Process.
5. Make sure you show the type of hardware on the front door (i.e., double key, panic, paddle, or lever handle). Accessory locks are not permitted unless they release upon activation of the panic, lever, or paddle device. At no time will dead bolts, sliders, 2x4's, or locks with the thumb turns be allowed.
6. Ensure that the Occupant Load is provided on the cover sheet of the Building Permit Plans.

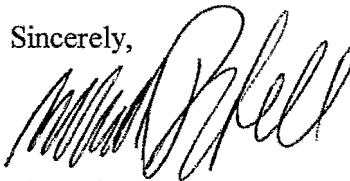
PROJECT REFERRAL

Date: August 1, 2011

RE: Case No. PLN2011-00096

If you have any questions, please contact me at the above number.

Sincerely,



Richard Tarbell
Development Planning Division
richard.tarbell@acgov.org

cc: Applicant: VALLEY GUNS & AMMO // NOBRIGA, STEVE 1196 Silver Trail Lane,
Manteca, Ca 95336

Owner: GRAVES, MARY K TR 3325 Lenard Dr, Castro Valley, Ca 94546

☒ No Comment - Date 8/11/2011

Attachments

BID- Need Bureau permit.

Allen Ly 8/11/2011

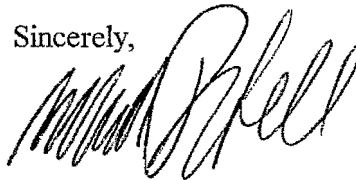
PROJECT REFERRAL

Date: August 1, 2011

RE: Case No. PLN2011-00096

If you have any questions, please contact me at the above number.

Sincerely,



Richard Tarbell
Development Planning Division
richard.tarbell@acgov.org

cc: Applicant: VALLEY GUNS & AMMO // NOBRIGA, STEVE 1196 Silver Trail Lane,
Manteca, Ca 95336

Owner: GRAVES, MARY K TR 3325 Lenard Dr, Castro Valley, Ca 94546

☒ No Comment - Date 8/16/11

Attachments

JR

Tarbell, Richard, CDA

From: Orduna, Rodrigo, CDA
Sent: Monday, September 19, 2011 3:54 PM
To: 'Cherryland Community Association'
Cc: Tarbell, Richard, CDA
Subject: RE: Planning Application Comments

Thank you for the comments, Susan.

Regarding outreach to the Ashland community, we mailed courtesy notices to tenants and property owners within a 500-foot radius of the subject property, and mailed a courtesy notice to David Zechman, president of the Ashland Community Association. I can let Richard Tarbell respond if we have gotten any feedback from David. Richard or I will call David this week to follow-up.

On a separate note, can you send me the agenda items to the CCA Board meetings ahead of the meeting date, so that I can find out whether to go or not? If you all want me to start going again, I will do so. But, I would like to be able to make efficient use of the times that I show up. If you give me a heads-up before the meeting, I can come to the meeting prepared with answers.

Regards,

Rodrigo Orduña, AICP, Bay-Friendly QLP
Senior Planner
Alameda County Planning Department
Community Development Agency

rodrigo.orduna@acgov.org
telephone 510-670-6503
facsimile 510-785-8793

399 Elmhurst Street, Suite 141
Permit Center
Hayward, CA 94544
<http://www.acgov.org/cda>

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From: Cherryland Community Association [<mailto:cca.bod@gmail.com>]
Sent: Thursday, September 08, 2011 9:41 PM
To: Orduna, Rodrigo, CDA
Subject: Planning Application Comments

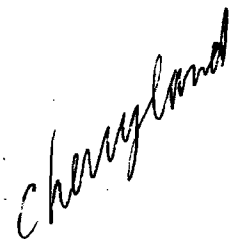
Hi Rodrigo,

Here are CCA Board comments on applications we reviewed this evening:

Gun store on Llewelling:
The Board is split.

Strong feelings in opposition were:

-This provides no benefit to the community. CUPs in our business district should be granted for a reason - such



as it stimulates the kind of business we want here or there is a community need. While we understand this gun store may sell guns to police, which are not accessible at every gun store, we don't have many Sheriff's living our area, so they should be guns in their own neighborhood.

This business is not locally owned. We want to stimulate more locally owned businesses in our area, especially in our business district. We may feel differently about this gun store coming in if the owner was going to live above the store.

-There are plenty of stores to buy guns. Big 5, the gun shop in Castro Valley on Redwood Road are two examples.

-This is not the type of business we want in our business district.

-It is bad for future business development in our area, this is not only going to not attract what we want, it is GOING TO ATTRACT what we DON'T want.

-There is a reason we have a restriction on gun store locations relative to residences and sensitive receptors. There is no compelling reason at all to allow this gun store in our neighborhood, even if it is owned by a police man.

Feelings for the gun store were not strongly for, but also not against. Reasons that were given for having the gun store were:

-It is a tax paying store.

-Everyone should have a gun.

I hope this application will be going through significant community process, in particular in the Ashland Community, where there is not a community organization the County relies on for input. I would like to know what outreach has been done about this in Ashland and how the County plans to get input from residents of Ashland, in particular those living adjacent to the location of the store.

Susan

--

Susan

Susan Beck, President

Cherryland Community Association

"Never doubt that a small group of committed citizens can change the world. Indeed it's the only thing that ever has."

Margaret Mead (1901-1978)

www.cherryland-ca.org

✓
ZONING ENFORCEMENT

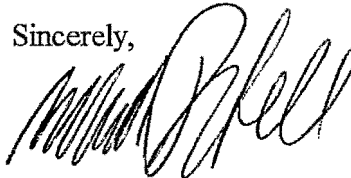
PROJECT REFERRAL

Date: August 1, 2011

RE: Case No. PLN2011-00096

If you have any questions, please contact me at the above number.

Sincerely,



Richard Tarbell
Development Planning Division
richard.tarbell@acgov.org

cc: Applicant: VALLEY GUNS & AMMO // NOBRIGA, STEVE 1196 Silver Trail Lane,
Manteca, Ca 95336

Owner: GRAVES, MARY K TR 3325 Lenard Dr, Castro Valley, Ca 94546

☒ No Comment - Date 8/15/11

Attachments



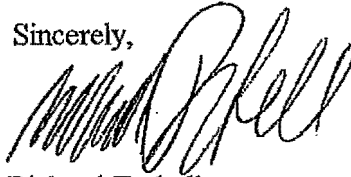
PROJECT REFERRAL

Date: August 1, 2011

RE: Case No. PLN2011-00096

If you have any questions, please contact me at the above number.

Sincerely,



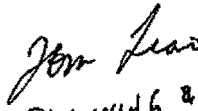
Richard Tarbell
Development Planning Division
richard.tarbell@acgov.org

cc: Applicant: VALLEY GUNS & AMMO // NOBRIGA, STEVE 1196 Silver Trail Lane,
Manteca, Ca 95336

Owner: GRAVES, MARY K TR 3325 Lenard Dr, Castro Valley, Ca 94546

TL No Comment - Date 8/11/11

Attachments


PLANNING & HOUSING MANAGER

Tarbell, Richard, CDA

From: TLiao@ci.san-leandro.ca.us
Sent: Thursday, August 11, 2011 2:15 PM
To: Tarbell, Richard, CDA
Cc: JTudor@ci.san-leandro.ca.us
Subject: re: pln2011-00096 gun shop in unincorporated san leandro
Attachments: SL No Comment Ltr.pdf

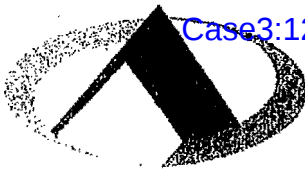
Hi Richard:

Attached is my confirmation of no comment for the proposed gun shop in the unincorporated area location of 488 Lewelling Blvd. The City Planning Division has no comment on this proposed business use because it is outside of the City's Zoning Code jurisdiction.

Is this signed .pdf sufficient or do you need the original signed hard copy mailed to you?

I've also forwarded your letter to our Police Department so see if they may have any questions or comments for you on this proposed business.

Tom Liao, Planning and Housing Manager
City of San Leandro Community Development Dept.
Planning and Housing Services Divisions
835 East 14th St.
San Leandro, CA 94577
510-577-6003 (office)
510-577-6007 (fax)
e-mail: tliao@ci.san-leandro.ca.us
www.sanleandro.org



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

Chris Bazar
Agency Director

Albert Lopez
Planning Director

224
West Winton Ave
Room 111

Hayward
California
94544

phone
510.670.5400
fax
510.785.8793

www.acgov.org/cda

PROJECT REFERRAL

Date: August 1, 2011

RE: Case No. PLN2011-00096

Conditional Use Permit

Due Date: August 22, 2011

ACPWA BUILDING DEPARTMENT
ALAMEDA CO. FIRE DEPT.

PLANNING TECHNICIAN

ENV HEALTH HAZARDOUS
MATERIALS ARIU LEVI
ALAMEDA CO. ZONING
ENFORCEMENT

CITY OF SAN LEANDRO PLANNING

CHERRYLAND COMMUNITY
ASSOC.

BRIAN WASHINGTON

ACPWA LAND DEVELOPMENT
SHERIFF PERMITS DEP. FRANK
BUSCHHUETER

ALAMEDA CO. REDEVELOPMENT
AGENCY

ACPWA TRAFFIC

CHP (WEST) ROBERT TUAZON

ASHLAND AREA COMMUNITY
ASSOC

SAN LORENZO VILLAGE HOMES
ASSOC.

The following application is referred to you for your information and recommendation:

to allow the operation of a gun shop, located at 488 Lewelling Blvd (Ashland),
Side: S; Distance: 140 ft; Direction: W; Of Cross St: Hesperian Blvd
APN: 413-0097-001-03

This project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA), and State and County CEQA Guidelines (Section 15301 - Class 1, Existing Facilities), as the project is limited to the operation, maintenance, and permitting of an existing use, structure(s) or facilities with minor repair or alteration, involving negligible or no expansion of the use beyond that existing at the time that the County takes action on this project, or is otherwise consistent with CEQA Guidelines for Class 1 projects.

Receipt of your comments by the indicated due date will enable the inclusion of relevant information in the preparation of a written staff report; otherwise, please initial and date below that your organization, department or agency has no comment and return this notice by the indicated due date.

Please send a copy of your recommendation(s) to the applicant.



Alameda County Fire Department

*Proudly serving the Unincorporated Area of Alameda County
and the communities of San Leandro, Dublin, Newark
the Lawrence Berkeley National Laboratory and
the Lawrence Livermore National Laboratory*

*sent: 1/1/13
NOBREGA*

Sheldon D. Gilbert, Fire Chief

ADMINISTRATION

835 E. 14th Street, Suite 200
San Leandro, CA 94577
(510) 618-3490
(510) 618-3445 Fax

EMS DIVISION

1426 164th Avenue
San Leandro, CA 94578
(510) 618-3485
(510) 276-5915 Fax

TRAINING DIVISION

1426 164th Avenue
San Leandro, CA 94578
(510) 618-3485
(510) 276-5915 Fax

ALAMEDA COUNTY REGIONAL EMERGENCY COMMUNICATIONS CENTER (ACRECC)

7000 East Avenue, L-388
Livermore, CA 94550
(925) 422-5194
(925) 422-5730 Fax

FIRE PREVENTION OFFICES:

ALAMEDA COUNTY

399 Elmhurst Street
Room 120
Hayward, CA 94544
(510) 670-5853
(510) 887-5836 Fax

CITY OF SAN LEANDRO

835 E. 14th Street
San Leandro, CA 94577
(510) 577-3317
(510) 577-3419 Fax

CITY OF DUBLIN

100 Civic Plaza
Dublin, CA 94568
(925) 833-6606
(925) 833-6628 Fax

CITY OF NEWARK

37101 Newark Blvd.
Newark, CA 94560
(510) 578-4218
(510) 578-4281 Fax

September 8th, 2011

Alameda County
Community Development Agency
Planning Department
224 West Winton Ave., Room 111
Hayward, California 94544

TO:	Richard Tarbell	CC	Graves
FROM:	County Fire Prevention		
	Alameda County Fire Prevention Office		
SUBJECT:	PLN 2011-0096, Condition Use Permit to allow the operation Of a gun shop located at 488 Lewelling Blvd. in Ashland.		

APPLICATION NOT COMPLETE FOR FIRE REQUIREMENTS – WITH CUSTOMER FOR RESPONSE

Fire Staff does not recommend that discretionary approval be given until the following issues are addressed and Fire Conditions are issued.

Re-submittal Required. A re-submittal is required for this project. Submit the revised plan along with a copy of any necessary reference materials, cut-sheets, listing sheets and calculations. Include a written itemized response to each comment and where in the re-submittal the specific change or information requested can be found.

Errors & Omissions. The purpose of code enforcement is to provide a means to help ensure projects are built to the codes, regulations and standards applicable to the project. Two methods are used towards this goal. First, is the review of the plans, second, are field inspections associated with the work. Between these two methods, it is hoped that all code deficiencies are discovered and corrected.

It is important to note that approval of the plan does not constitute permission to deviate from any code requirement and shall not be construed to be a permit for, or an approval of, any violation of the applicable statute, regulation, code or standard. Approval of a plan or permit presuming to give authority to violate or cancel the provision of any applicable statute, regulation, code or standard shall not be valid.

Alternate Means. Any alternate means or equivalences shall be submitted in writing explaining the code provision that will be deviated from, the justification for such deviation, and an explanation on how this deviation meets the intent of the code and the equivalent level of safety intended by the code. This letter and supporting documents must be reviewed and approved for the deviation to be considered acceptable.

Items to Be Addressed with Required Re-submittal

1. How much Smokeless powder will be stored on site?
Response: _____
2. Provide Manufacture Specifications on the ATF approved Container.
Response: _____

3. Please indicate the Occupant load of the facility as two exits may be required and only one is shown.

Response: _____

4. Provide details on the security gate installed across the display area. Is there an emergency release device to prevent people from stranded?

Response: _____

5. During the Building Permit Process, Exit signs and Emergency Lighting will be required. Please show the locations on the plans.

Response: _____



Alameda County Fire Department

*Proudly serving the Unincorporated Area of Alameda County
and the communities of San Leandro, Dublin, Newark
the Lawrence Berkeley National Laboratory and
the Lawrence Livermore National Laboratory*

Sheldon D. Gilbert, Fire Chief

ADMINISTRATION

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(925) 833-6628 Fax

CITY OF NEWARK

37101 Newark Blvd.
Newark, CA 94560
(510) 578-4218
(510) 578-4281 Fax

August 22, 2011

Alameda County
Community Development Agency
Planning Department
224 West Winton Ave., Room 111
Hayward, California 94544

TO:	Richard Tarbell	CC	Graves
FROM:	County Fire Prevention		
	Alameda County Fire Prevention Office		
SUBJECT:	PLN 2011-0096, Condition Use Permit to allow the operation Of a gun shop located at 488 Lewelling Blvd. in Ashland.		

APPLICATION NOT COMPLETE FOR FIRE REQUIREMENTS – WITH CUSTOMER FOR RESPONSE

Fire Staff does not recommend that discretionary approval be given until the following issues are addressed and Fire Conditions are issued.

Re-submittal Required. A re-submittal is required for this project. Submit the revised plan along with a copy of any necessary reference materials, cut-sheets, listing sheets and calculations. Include a written itemized response to each comment and where in the re-submittal the specific change or information requested can be found.

Errors & Omissions. The purpose of code enforcement is to provide a means to help ensure projects are built to the codes, regulations and standards applicable to the project. Two methods are used towards this goal. First, is the review of the plans, second, are field inspections associated with the work. Between these two methods, it is hoped that all code deficiencies are discovered and corrected.

It is important to note that approval of the plan does not constitute permission to deviate from any code requirement and shall not be construed to be a permit for, or an approval of, any violation of the applicable statute, regulation, code or standard. Approval of a plan or permit presuming to give authority to violate or cancel the provision of any applicable statute, regulation, code or standard shall not be valid.

Alternate Means. Any alternate means or equivalences shall be submitted in writing explaining the code provision that will be deviated from, the justification for such deviation, and an explanation on how this deviation meets the intent of the code and the equivalent level of safety intended by the code. This letter and supporting documents must be reviewed and approved for the deviation to be considered acceptable.

Items to Be Addressed with Required Re-submittal

1. Will there be various types of gun powder sold at this site?

Response: _____

2. If gun powder is to be stored on-site, how is it being stored?

Response: _____

3. Please indicate the Occupant load of the facility as two exits may be required and only one is shown.
Response: _____
4. Identify the locations of the Fire Extinguishers.
Response: _____
5. Please indicate on the site plan if there are Exit signs or emergency lighting.
Response: _____
6. Please indicate the type of hardware on the front door. Only single action hardware is allowed on the door.
Response: _____
7. Identify the location of the Knox Box.
Response: _____

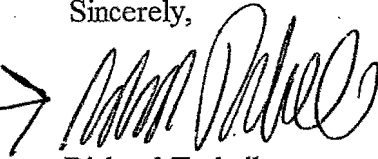
PROJECT REFERRAL

Date: August 29, 2011

RE: Case No. PLN2011-00096

If you have any questions, please contact me at the above number.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Tarbell', is written over a long horizontal line that extends from the left margin towards the signature.

Richard Tarbell
Development Planning Division
richard.tarbell@acgov.org

cc: Applicant: VALLEY GUNS & AMMO // NOBRIGA, STEVE 1196 Silver Trail Lane,
Manteca, Ca 95336

Owner: GRAVES, MARY K TR 3325 Lenard Dr, Castro Valley, Ca 94546

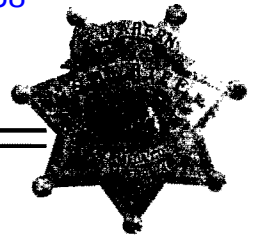
☒ No Comment - Date 8/31/11

Attachments

JR

Alameda County Sheriff's Office

Eden Township Substation
15001 Foothill Boulevard, San Leandro, CA 94578-1008



Gregory J. Ahern, Sheriff

Director of Emergency Services
Coroner - Marshal

August 23, 2011

Alameda County Community Development Agency
224 West Winton Avenue #111
Hayward, CA 94544

Attention: Richard Tarbell

RE: PLN2011-00096

My staff reviewed the attached application and advised me of the following concerns. The Sheriff's Office has experienced a large volume of calls for service to retail stores in unincorporated Alameda County in the past year with a majority of the calls involving property crimes. This would significantly increase the likelihood of calls for service including thefts, burglaries, and robberies. The Sheriff's Office would like to see additional security features added to the building including a security/hold up alarm, video surveillance system, additional exterior lighting, heavy security doors and locks, also shatter resistant windows. X

Additionally, the Sheriff's Office would require the gun shop to comply with the following applicable laws and regulations:

Office of the Attorney General California Department of Justice, Dangerous Weapons Control Laws Title 2 Part 4. X

- Dangerous Weapons, Penal Codes 12000 thru 12809.
- Security Requirements for Firearms Dealers, Penal Code 12071.
- Imitation Firearms, Sniperscopes and Switchblades, Penal Codes 469 thru 654k.
- Mental Health, Welfare and Institutions Codes 8100 thru 8108.
- Second Hand Dealers, Business and Professions Code 21641.

Page 2

U.S. Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives, Federal Firearms Regulations. X

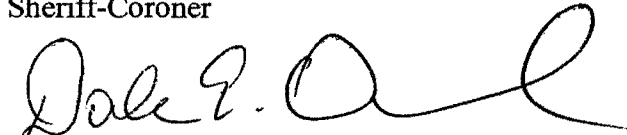
- Gun Control Act, 18 United States Code, Chapter 44.
- National Firearms Act, 26 United States Code, Chapter 53.
- Arms Export Control Act, 22 United States Code, Chapter 2778.
- National Instant Criminal Background Check, Title 28 CFR, Chapter 1.

The gun shop would be required to submit to an application process with the Alameda County Sheriff's Office for a Retail Firearms Dealer License, per Penal Code 12071. X

Additionally, the gun shop would be required to comply with the applicable sections of the Alameda County General Ordinance regarding Firearms and Dangerous Weapons, Chapter 9.12. X

If further assistance is needed, please contact Deputy Frank Buschhueter at (510) 667-3620.

Gregory J. Ahern,
Sheriff-Coroner

A handwritten signature in black ink, appearing to read "Dale E. Amaral", with a stylized flourish at the end.

Dale E. Amaral, Captain
Law Enforcement Services
Eden Township Substation

GJA:DEA:fjb

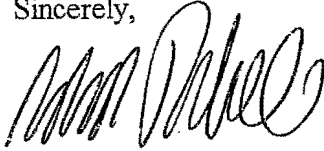
PROJECT REFERRAL

Date: August 29, 2011

RE: Case No. PLN2011-00096

If you have any questions, please contact me at the above number.

Sincerely,



Richard Tarbell
Development Planning Division
richard.tarbell@acgov.org

cc: Applicant: VALLEY GUNS & AMMO // NOBRIGA, STEVE 1196 Silver Trail Lane,
Manteca, Ca 95336

Owner: GRAVES, MARY K TR 3325 Lenard Dr, Castro Valley, Ca 94546

☒ No Comment - Date 9/16/2011

Attachments

BID - Bldg PERMIT Required.
Alta L

Tarbell, Richard, CDA

To: David Zechman; 'Susan Beck'; 'cca.bod@gmail.com'; 'kathleen@slvha.com'
Cc: Patti Hart; Cheryl Christensen; Molly Billalon; Desiree Sanchez
Subject: RE: Letter to recognize Mr. Teixeira and recommend him.

To answer your question - Mr. Teixeira is one of the partners in the proposed gun shop.

Richard Tarbell, Planner

Alameda County Community Development Agency

Planning Department

Phone (510) 670-5400

Fax: (510) 785-8793

Email: richard.tarbell@acgov.org

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From: David Zechman [<mailto:dzechman@prodigy.net>]
Sent: Monday, September 26, 2011 4:17 PM
To: Tarbell, Richard, CDA; 'Susan Beck'; 'cca.bod@gmail.com'; 'kathleen@slvha.com'
Cc: Patti Hart; Cheryl Christensen; Molly Billalon; Desiree Sanchez
Subject: Re: Letter to recognize Mr. Teixeira and recommend him.

Mr. Tarbell. I am replying to all and copying the other members of the Ashland Community Association Board.

Who is Mr. Teixeira? It is not the name of the owner on the paperwork I received, but rather Steve Nobriga is named.

At any rate, I don't believe the letter of recommendation is relevant. Zoning already prohibits the location of a gun shop here--whether properly run or not. Such laws are there to preserve neighborhoods and protect residents. I believe your department's job is to uphold and enforce these laws. Please don't nullify these laws by granting an exception just because someone asks. Enough already. Just follow the law and say no.

Thank you,
David Zechman, President
Ashland Community Association

ASHLAND

From: "Tarbell, Richard, CDA" <richard.tarbell@acgov.org>
To: 'Susan Beck' <soozebeck@gmail.com>; "'cca.bod@gmail.com'" <cca.bod@gmail.com>; "'kathleen@slvha.com'" <kathleen@slvha.com>; "'dzechman@prodigy.net'" <dzechman@prodigy.net>
Sent: Monday, September 26, 2011 3:06 PM
Subject: Letter to recognize Mr. Teixeira and recommend him.

For your consideration:

Find attached a letter to speak for and recommend one of the principles of the Gun shop application from Former Alameda County Sheriff Charles Plummer.

Richard Tarbell, Planner
Alameda County Community Development Agency
Planning Department
Phone (510) 670-5400
Fax: (510) 785-8793
Email: richard.tarbell@acgov.org

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-----Original Message-----

From: ricohscanner@acgov.org [mailto:ricohscanner@acgov.org]
Sent: Monday, September 26, 2011 10:30 AM
To: Tarbell, Richard, CDA
Subject: Scanned Document Attached

This E-mail was sent from "RNP01F60E" (Aficio MP C6501).

Scan Date: 09.26.2011 13:30:18 (-0400)
Queries to: ricohscanner@acgov.org

Tarbell, Richard, CDA

To: PatiHart@aol.com
Subject: RE: Re Gun Shop

Patti:
Thank you for your response and input.

Richard Tarbell, Planner

Alameda County Community Development Agency

Planning Department

Phone (510) 670-5400

Fax: (510) 785-8793

Email: richard.tarbell@acgov.org

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From: PatiHart@aol.com [<mailto:PatiHart@aol.com>]

Sent: Monday, September 26, 2011 6:47 PM

To: Tarbell, Richard, CDA; soozebeck@gmail.com; kathleen@slvha.com; cca.bod@gmail.com

Subject: Re Gun Shop

Zoning already prohibits the location of a gun shop in our area. ...this is not needed.....
we have enough problems without this. Please spare us another "exception".....we have become a dumping ground for "exceptions".....

Respectfully Submitted
Patti Hart
677 Paradise Blvd
Hayward, Ca (In Ashland)
V.P. Ashland Community Assn
Block Captain Paradise Blvd

ASHLAND

Tarbell, Richard, CDA

From: PatiHart@aol.com
Sent: Monday, September 26, 2011 6:47 PM
To: Tarbell, Richard, CDA; soozebeck@gmail.com; kathleen@slvha.com; cca.bod@gmail.com
Subject: Re Gun Shop

Zoning already prohibits the location of a gun shop in our area. ...this is not needed.....
we have enough problems without this. Please spare us another "exception"....we have become a dumping ground for
"exceptions".....

Respectfully Submitted
Patti Hart
677 Paradise Blvd
Hayward, Ca (In Ashland)
V.P. Ashland Community Assn
Block Captain Paradise Blvd

Tarbell, Richard, CDA

From: David Zechman [dzechman@prodigy.net]
Sent: Monday, September 26, 2011 4:17 PM
To: Tarbell, Richard, CDA; 'Susan Beck'; 'cca.bod@gmail.com'; 'kathleen@slvha.com'
Cc: Patti Hart; Cheryl Christensen; Molly Billalon; Desiree Sanchez
Subject: Re: Letter to recognize Mr. Teixeira and recommend him.

Mr. Tarbell. I am replying to all and copying the other members of the Ashland Community Association Board.

Who is Mr. Teixeira? It is not the name of the owner on the paperwork I received, but rather Steve Nobriga is named.

At any rate, I don't believe the letter of recommendation is relevant. Zoning already prohibits the location of a gun shop here--whether properly run or not. Such laws are there to preserve neighborhoods and protect residents. I believe your department's job is to uphold and enforce these laws. Please don't nullify these laws by granting an exception just because someone asks. Enough already. Just follow the law and say no.

Thank you,
David Zechman, President
Ashland Community Association

From: "Tarbell, Richard, CDA" <richard.tarbell@acgov.org>
To: 'Susan Beck' <soozebeck@gmail.com>; 'cca.bod@gmail.com' <cca.bod@gmail.com>; 'kathleen@slvha.com' <kathleen@slvha.com>; 'dzechman@prodigy.net' <dzechman@prodigy.net>
Sent: Monday, September 26, 2011 3:06 PM
Subject: Letter to recognize Mr. Teixeira and recommend him.

For your consideration:

Find attached a letter to speak for and recommend one of the principles of the Gun shop application from Former Alameda County Sheriff Charles Plummer.

Richard Tarbell, Planner
Alameda County Community Development Agency
Planning Department
Phone (510) 670-5400
Fax: (510) 785-8793
Email: richard.tarbell@acgov.org

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-----Original Message-----

From: ricohscanner@acgov.org [mailto:ricohscanner@acgov.org]
Sent: Monday, September 26, 2011 10:30 AM
To: Tarbell, Richard, CDA
Subject: Scanned Document Attached

This E-mail was sent from "RNP01F60E" (Aficio MP C6501).

Scan Date: 09.26.2011 13:30:18 (-0400)

Queries to: ricohscanner@acgov.org



**ALAMEDA COUNTY COMMUNITY
DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

STAFF REPORT

TO: WEST COUNTY BOARD OF ZONING ADJUSTMENTS

HEARING DATE: DECEMBER 14, 2011

GENERAL INFORMATION

APPLICATION

TYPE AND

NUMBER: PLN2011-00096, Conditional Use Permit and Variance

OWNER/

APPLICANT: Valley Guns & Ammo//Nobriga, Steve

PROPOSAL: To allow the operation of a gun shop, and at a distance of less than 500 feet from a residentially zoned district, where 500 feet is required.

ADDRESS AND

SIZE OF PARCEL: 488 Lewelling Boulevard, south side, 140 feet west of Hesperian Boulevard, Ashland area of unincorporated Alameda County, with County Assessor's Parcel Number: 413-0097-001-03. The parcel is approximately 14,800 square feet (0.34 acres) in area.

ZONING: FA (Freeway Access) District according to the *Ashland and Cherryland Business District Specific Plan*, allowing large scale, general commercial land uses that benefit from freeway access and exposure.

EDEN AREA

GENERAL PLAN

DESIGNATION: *Eden Area General Plan* of Alameda County designates this property as GC, (General Commercial). The General Commercial designation allows for a wide range of commercial uses that encompass small offices, local and regional retail establishments and automobile-oriented uses to meet the needs of Eden Area residents, employees and pass-through travelers. Offices are particularly encouraged in commercially designated areas to enhance the employment base of the area. Commercial parcels have a maximum FAR of 1.0.

ENVIRONMENTAL

REVIEW: This project is Categorically Exempt from the requirements of the *California Environmental Quality Act*; Article 19, Section 15303, Class 3, New Construction or Conversion of Small Structures. Consisting of construction and location of limited numbers of new, small facilities or structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

RECOMMENDATION

The recommendation to the West County Board of Zoning Adjustments is to determine that the proposed location of the firearms sales is within 500 feet of the residential district. Staff is unable to make the findings herein for the Conditional Use Permit and Variance, and recommends denial of the application, PLN2011-00096.

PARCEL ZONING HISTORY

In 1954, the first zoning regulations were applied to the areas in the northwest Eden Township. The 49th Zoning Unit designated a C-2 (General Commercial) District for this area.

October 10, 1966, Variance V-3876 approved expansion of a nonconforming use (residence in a commercial district, structures encroaching into Special Building Line, required amount of off-street parking not provided) and to construct a building so as to (1) encroach 20 feet into an established Special Building Line and (2) reduce off-street parking spaces from the required 17 spaces to 7 spaces.

January 9, 1967, Variance V-3989 approved: (1) the location of a sign in a Special Building Line; (2) sign extends above the roof line; (3) sign contains 70 sq. ft. (double faced sign with 35 sq. ft. on each side) where the Ordinance limits the area to 68 Sq. ft. and no one sign exceeding 40 sq. ft.

October 16, 1974, Variance V-6509 was approved on appeal to retain a nonconforming outdoor advertising sign. Expiration December 2, 1978.

In 1995, the Board of Supervisors adopted the *Ashland and Cherryland Business District Specific Plan* for the commercial districts of the Ashland and Cherryland communities. The *Specific Plan* promotes transit oriented development as well as development that takes advantage of existing highway and freeway access. There are six identified business districts which include mixed-use development along Lewelling/East Lewelling Boulevard between Hesperian Boulevard and Mission Boulevard.

SITE AND CONTEXT DESCRIPTION

Physical features: This is a triangular shaped site with 150 feet of frontage on Lewelling Boulevard, 165 feet of width at the back, bordering on Highway 880, and 140 feet of width adjacent to the corner property to the east. The only access to the property is the frontage on Lewelling Boulevard. The 2,237 square foot, single story building, built in 1947, is a currently vacant store front space with two small offices and a bathroom. The building is located at the southeastern corner of the site, set back from the street. There is a second building on the parcel that is an upholstery shop use. Parking for 18 cars makes up the remainder of the property. There is a billboard sign facing Highway 880, behind the upholstery shop.

Adjacent area: The property is located on the south side of Lewelling Boulevard, along a mixed use commercial and residential corridor along Lewelling Boulevard in the Ashland area of unincorporated Alameda County. The north side of Lewelling Boulevard is within the City of San Leandro. A Kelly Moore Paint store is located on the adjacent property to the east. The property is in close proximity to an In-N-Out Burger restaurant, Walmart, Rasputin's Records, and a Big Five Sporting Goods store in a strip mall development across the Lewelling/Hesperian intersection. A Kragen's Auto Supply store is across Hesperian Boulevard. The residential properties are across Highway 880 to the southwest, and across Hesperian Boulevard to the east.

PROJECT DESCRIPTION

This petition is to allow firearms sales (gun shop), and at a distance of less than 500 feet from a residentially zoned district, where 500 feet is required. The distance from a residential district has been determined to be approximately 446 feet in two directions. The distance was measured from the closest building exterior wall of the gun shop to the property line of the residentially zoned district. The business is proposed to be located within an existing building that has historically been used for retail business. No additional floor area or building expansion is proposed as part of this project. This application at this location requires the Conditional Use Permit public hearing process to allow legal sales of firearms in this zoning district, and a variance when located closer than 500 feet to the nearest residentially zoned district; elementary, middle or high school; pre-school or day care center; other firearms sales business; or liquor stores or establishments in which liquor is served.

REFERRAL RESPONSES

Alameda County Building Department: Responded September 16, 2011. The Building Department has no comment for the proposed Conditional Use Permit. A Building Permit will be required for site work associated with the proposed use. General Conditions for Building Permit Applications will apply.

Alameda County Land Development: Responded on August 31, 2011. Staff reviewed the referral and attachments and stated that its office has no comment at this time with regard to this application based on what they could determine from the plans submitted at the time.

Public Works Agency, Traffic: Has not responded as of this writing.

Alameda County Sheriff's Office: Responded on August 23, 2011. Staff reviewed the referral and attachments and requests the following:

- Like to see additional security features added to the building including/hold up alarm, video surveillance system, additional exterior lighting, heavy security doors and locks, also shatter resistant windows.
- Compliance with applicable laws and regulations, such as the Office of the Attorney General California Department of Justice, Dangerous Weapons Control Laws Title 2, Part 4.
- U.S. Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives, Federal Firearms Regulations.
 - ✓ Gun Control Act, 18 United States Code, Chapter 44.
 - ✓ National Firearms Act, 26 United States Code, Chapter 53.
 - ✓ Arms Export Control Act, 22 United States Code, Chapter 2778.
 - ✓ National Instant Criminal Background Check, Title 28 CFR, Chapter 1.
- Requires a Retail Firearms Dealer License, per Penal Code 12071.
- Requires compliance with Firearms and Dangerous Weapons, Chapter 9.12.

Zoning Enforcement: Has responded on August 15, 2011. Staff reviewed the referral and attachments and stated that its office has no comment at this time.

California Highway Patrol: Has not responded as of this writing.

Alameda County Health Agency: Has not responded as of this writing.

Alameda County Fire Department: Responded on September 8, 2011. Correspondence from the Fire Department stated that the Applicant must address five items with a required re-submittal prior to the issuance of a Building Permit and Fire Clearance for occupancy:

- How much Smokeless power will be stored on site?
- Provide Manufactures Specifications on the ATF approved Container.
- Indicate the Occupancy load of the facility as two exits may be required and only one is shown.
- Provide details on the security gate installed across the display area. Is there an emergency release device to prevent people from becoming stranded?
- During the Building Permit Process, Emergency Lighting and Exit signs shall be required. Show the locations on the plans.

San Lorenzo Village Home Association: Has responded on October 31, 2011. Without a majority of residence at the meeting there were the two factions that spoke – the right to own firearms, and those generally opposed to guns. The concerns related to this particular gun shop at this location were:

- The fact that the use is a gun shop should not be factored into the decision, rather the ordinance regulations.
- The proximity to an already existing sporting goods store that sells guns and ammunition.
- The proximity to a bar was stated as a concern.
- Concern that the gun shop would be located near the headquarters of a motorcycle club that has ties to the Hells Angels.
- Concerns were raised about the type of weapons that would be sold.
- The mention that, if the gun shop was to serve Castro Valley, Ashland, Cherryland, why can't it be located closer to the population center of the targeted business community.

Cherryland Community Association: Has responded on September 19, 2011. The community association board states that it is split on this project:

- The business is not an asset to the community.
- The Association wants to attract the kind of business we want and need in the community.
- Police and Sheriff officers should purchase their weapons in their own community.
- This business is not locally owned.
- There are already other gun stores in the area.

Ashland Area Community Association: Has responded on September 26, 2011. The community association board states that it is not in support of the project, and that Zoning laws are in place to preserve neighborhoods and protect residents. The association states: Just follow the law and say no.

City of San Leandro Planning: Has responded on August 11, 2011. Staff reviewed the referral and attachments and stated that its office has no comment at this time.

CURRENT FACTS

The West County Board of Zoning Adjustments hearing, which was held on November 16th brought up issues that required additional information. That information will be discussed at this point in the staff report.

Minimum Distance Requirement

The requirement to apply for a Variance with this application comes from the distance measured from the proposed firearms sales location and nine distinct other land use locations. The language in the Zoning Ordinance for that distance is clear – five hundred (500) feet. The language of how that 500 feet is measured is not quite so clear – that is from what point to what point is the 500 feet measured. Section

17.54.131, Conditional Uses – Firearms Sales, subsection (B) states: “That the subject premises is not within five hundred (500) feet of any of the following: residentially zoned district; elementary, middle or high school; pre-school or day care center; other firearms sales business; or liquor stores or establishments in which liquor is served”.

The only language for interpretation is “subject premises” to establish a point to take a measurement. Premises could be property boundary line, but that could be stated as “property boundary line”. If there is more than one structure or business on the property, then “premises” would have to be defined as the specific structure, or area of the structure, of strip mall. The property in this application has two structures located on it – the vacant building proposed for the gun shop and an upholstery shop.

The points of measurement used in this report to determine the 500 feet distance are from the building wall of the structure proposed for the gun shop use (the premises) that is closest to the residentially zoned district or other land use location to be considered as described in the Zoning Ordinance*.

The method used by the Planning Department to make the measurements has been the Ortho Photographic projection from Pictometry using 500 foot buffer on ESRI, ArcMap (Version 9.3), on Windows 7 software.

Other measurements have been presented and talked about that have produced varying results. Staff will present the following table to explain those measurements.

MEASURED FROM:	MEASURED TO:	DISTANCE MEASURED:
Building wall of the proposed gun shop*	Residentially zoned district	445.9 feet
Front door of the proposed gun shop	Residentially zoned district	492.39 feet
Property line of the proposed gun shop	Residentially zoned district	432.94 feet
Building wall of the proposed gun shop*	Building wall of other firearms sales business, (Big 5 Sporting Goods, 15556 Hesperian Blvd.)	607 feet
Building wall of the proposed gun shop*	Private school (Grounds), International Christian Center East Bay (School), 562 Lewelling Blvd.	1,100 feet
Building wall of the proposed gun shop*	Building wall of an establishment serving liquor, (Usher Inn, 391 Lewelling Blvd.)	620 feet

The following measurements were submitted by the applicant as per his request to the County Survey Department.

MEASURED FROM:	MEASURED TO:	DISTANCE MEASURED:
Front door of the proposed gun shop	Back door of the dwelling in the residentially zoned district	560 feet
Front door of the proposed gun shop	Back door of the dwelling in the residentially zoned district	532 feet
Front door of the proposed gun shop	Front door of the dwelling in the residentially zoned district	534 feet

The method used to make the measurements by the County Survey Department was as requested by the applicant. The software used was Orthophoto (Sanborn Images, Scaled images orthorectified) on ArcMap (Version 9.3).

The following measurements were submitted by the applicant with the original application submittal, as "Exhibit A" with measurements provided from Google mapping tools.

MEASURED FROM:	MEASURED TO:	DISTANCE MEASURED:
Front door of the proposed gun shop	Front door of the dwelling in the residentially zoned district	504.63 feet
Front door of the proposed gun shop	Property line of a multi-family property	630 feet
Front door of the proposed gun shop	Front door of the dwelling of a residentially zoned district	505.6 feet
Front door of the proposed gun shop	Wall of other firearms sales business	620.95 Feet
Front door of the proposed gun shop	Establishment serving liquor	660.91 feet

THE LIST OF OTHER GUN STORES IN ALAMEDA COUNTY

15556 Hesperian Boulevard, San Lorenzo
 22287 Redwood Road, Castro Valley
 3636 Castro Valley Boulevard, Castro Valley
 2129 Newpark Mall, Newark
 3820 Mowry Avenue, Fremont
 40927 Grimmer Boulevard, Fremont
 6600 Dublin Boulevard, Dublin
 4514 Las Positas Road, Livermore
 1870 First Street, Livermore
 2558 Old First Street, Livermore

STAFF ANALYSIS

Conformance with the General Plan

Eden Area General Plan.

3. Land Use Element

A.1. Commercial: Commercial land uses include parcels that contain a number of business types including retail, office, and medical facilities. Commercial development is predominantly located along arterial roadways such as East 14th Street/Mission Boulevard, Hesperian Boulevard, Foothill Boulevard and Lewelling Boulevard, and at key intersections of collector streets. Commercial development in the Eden Area consists of a mixture of strip and stand-alone commercial buildings, often set back from the street and having limited relationship to one another or adjacent land uses.

D.1. General Goals, Policies and Actions: This section provides general goals, policies, and actions that apply to the Eden Area as a whole. D.3. Corridors: Corridors are linear areas with a mix of uses along major roadways that provide a variety of needs for surrounding neighborhoods. This section provides guidance about the County's plan for the Corridors in the Eden Area.

E.1a Specific Guidance Areas: 1.a. Four Corners

1.a.1. The Four Corners area of Lewelling Boulevard shall be developed as a District with a diverse mix of uses that serves as a community meeting and gathering place, through the development of public and private partnerships.

1.a.2. The intersection of Interstate 880 with Lewelling Boulevard should be designed as a gateway into the Eden Area. Special attention should be given to the types of uses and design of this area to ensure that development is visually attractive.

1.a.3. The County should explore designating Four Corners as a historic district due to its significance in the development of the Eden Area.

1.a.4. Historic buildings and sites in Four Corners should be identified and preserved.

The proposed firearms sales store could be a questionable use when guided by the *Eden area General Plan*. The current structures are vintage 1947 and are in need of façade improvement. Generally, the location of the property, and existing site and context, make the proposed use difficult to match with this property. The *General Plan* states that: "special attention should be given to the types of uses and design of this area to ensure that development is visually attractive." This proposal does not include physical improvements to the building or site, in addition to exterior paint and planter boxes. The proposed improvements do not rise to the level of "visually attractive". Also, the subject property is located within the Lewelling Boulevard corridor, part of the *Eden Area General Plan*. For the Lewelling Corridor, the Eden General Plan promotes a "variety of uses". However, the General Plan goal to promote a "variety of uses" did not consider "gun store/firearms sales" as part of that desirable mix of uses.

Following are excerpts from the *Eden Area General Plan* that guide and inform the review and consideration of this application for Conditional Use Permit. Compatibility with existing neighborhood character is a consistent theme reflected in the land use policies.

Eden Area General Plan (2010)

Goal LU-1	Establish a clearly defined urban form and structure to the Eden Area in order to enhance the area's identity and livability.
Policy 7	On parcels that have a viable use in place when this General Plan is adopted, the uses may remain in place until such time as the property is redeveloped. When a property is redeveloped, the new use shall be required to conform to the land use designations in this General Plan.
Goal LU-7	Create attractive Corridors with a mix of uses throughout the Eden Area.
Policy 1:	The redevelopment of corridors shall be a priority for the County as it is a key to revitalizing the Eden Area.
Policy 7:	The County shall utilize its Design Guidelines as an implementation tool to require higher quality and more appropriately scaled development in the Eden Area.

This request for a gun shop may not comply with the “gateway” concept into the Eden Area. There are no substantial modifications proposed to the existing buildings on the subject property.

Design Guidelines include: maintain the desirable qualities and character of existing neighborhoods; consider creating existing corridors to preserve the look and feel of existing neighborhoods; collaborate the County Redevelopment Agency to promote neighborhood identity and beautification; work with existing Neighborhood Associations in the referral process for projects in their areas; consider the establishment of neighborhood-level design review boards.

The proposal would only involve internal tenant improvement work on an existing building located at the back of this small property, and would not change the exterior of the building as seen from the street, with the exception of painting the building, signage, and doors (See attached site plan and elevations). The project remains questionable as to conforming to the guidelines.

There is existing space at the perimeter of the property to provide new landscape material that would be an improvement, along with the placement of potted plants.

Conformance with the Specific Plan

This site is within the *Ashland Cherryland Business District Specific Plan* adopted by the Alameda County Board of Supervisors on June 1, 1995. The *Ashland Cherryland Business District Specific Plan*, designation of FA (Freeway Access) cites examples of land uses allowed, it does not specifically exclude retail gun shops as a land use.

The subject property is located in the FA (Freeway Access) land use designation of the *Ashland and Cherryland Business District Specific Plan*. The FA *Specific Plan* designation allows for large scale, general commercial land uses along busy streets that have access from freeways. Firearms sales are conditionally permitted in some Specific Plan land use designations such as the FA land use designation. Currently, “retail (firearms) sales, equipment sales general store” are illustrative examples of the types of general commercial land uses that could benefit from freeway access and exposure. The surrounding areas along Lewelling and Hesperian Boulevards are a mix of commercial and residential uses.

Conformance with the Zoning Ordinance

Title 17 of the Zoning Ordinance states the following:

17.54.131 – Conditional uses---Firearms sales.

In addition to the findings required of the board of zoning adjustments under Sections 17.54.130 and 17.54.140, no conditional use permit for firearms sales shall issue unless the following additional findings are made by the board of zoning adjustments based on sufficient evidence:

- A. That the district in which the proposed sales activity is to occur is appropriate;
- B. That the subject premises is not within five hundred (500) feet of any of the following: residentially zoned district; elementary, middle or high school; pre-school or day care center; other firearms sales business; or liquor stores or establishments in which liquor is served;
- C. That the applicant possesses, in current form, all of the firearms dealer licenses required by federal and state law;
- D. That the applicant has been informed that, in addition to a conditional use permit, applicant is required to obtain a firearms dealer license issued by the county of Alameda before sale activity can commence, and that information regarding how such license may be obtained has been provided to the applicant;
- E. That the subject premises is in full compliance with the requirements of the applicable building codes, fire codes and other technical codes and regulations which govern the use, occupancy, maintenance, construction or design of the building or structure;
- F. That the applicant has provided sufficient detail regarding the intended compliance with the Penal Code requirements for safe storage of firearms and ammunition to be kept at the subject place of business and building security.

17.54.141 – Conditional uses---Action---Firearms sales.

In order for a conditional use permit for firearms sales to become effective and remain operable and in full force, the following are required of the applicant:

- A. A final inspection from appropriate building officials demonstrating code compliance;
- B. Within thirty (30) days of obtaining a conditional use permit, and prior to any sales activity, a firearms dealer license shall be secured from the appropriate county agency;
- C. The county-issued firearms dealer's license be maintained in good standing;
- D. The maintenance of accurate and detailed firearms and ammunition transaction records;
- E. Transaction records shall be available for inspection as required by the California Penal Code;
- F. Compliance with all other state and federal statutory requirements for the sale of firearms and ammunition and reporting of firearms transactions, including, but not limited to Section 12070 et seq. of the California Penal Code.

GENERAL DISCUSSION

This application is to allow a firearms sales (Valley Guns and Ammo) business operation at the proposed site on Lewelling Boulevard. The ordinance states that this business requires prior consideration for approval of a Conditional Use Permit through the public hearing process and a Variance because the firearms sales would be located fewer than 500 feet from established residences.

The applicants have 38 years of firearm shop business ownership experience and knowledge. There are three owner/operators that will attend the shop five days a week, Tuesday through Saturday, 10:00 am to 6:00 pm.

The applicant has provided staff with a collection of 1,200 individually signed letters of support from the

general public and 113 individually signed letters of support for the shop from police officers, as well as a personal letter of endorsement from Alameda County Sheriff Emeritus Charles C. Plummer.

SERVICES PROVIDED

The operation would generally be described, as above, as the sales of firearms and supplies. Beyond that, the store owners state that they will offer: firearms instruction; classes in hunter safety by certified instructors; handgun certificates (required); firearms repairs; catalog sales; gun cases and safes; vintage and collectibles (early 1800's to the present); new and used hand gun and sporting rifles and shot guns, B-B, pellet, and air rifles. Services will include consignment and appraisals. NO ASSAULT WEAPONS will be sold from the store. They would also sell hunting and fishing tags and licenses, and hand gun safety certificates would be issued.

DISTANCE FROM OTHER BUSINESSES & NON-RESIDENTIAL SENSITIVE USES

The ordinance language requires that a firearms sales business be located 500 feet from the nearest residentially zoned district; elementary, middle or high school; pre-school or day care center; other firearms sales business; or liquor stores or establishments in which liquor is served. The Big 5 Sporting Goods store that is located in the strip shopping center to the northeast across Hesperian Boulevard sells firearms, but is beyond the 500 foot radius from building to building. The Walmart store across Lewelling, to the north, sells ammunition, but not firearms. There are over 600 feet to a business where liquor is served. A private school is located approximately 1,100 feet from the subject site.

DISTANCE FROM RESIDENTIAL ZONED PROPERTY

The Zoning Ordinance requires that to sell firearms the premises must be more than 500 feet from residentially zoned districts. That measurement is taken from the building wall of the subject use (firearms sales shop) to the property line of the residentially zoned districts.

The measurement taken from the closest exterior wall of the gun shop to the closest property line of a residentially zoned district in this case is less than 500 feet in two directions. The closest is to the southeast to the residences 446 feet away across Hesperian Boulevard and behind Kragen Auto Parts store on Albion Avenue. Because of the unconventional wedge shape of the nearest property, this measurement is taken from the proposed gun shop to a usable location inside the property line to remove any doubt of the distance measured. The other distance is to the southwest from the proposed gun shop location, 446 feet to the residentially zoned properties on Paseo del Rio in San Lorenzo Village. The 446 foot distance is measured to the property line with Highway 880 in between.

PARKING

Parking for the retail shop is required by Section 17.52.930 to be one (1) parking space for each 300 square feet of floor area. There would be approximately 1,875 square feet of floor area in the shop. That would figure out to be parking spaces required for 7 cars. There are 12 on-site parking spaces, including one handicapped space on the property. The existing number of parking spaces, therefore, meets the required number of spaces per the zoning ordinance.

TENTATIVE FINDINGS BASED ON INFORMATION AVAILABLE PRIOR TO THE PUBLIC HEARING

CONDITIONAL USE PERMIT:

1. Is the use required by the public need?

Yes. There is a need to provide the opportunity to the public to purchase firearm sales in a qualified, licensed establishment. Unincorporated Alameda County currently has four (4) licensed firearms sales businesses. The necessary number of firearms sales establishments to serve the public need is left up to the market.

2. Will the use be properly related to other land uses and transportation and service facilities in the vicinity?

Yes. The firearms sales shop is located in a mixed use retail/commercial area on a major thoroughfare where the surrounding public streets, and freeway access are adequate and all necessary improvements and services are available.

3. Will the use, if permitted, under all circumstances and conditions of this particular case, materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood?

No. The firearms sales shop will be properly licensed, inspected, and security installed and shall meet all applicable life-safety, and fire code requirements, with proper inventory security devices, and no adverse effects are otherwise anticipated.

4. Will the use be contrary to the specific intent clauses or performance standards established for the District in which it is to be considered?

Yes. The Zoning Ordinance requires a Conditional Use Permit for firearms sales, and does not allow firearms sale within 500 feet of a residentially zoned district; elementary, middle or high school; pre-school or day care center; other firearms sales business; or liquor stores or establishments in which liquor is served. The site proposed with this application is approximately 446 feet from a residentially zoned district. An approved Variance would be required to make this finding. A Variance application has been submitted and is part of this application.

In addition to the findings required of the Board of Zoning Adjustments under Sections 17.54.130 and 17.54.140, no conditional use permit for firearms sales shall be issued unless the following additional findings are made by the board of zoning adjustments based on sufficient evidence:

- A. That the district in which the proposed sales activity is to occur is appropriate;

This could be a questionable site. The *Eden Area General Plan* calls for "Mixed uses" in the "General Commercial" designation, which is where this site is located. However, the General Plan goal to promote a "variety of uses" did not consider "gun store/firearms sales" as part of that desirable mix of uses.

- B. That the subject premises is not within five hundred (500) feet of any of the following: residentially

zoned district; elementary, middle or high school; pre-school or day care center; other firearms sales business; or liquor stores or establishments in which liquor is served;

This finding can not be made. The proposed site is less than 500 feet from two residentially zoned districts. However, one such district is located on the other side of Highway I-880, which cannot be traversed. The other residentially zoned district can be easily accessed from the subject site.

C. That the applicant possesses, in current form, all of the firearms dealer licenses required by federal and state law;

Affirmative. The applicant has the required licenses and is knowledgeable about the firearms business operation having 38 years of prior firearms shop business ownership and experience.

D. That the applicant has been informed that, in addition to a conditional use permit, applicant is required to obtain a firearms dealer license issued by the county of Alameda before sale activity can commence, and that information regarding how such license may be obtained has been provided to the applicant;

Affirmative. Staff has discussed the licensing requirements with the applicant in meetings and he is aware of the licensing requirements.

E. That the subject premises is in full compliance with the requirements of the applicable building codes, fire codes and other technical codes and regulations which govern the use, occupancy, maintenance, construction or design of the building or structure;

If approved as to the use, the premises would undergo the required alteration to bring it into full compliance with codes, regulations, occupancy, maintenance, construction, and safety design for the gun shop use. There are no exterior design changes proposed, except for proposed exterior paint and potted plants.

F. That the applicant has provided sufficient detail regarding the intended compliance with the Penal Code requirements for safe storage of firearms and ammunition to be kept at the subject place of business and building security.

The applicant has had prior experience with the Code requirements to operate firearms and ammunition sales type of business, and as shown the firearms will be kept safe and secure.

TENTATIVE FINDINGS BASED ON INFORMATION AVAILABLE PRIOR TO THE PUBLIC HEARING

VARIANCE:

1. Are there special circumstances applicable to the property, which deprive the property of privileges enjoyed by other properties in the vicinity under identical zoning classification?

No. There are no special circumstances applicable to the property, which deprive the property of privileges enjoyed by other properties in the vicinity under the identical zoning classification when considered for firearms sales use. The property that proposed for the firearms sales is within 500 feet of a residentially zoned District. This is not allowed by the Zoning Ordinance. It should be noted that the 500 foot distance to the southwest is across the lanes of Highway 880, which cannot be traversed.

2. Will granting of the application constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone?

Yes. The granting of firearms sales at the proposed location would constitute a grant of special privileges inconsistent with the location requirements given the establishment of this use within 500 feet of residentially zoned properties. Other firearms sales shops without special circumstances would not be granted a variance in the area due to the existing residential property development within 500 feet.

3. Will granting the application be detrimental to persons or property in the neighborhood or to the public welfare?

Yes. The use will be detrimental to persons or property in the neighborhood or to the public welfare because there is less than the required distance of 500 feet from residentially zoned district in two directions.

At the southwesterly direction, the 500 foot distance is across the lanes of Highway 880, which cannot be traversed. Therefore, there is an existing physical condition that blocks access between the gun shop and residentially zoned properties and there would be no detriment to that neighborhood on the southwest side. The southeasterly direction that is less than 500 feet, however, would not be difficult to traverse. The use would therefore, be detrimental to this residentially zoned neighborhood.

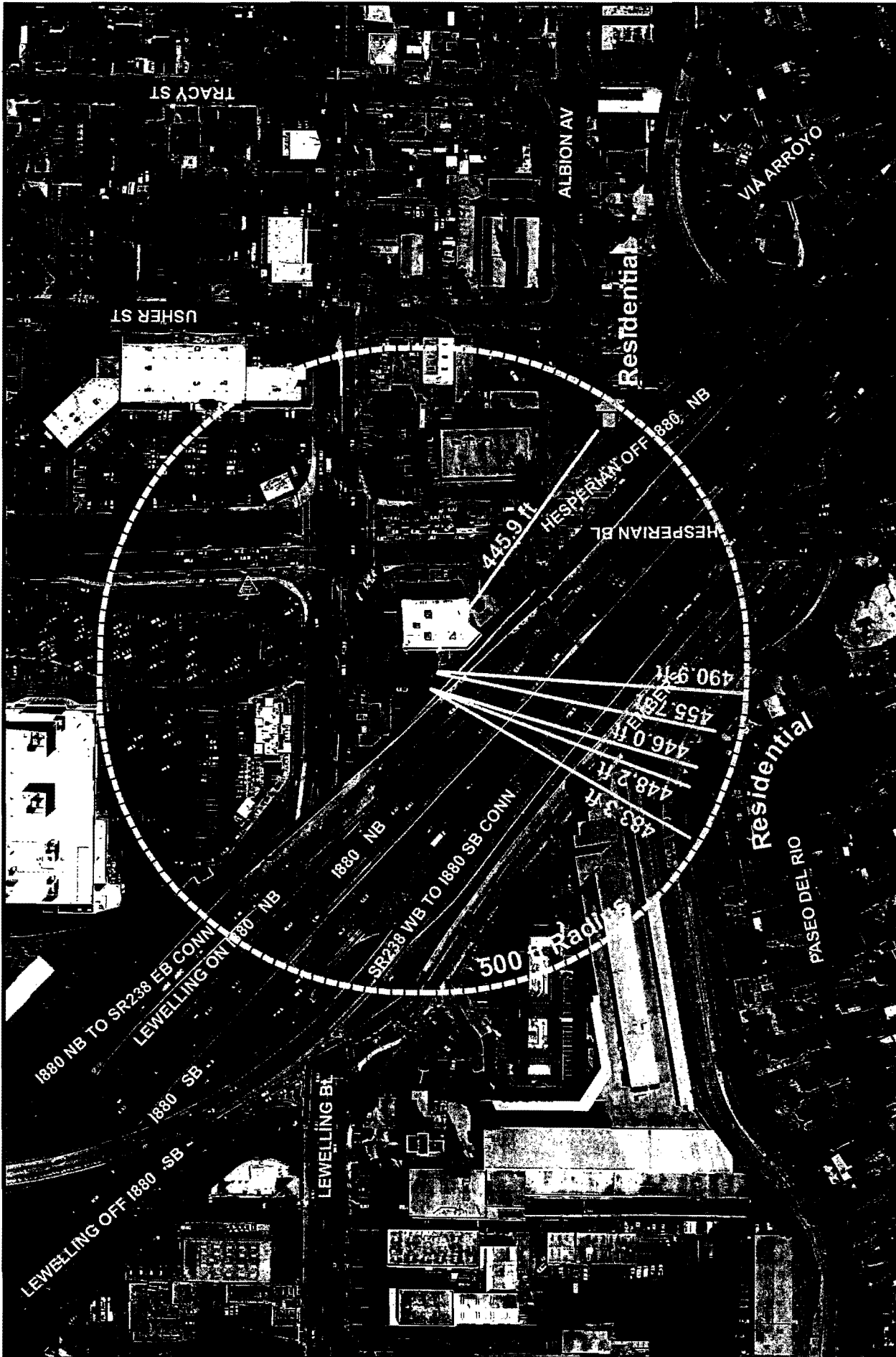
PRE-HEARING RECOMMENDATION

Based on the distances measured from the proposed firearms sale shop to the residentially zoned district measuring less than the required 500 feet the recommendation is for denial.

ATTACHMENTS

Exhibits
Referral Responses
Correspondence
Photographs
Distance Study

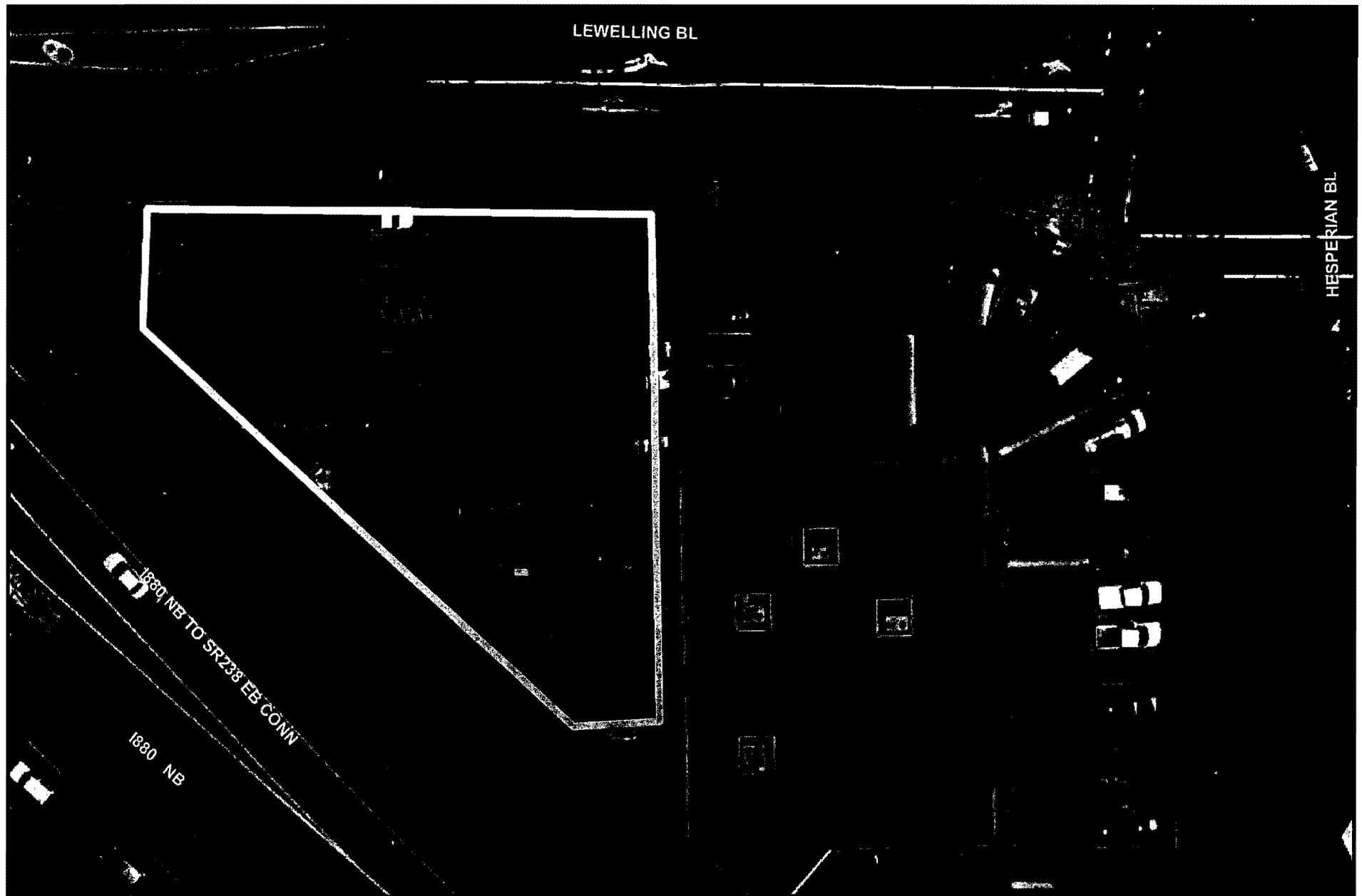
PREPARED BY: Richard Tarbell, Planner
REVIEWED BY: Rodrigo Orduña, Senior Planner



PLN2011-00096

DISTANCE STUDY

Alameda County CDA - Planning Department



PLN2011-00096

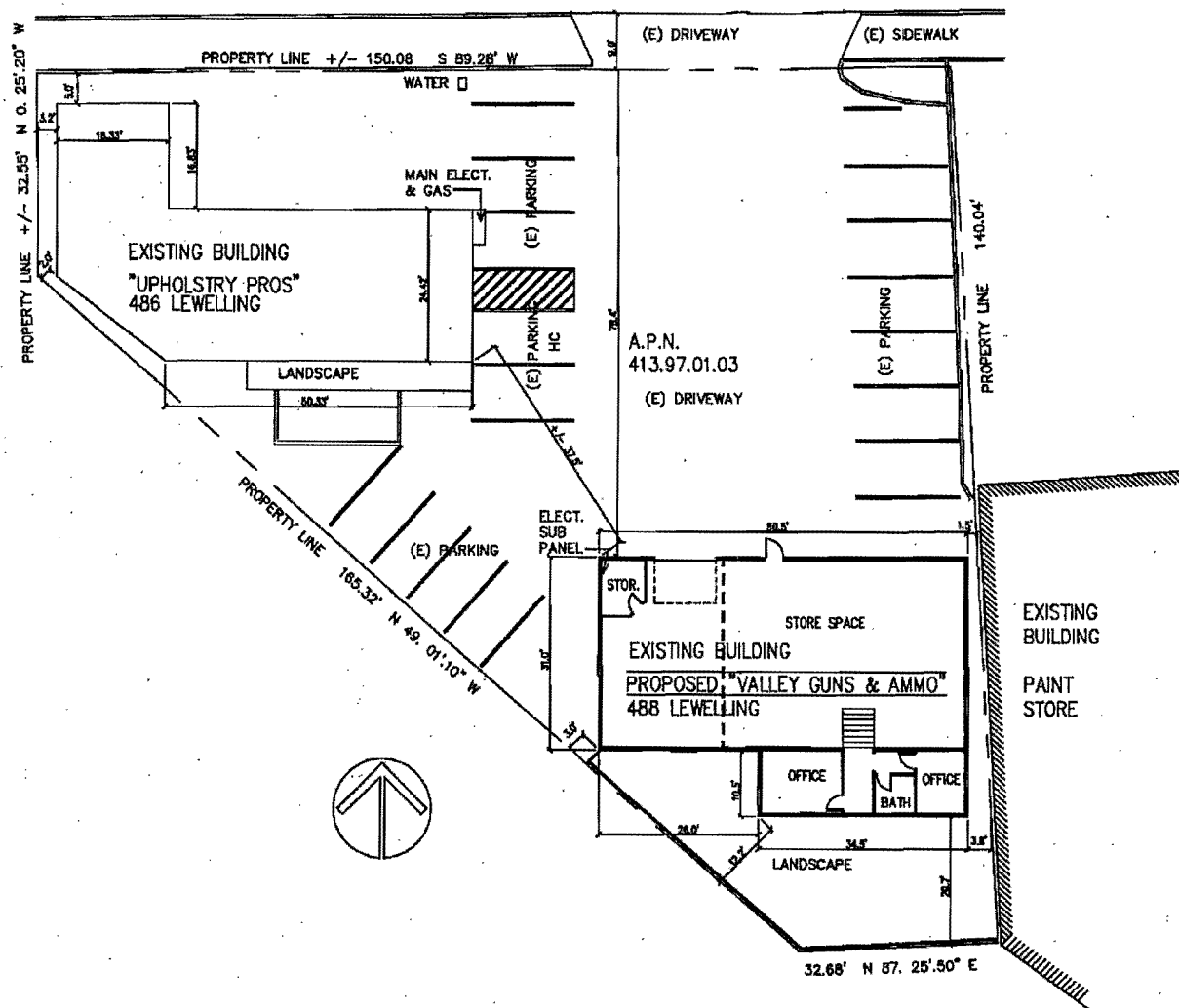
AERIAL PHOTO

Alameda County CDA - Planning Department

0 15 30 60 90 120
Feet



LEWELLING BLVD. SAN LORENZO, CA.



SITE PLAN & FLOOR PLAN

SCALE: 1/8" = 1'-0"

PLN2011-00096

SITE PLAN

Alameda County CDA - Planning Department





488 Lewelling Blvd San Lorenzo, CA 94580

© 2011 Europa Technologies

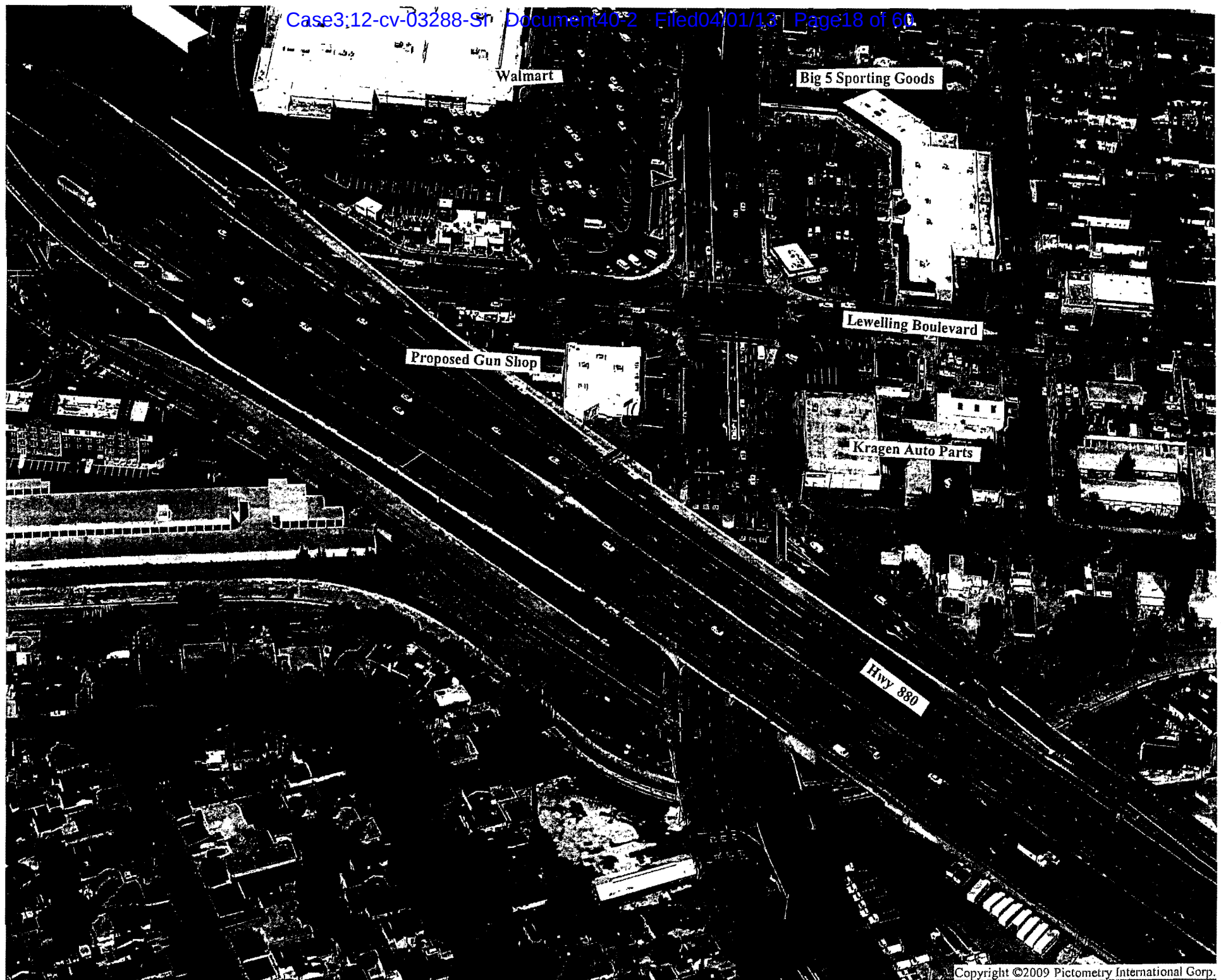
© 2011 Google

37°41'09.41"N 122°07'47.06"W elev 40 ft

Imagery Date: 10 - 2009

Single Family Res

504.63 ±





FILE COPY

EXHIBIT A

JUL 01 2011

CLP

PLN 2011-00096



SUBJECT PROPERTY

EXHIBIT A

JUL 01 2011

CHP

PLN 2011-00096



488 Lewelling Blvd, San Lorenzo, CA 94580

2011 Europa Technologies

2011 Google

37° 41' 10.42" N 122° 07' 47.04" W Elev. 41 ft

Imagery Date: 01/2008

630. FT
Multi Family Res

488 Lewelling Blvd, San Lorenzo, CA 94580

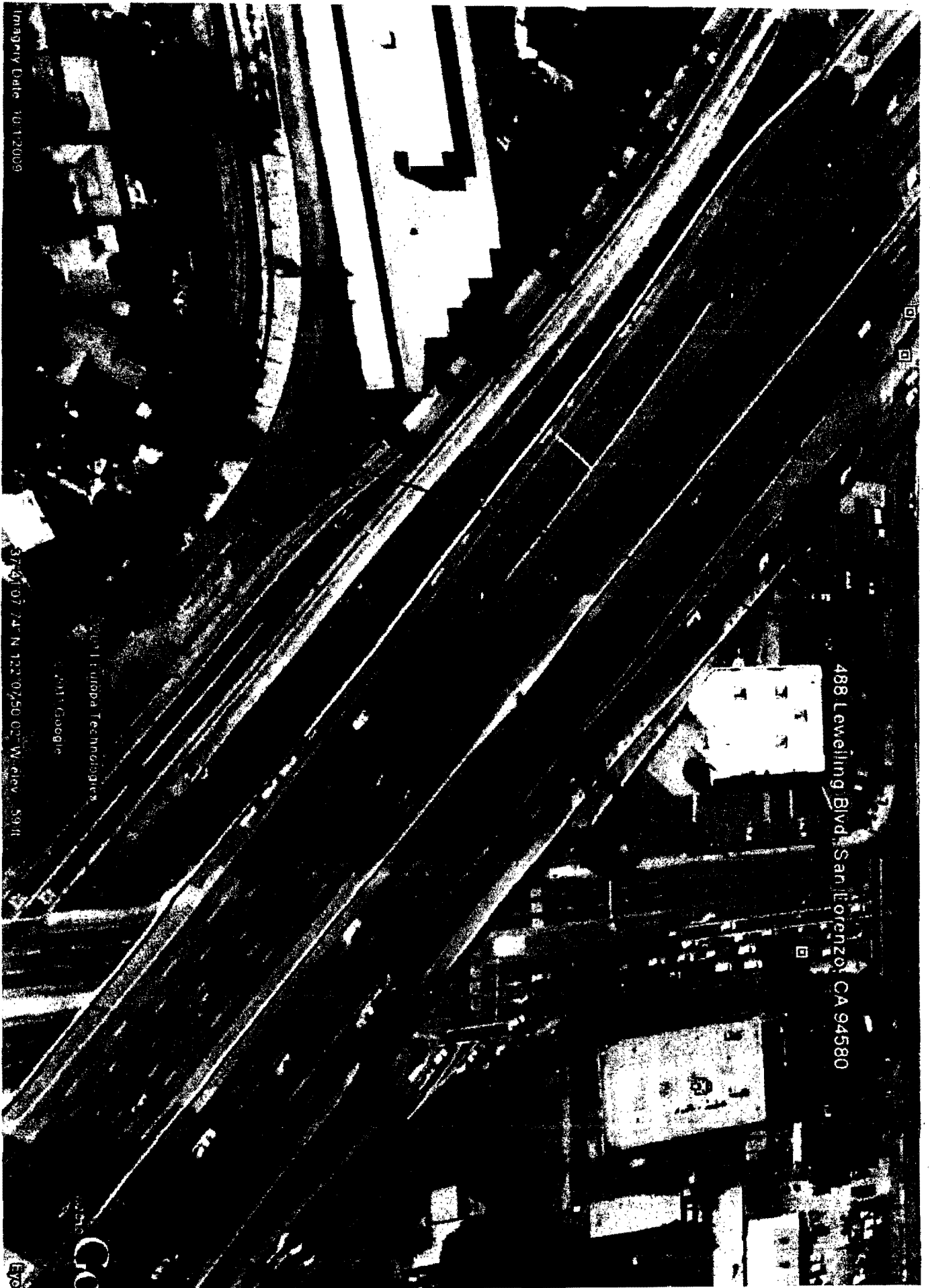
© 2011 Europa Technologies

© 2011 Google

37°51'07.74" N 122°07'50.02" W elev. 59 ft

Imagery Date: 10/12/2009

SHOP TO PROPERTY line

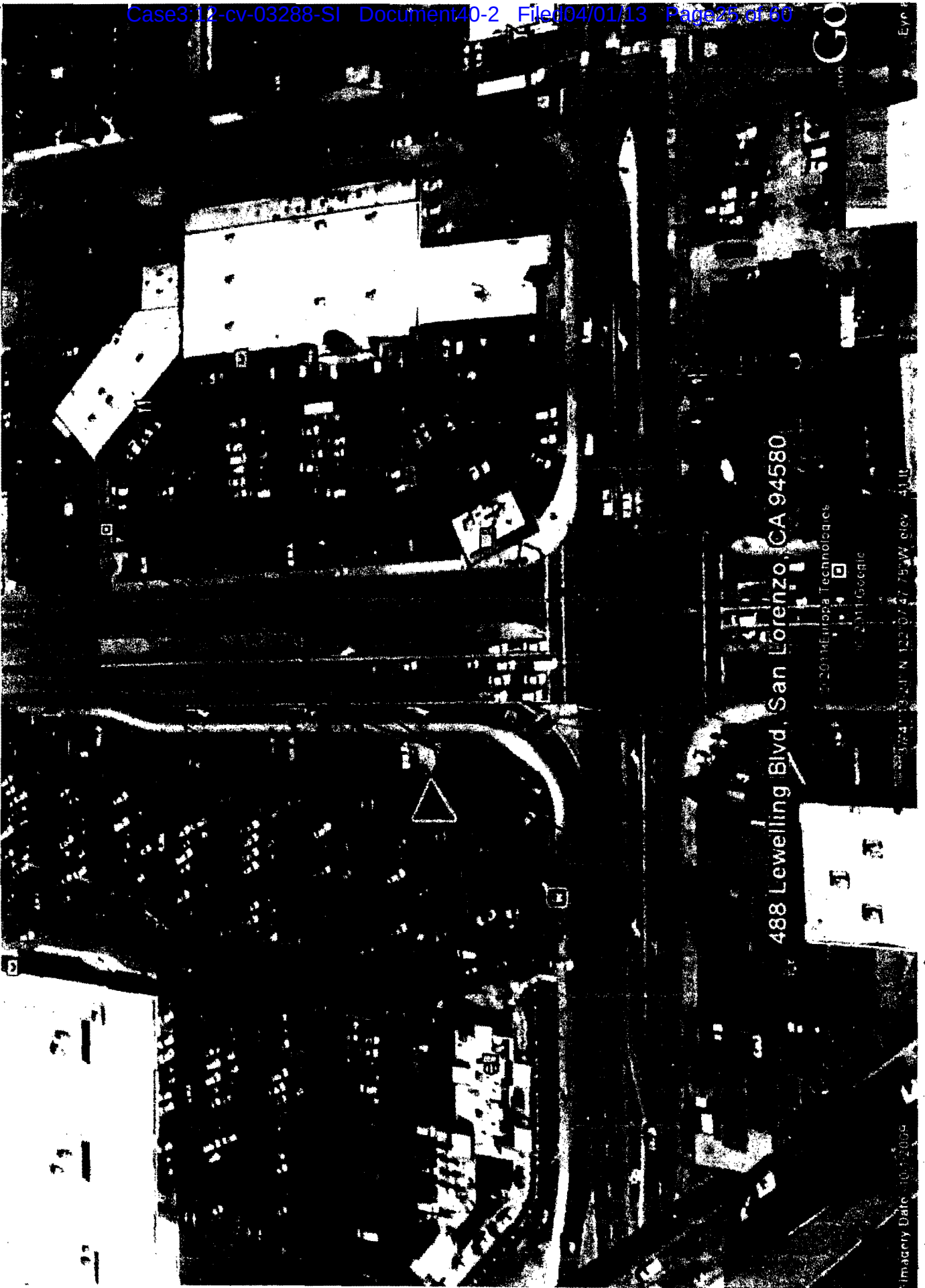


505.6 FT Walmart

SHOP TO INN.

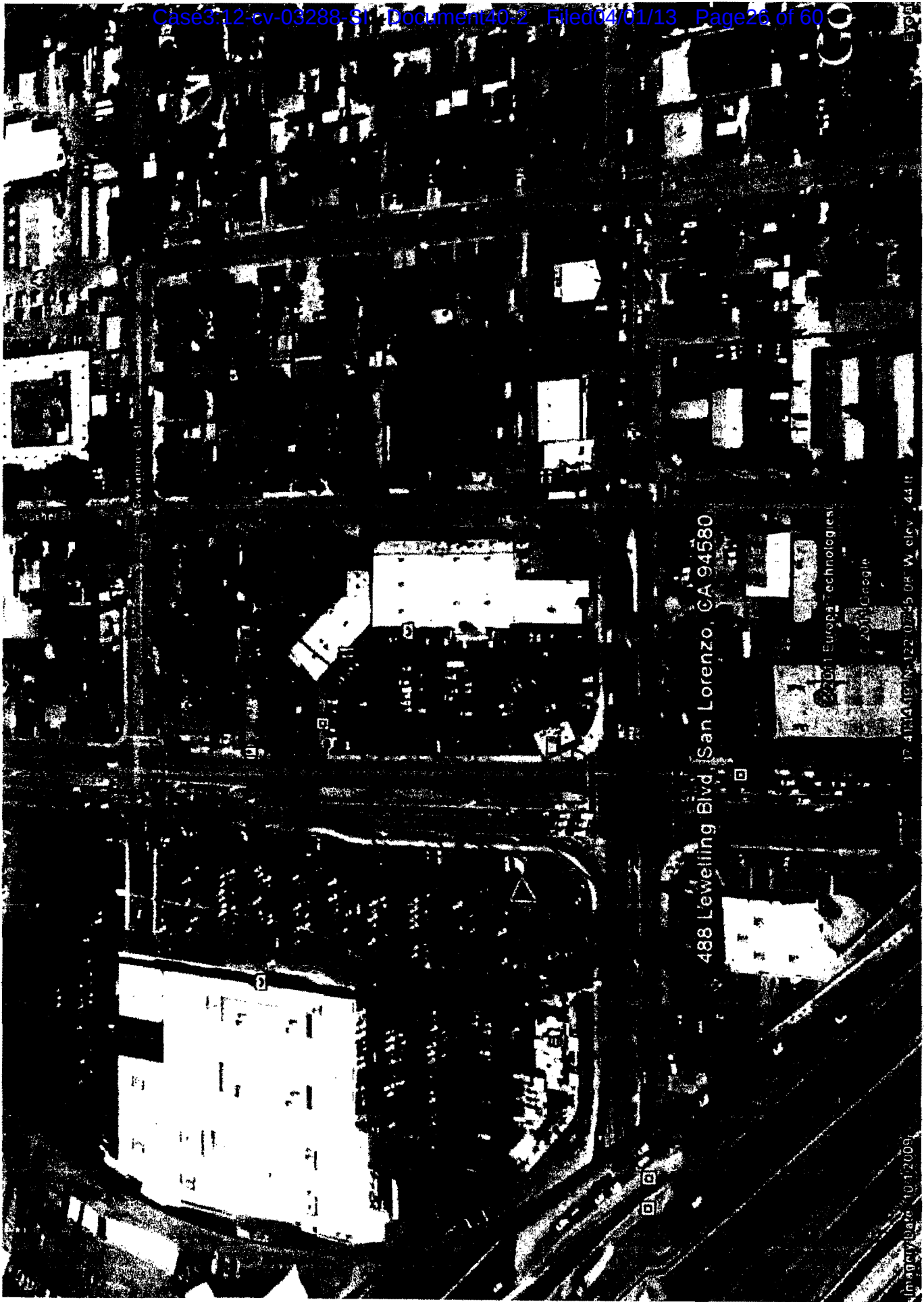
660,91 FEET





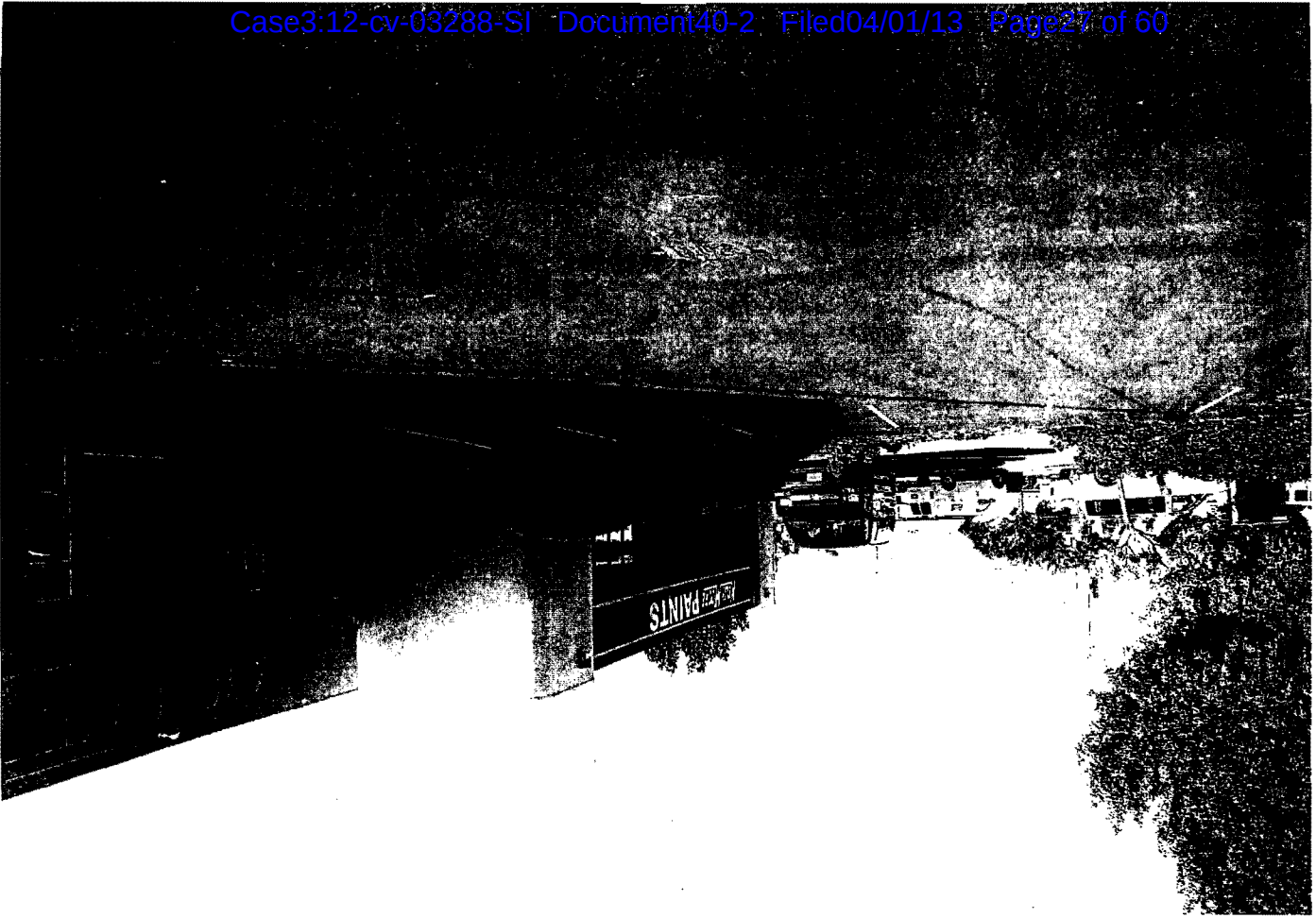
620.95 FEET

SHOP TO B165

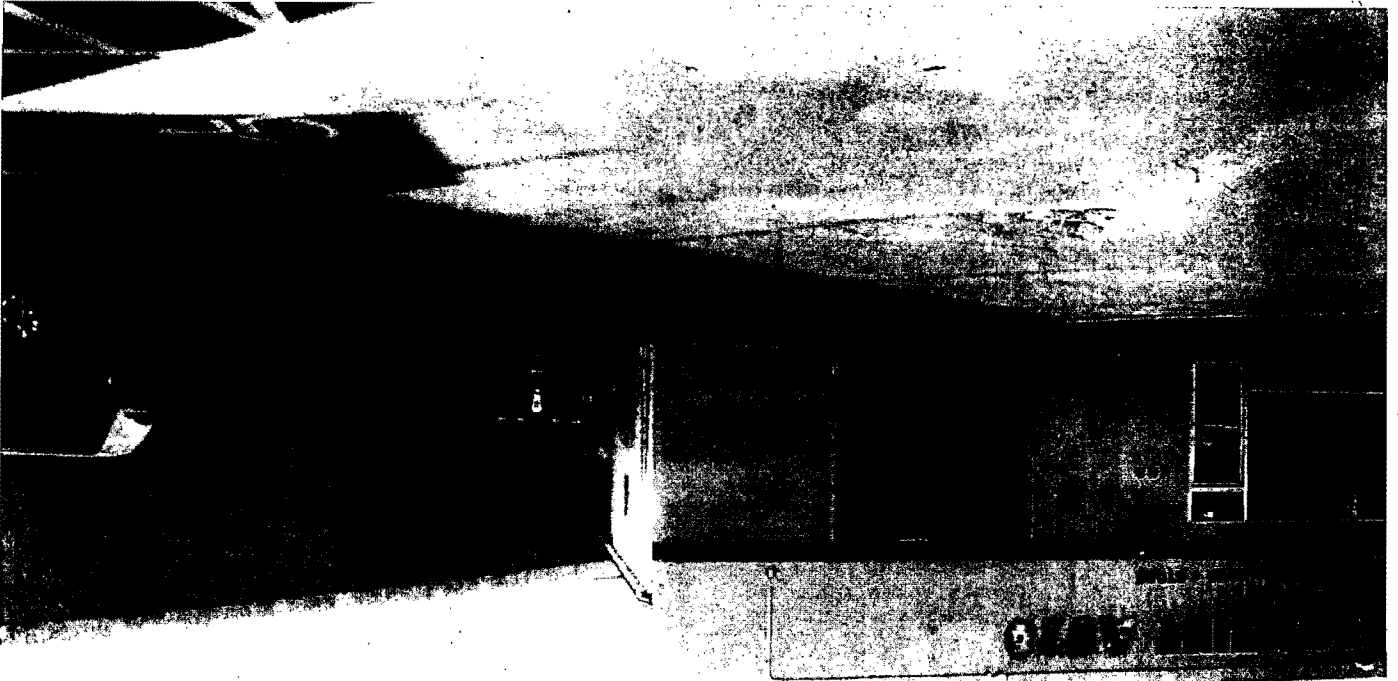


1066.8 FT SCHOOL MAIN YARD

Photograph submitted by the Applicant at
11/16/2011 Board of Zoning Adjustments
Hearing



Photograph submitted by the Applicant at
11/16/2011 Board of Zoning Adjustments
Hearing.



THE COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY
HAYWARD, CALIFORNIA

V-3876

RESOLUTION NO. 7802 - At meeting held October 10, 1966

Introduced by Commissioner Harry W. Spencer
Seconded by Commissioner John P. Gardella

WHEREAS Mary K. Graves and Lawrence A. Ratti, (V-3876) have filed with the Alameda County Planning Commission an application for an adjustment to expand a nonconforming use (residence in a commercial district, structures encroaching into Special Building Line, required amount of off-street parking not provided, and to construct a building so as to (1) encroach 20' into an established Special Building Line and (2) reduce off-street parking spaces from the required 17 spaces to 7 spaces, in a "C-2" (General Commercial) District, on the south side of Lewelling Boulevard, approximately 157' west of the intersection with Hesperian Boulevard, San Lorenzo Area, Eden Township, as shown on a plot plan on file with this Commission; and

WHEREAS this Commission did hold a public hearing on said application at the hour of 1:30 p.m. on the 10th day of October, 1966, in the County of Alameda Public Works Building, 399 Elmhurst Street, Hayward, California; and

WHEREAS it satisfactorily appears from affidavits on file that newspaper notice of said public hearing was given in all respects as required by law; and

WHEREAS this Commission does find that:

- (a) There are special circumstances applicable to the property which deprive the property of privileges enjoyed by other property in the vicinity under the identical zoning classification.
- (b) The granting of the application will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone.
- (c) The use will not be detrimental to persons or property in the neighborhood or to the public welfare: Now Therefore

BE IT RESOLVED that this Commission does hereby approve said application as shown on a plot plan labelled "Exhibit A" on file with this Commission, a copy of which shall be forwarded to the County Building Official, subject to the following condition:

Said adjustment shall become null and void if a building permit is not obtained by October 10, 1967.

Except as specifically stated above, the land and use of this property shall comply with all the provisions of the County Zoning Ordinance.

Said adjustment shall be subject to revocation for cause by the Planning Commission after seven (7) days notice and a hearing by said Commission.

ADOPTED BY THE FOLLOWING VOTE:

AYES: Commissioners Enos, Gardella, Kauffman, Spencer, Vaughns, and Chairman DeBernardi.

NOES: Commissioner Kuder

ABSENT: None.

WILLIAM H. FRALEY - PLANNING DIRECTOR & SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY

V-3989

THE COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY
HAYWARD, CALIFORNIA

RESOLUTION NO. 7957 - At meeting held January 9, 1967

Introduced by Commissioner Howard F. Kuder

Seconded by Commissioner Harry W. Spencer

WHEREAS San Lorenzo Glass Company, (V-3989), has filed with the Alameda County Planning Commission an application for an adjustment to (1) approve location of a sign in a Special Building Line; (2) sign extends above the roof line; (3) sign contains 70 sq. ft. (double faced sign with 35 sq. ft. on each side) where ordinance limits area to 68 sq. ft. and no one sign exceeding 40 sq. ft. in a "C-2" (General Commercial) District, located at 486 Lewelling Boulevard, south side, 157' west of the intersection with Hesperian Boulevard, San Lorenzo, Eden Township, as shown on a plot plan on file with this Commission; and

WHEREAS this Commission did hold a public hearing on said application at the hour of 1:30 p.m. on the 9th day of January, 1967, in the County of Alameda Public Works Building, 399 Elmhurst Street, Hayward, California; and

WHEREAS it satisfactorily appears from affidavits on file that newspaper notice of said public hearing was given in all respects as required by law; and

WHEREAS this Commission does find that:

- (a) There are special circumstances applicable to the property which deprive the property of privileges enjoyed by other property in the vicinity under the identical zoning classification.
- (b) The granting of the application will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone.
- (c) The use will not be detrimental to persons or property in the neighborhood or to the public welfare: Now Therefore

BE IT RESOLVED that this Commission does hereby approve said application as shown on a plot plan labelled "Exhibit A" on file with this Commission, a copy of which shall be forwarded to the County Building Official.

Except as specifically stated above, the land and use of this property shall comply with all the provisions of the County Zoning Ordinance.

Said adjustment shall be subject to revocation for cause by the Planning Commission after seven (7) days notice and a hearing by said Commission.

ADOPTED BY THE FOLLOWING VOTE:

AYES: Commissioners Enos, Gardella, Kuder, Spencer, Vaughns, and Chairman DeBernardi.

NOES: None.

ABSENT: None.

EXCUSED: Commissioner Kauffman.

WILLIAM H. FRALEY - PLANNING DIRECTOR & SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY

REF.

PAGE

B.

V-6509

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA

On motion of ~~Supervisor~~ Chairman Cooper and approved by the following vote: Mary Groves and Anthony and Peter Ratti - 3
 Ayes: Supervisors
 Noes: Supervisors
 Excused ~~Supervisors~~ Supervisors
 Board - 2

OCT 16, 1974

THE FOLLOWING RESOLUTION WAS ADOPTED VARIANCE GRANTED NUMBER 169927

WHEREAS, at a hearing held on October 16, 1974, the Alameda County Zoning Administrator disapproved the application of Eller Outdoor Advertising Company of California (lessors) and Mary Groves and Anthony and Peter Ratti (owners) for a Variance (V-6509), to permit the retention of a nonconforming Outdoor Advertising Sign (not permitted within Scenic Route Corridor) beyond that amortization period established by the Zoning Ordinance, in a C-2 (General Commercial) District, located at 486 Lewelling Boulevard, south side, adjacent easterly to the Nimitz Freeway, San Lorenzo Area, Eden Township, as shown on a plot plan on file with this Board of Supervisors; and

WHEREAS, in accordance with the provisions of Article 2 of Chapter 2 of Title 3 of the Alameda County Ordinance Code, Eller Outdoor Advertising Company of California did appeal to this Board of Supervisors from the decision of the Alameda County Zoning Administrator; and

WHEREAS, at public hearings held on December 12, 1974, January 16, 1975, March 4, 1975, June 5, 1975, August 7, 1975, December 4, 1975, May 6, 1976, July 8, 1976, and December 2, 1976, the Board did consider the appeal of Eller Outdoor Advertising Company of California; and

WHEREAS, this Board of Supervisors did find that there are special circumstances applicable to this property which deprive the property of privileges enjoyed by other property in the vicinity under the identical zoning classification in that the area where this sign is located is subject to a special scenic route corridor presently being considered for revision by the County Planning Commission and this Board, with the result that the dimensions and scope of the existing boundaries presently making this sign nonconforming may be altered so as to bring this sign into conformity with such revision. Under these circumstances granting a limited variance of this type will bring this sign within the same method of treatment presently applicable to other uses subject to the same scenic route restrictions.

NOW, THEREFORE, BE IT RESOLVED that Eller Outdoor Advertising Company of California (lessors) and Mary Groves and Anthony and Peter Ratti (owners) be and they are hereby granted a variance to retain a nonconforming Outdoor Advertising Sign in a C-2 (General Commercial) District, located at 486 Lewelling Boulevard, south side, adjacent easterly to the Nimitz Freeway, San Lorenzo Area, Eden Township; subject, however, to the following condition:

- (1) This Variance is valid until December 2, 1978, provided, however, that if during said term Zoning Ordinance provisions become modified to permit the filing of a Conditional Use Permit to retain the subject sign, said permit shall be filed and the provisions of that Permit shall prevail.

Except as specifically stated above, the land and use of this property shall comply with all the provisions of the Zoning Ordinance.

Said Variance shall be subject to revocation for cause in accordance with Section 8-90.3 of the Alameda County Zoning Ordinance.

ad/

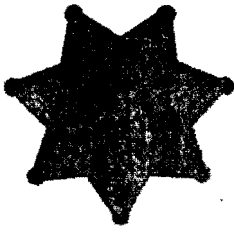
DEC 2 1976
DEC 14 1976

S. Littlewood

Cap

re

Chang



CHARLES C. PLUMMER

February 3, 2011

To Whom It May Concern:

SUBJECT: Mr. John Teixeira

Mr. Teixeira was the owner of a gun store at 22287 Redwood Road in Castro Valley, California for 35 years.

Without question, I found him to be the most honest gun store operator in my 54 years as a peace officer in Alameda County (24 years Berkeley Police, 10 ½ years Hayward Police Chief and 20 plus years as Sheriff of Alameda County).

On several occasions in the early 1990's, I sent undercover officers into his store to try to discover violations. Mr. Teixeira was always doing business according to the letter of the law.

I have found Mr. Teixeira to be a very fine citizen of this County. He is a man of fine character and I'm proud to call him my friend.

I highly recommend him to one and all. He is a good man.

Sincerely,

C.C. Plummer
Sheriff Emeritus
Alameda County



SAN LORENZO VILLAGE HOMES ASSOCIATION

377 Paseo Grande • San Lorenzo CA 94580
(510) 276-4554 • www.slvha.com

Position of the SLVHA on the Proposed Gun Shop

In August, the SLVHA discussed the proposed gun shop in an open meeting. Clearly, there was NOT a majority of residents at the meeting, so the following opinions represent the opinion of those who spoke at the meeting.

Without surprise, there were 2 obvious opposing factions: those who believe in their right to own firearms and therefore had no opposition to the gun shop and those who are opposed to guns and their ready availability and therefore believe that gun shops should not be located within our community. After reading about the spate of recent shootings, some who oppose guns and gun shops have a point of concern. That said, there were also members of the community that simply raised concerns about this particular gun shop, at this particular location.

Those concerns were as follows:

A gun shop should not be given either preferential or less favored treatment based solely on the fact it is a gun shop. If it meets all of the conditions set out by the County, then it should be approved.

With that in mind, one of the requirements is that it be located 500 plus feet away from a school. Apparently, this location does not meet that requirement. I have heard that since the school in question is a private school, the 500 foot rule does not apply. My thought on that is that a school is a school, students are students; whether they attend a public or private institution does not change their status as students, with all the attendant concerns that go along with schools and children.

Another concern was the proximity to an already existing sporting goods store that sells rifles and ammunition. As with every other type of business in the county, oversaturation is always a concern. The County does not permit "too many" liquor stores in any one location, so to, should it be concerned about "too many" gun stores in any one location.

Another concern is its proximity to a bar. Is it appropriate to locate a gun store in the vicinity of a bar and several other businesses that sell alcohol?

Another citizen was concerned that the gun shop would be located near to the headquarters of a motorcycle club that has ties to the Hells Angels and questioned if this was the best location for a gun shop.

Citizens raised the question of what type of weapons will be sold. We were told that the gun store will sell "hunting" oriented weapons. What is the definition of a hunting weapon? When it comes to rifles, this presupposes that weapons could be bolt action, small capacity magazines; however, which handguns are considered hunting weapons. Will the gun shop only stock revolvers of a certain caliber, or will it stock pistols and revolvers. Almost any reliable handgun (pistol or revolver) can be used for hunting.

Board Members: Art Wydler-President, Diane Wydler-Vice President
Margaret Wright-Secretary/Treasurer, Wulf Bieschke
Administrator: Kathy Martins

And will a business license limit or specify the specific type(s) of weapon(s) sold? If not, we can be promised one thing, knowing that promises can change.

Finally, is the question of what neighborhood is affected by this gun shop? Apparently, it is within the Castro Valley, Ashland/Cherry Land business jurisdiction, but it is located within or nearer the borders of the Village of San Lorenzo. If the business is to service Castro Valley, Ashland, Cherry Land, why can't it be located closer to the population center of the targeted business community.

As you can see, there was no consensus about whether this gun shop should be located at the proposed location. Before a business permit is issued, I believe the concerns raised by San Lorenzo citizens deserve to be answered. I realize that no decision will please everyone, but every question deserves an answer.

Tarbell, Richard, CDA

From: Lang, Allen
Sent: Tuesday, October 25, 2011 8:19 AM
To: Tarbell, Richard, CDA
Subject: RE: Occupancy Load for retail

One exit is enough.

Allen Lang, PE, SE
Building Official
Alameda County Public Works Agency
510-670-5557

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-----Original Message-----

From: Tarbell, Richard, CDA
Sent: Monday, October 24, 2011 5:16 PM
To: Lang, Allen
Subject: Occupancy Load for retail

Allen:
This location has been glass shop for years (488 Lewelling Blvd. Vacant at this time), the request now is for a firearms sales business and the question is does it need two exits. Can you review and determine if one or two exits would be required?

I will talk to you soon.

Thanks,

Richard Tarbell, Planner
Alameda County Community Development Agency Planning Department Phone (510) 670-5400
Fax: (510) 785-8793
Email: richard.tarbell@acgov.org

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-----Original Message-----

From: ricohscanner@acgov.org [<mailto:ricohscanner@acgov.org>]
Sent: Monday, October 24, 2011 1:56 PM
To: Tarbell, Richard, CDA
Subject: Scanned Document Attached

This E-mail was sent from "RNP01F60E" (Aficio MP C6501).

Tarbell, Richard, CDA

To: Lang, Allen
Subject: Occupancy Load for retail
Attachments: 20111024165545915.pdf

Allen:

This location has been glass shop for years (488 Lewelling Blvd. Vacant at this time), the request now is for a firearms sales business and the question is does it need two exits. Can you review and determine if one or two exits would be required?

I will talk to you soon.

Thanks,

Richard Tarbell, Planner
Alameda County Community Development Agency Planning Department Phone (510) 670-5400
Fax: (510) 785-8793
Email: richard.tarbell@acgov.org

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-----Original Message-----

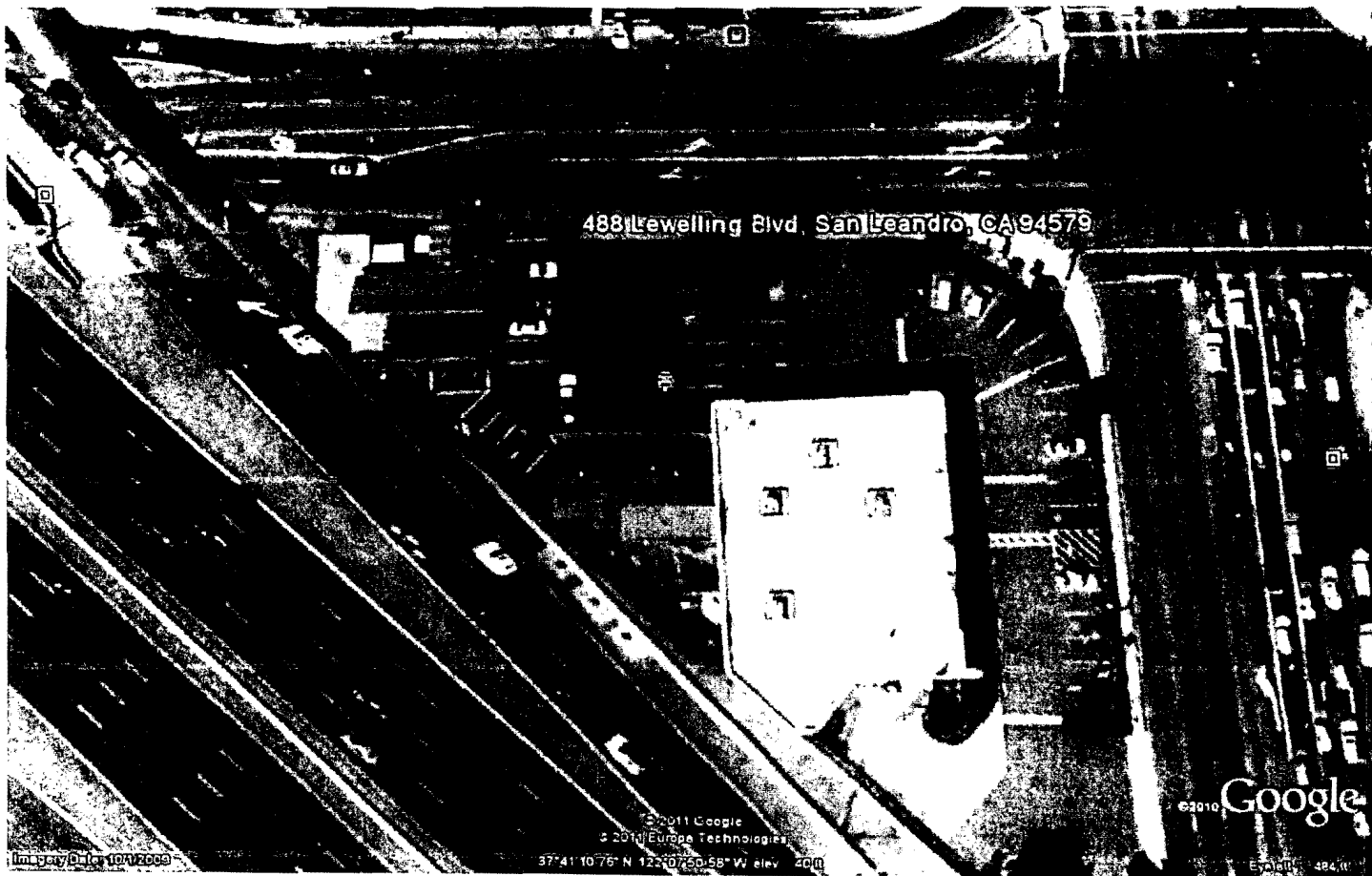
From: ricohscanner@acgov.org [<mailto:ricohscanner@acgov.org>]
Sent: Monday, October 24, 2011 1:56 PM
To: Tarbell, Richard, CDA
Subject: Scanned Document Attached

This E-mail was sent from "RNP01F60E" (Aficio MP C6501).

Scan Date: 10.24.2011 16:55:45 (-0400)
Queries to: ricohscanner@acgov.org

Scan Date: 10.24.2011 16:55:45 (-0400)

Queries to: ricohscanner@acgov.org



SUBJECT PROPERTY

EXHIBIT A

JUL 01 2011

CUP

PLN 2011-00096



Alameda County Fire Department

*Proudly serving the Unincorporated Area of Alameda County
and the communities of San Leandro, Dublin, Newark
the Lawrence Berkeley National Laboratory and
the Lawrence Livermore National Laboratory*

Sheldon D. Gilbert, Fire Chief

ADMINISTRATION

835 E. 14th Street, Suite 200
San Leandro, CA 94577
(510) 618-3490
(510) 618-3445 Fax

EMS DIVISION

1426 164th Avenue
San Leandro, CA 94578
(510) 618-3485
(510) 276-5915 Fax

TRAINING DIVISION

1426 164th Avenue
San Leandro, CA 94578
(510) 618-3485
(510) 276-5915 Fax

ALAMEDA COUNTY REGIONAL EMERGENCY COMMUNICATIONS CENTER (ACRECC)

7000 East Avenue, L-388
Livermore, CA 94550
(925) 422-5194
(925) 422-5730 Fax

FIRE PREVENTION OFFICES:

ALAMEDA COUNTY

399 Elmhurst Street
Room 120
Hayward, CA 94544
(510) 670-5853
(510) 887-5836 Fax

CITY OF SAN LEANDRO

835 E. 14th Street
San Leandro, CA 94577
(510) 577-3317
(510) 577-3419 Fax

CITY OF DUBLIN

100 Civic Plaza
Dublin, CA 94568
(925) 833-6606
(925) 833-6628 Fax

CITY OF NEWARK

37101 Newark Blvd.
Newark, CA 94560
(510) 578-4218
(510) 578-4281 Fax

October 27th, 2011

Alameda County
Community Development Agency
Planning Department
224 West Winton Ave., Room 111
Hayward, California 94544

TO:	Richard Tarbell	CC	Graves
FROM:	County Fire Prevention Alameda County Fire Prevention Office		
SUBJECT:	PLN 2011-0096, Condition Use Permit to allow the operation Of a gun shop located at 488 Lewelling Blvd. in Ashland.		

Conditions of Approval

The following conditions shall be met prior the issuance of a building permit and fire clearance for occupancy.

1. Details on the security gate installed across the display area shall be provided during the building permit process.
2. During the Building Permit Process, Exit signs and Emergency Lighting will be required. Please show the locations on the plans.
3. A Knox Box shall be provided near the entry and shall be shown on the site plan during the Building Permit Process.
4. A Fire Extinguisher shall be shown on the floor plan during the Building Permit Process.
5. Make sure you show the type of hardware on the front door (i.e., double key, panic, paddle, or lever handle). Accessory locks are not permitted unless they release upon activation of the panic, lever, or paddle device. At no time will dead bolts, sliders, 2x4's, or locks with the thumb turns be allowed.
6. Ensure that the Occupant Load is provided on the cover sheet of the Building Permit Plans.

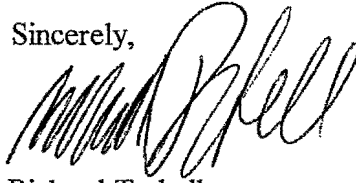
PROJECT REFERRAL

Date: August 1, 2011

RE: Case No. PLN2011-00096

If you have any questions, please contact me at the above number.

Sincerely,



Richard Tarbell
Development Planning Division
richard.tarbell@acgov.org

cc: Applicant: VALLEY GUNS & AMMO // NOBRIGA, STEVE 1196 Silver Trail Lane,
Manteca, Ca 95336

Owner: GRAVES, MARY K TR 3325 Lenard Dr, Castro Valley, Ca 94546

☒ No Comment - Date 8/11/2011

Attachments

BID- Need Bulldozing permit.

Allen Ly 8/11/2011

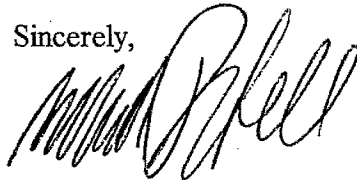
PROJECT REFERRAL

Date: August 1, 2011

RE: Case No. PLN2011-00096

If you have any questions, please contact me at the above number.

Sincerely,



Richard Tarbell
Development Planning Division
richard.tarbell@acgov.org

cc: Applicant: VALLEY GUNS & AMMO // NOBRIGA, STEVE 1196 Silver Trail Lane,
Manteca, Ca 95336

Owner: GRAVES, MARY K TR 3325 Lenard Dr, Castro Valley, Ca 94546

☒ No Comment - Date 8/16/11

Attachments *JR*

Tarbell, Richard, CDA

From: Orduna, Rodrigo, CDA
Sent: Monday, September 19, 2011 3:54 PM
To: 'Cherryland Community Association'
Cc: Tarbell, Richard, CDA
Subject: RE: Planning Application Comments

Thank you for the comments, Susan.

Regarding outreach to the Ashland community, we mailed courtesy notices to tenants and property owners within a 500-foot radius of the subject property, and mailed a courtesy notice to David Zechman, president of the Ashland Community Association. I can let Richard Tarbell respond if we have gotten any feedback from David. Richard or I will call David this week to follow-up.

On a separate note, can you send me the agenda items to the CCA Board meetings ahead of the meeting date, so that I can find out whether to go or not? If you all want me to start going again, I will do so. But, I would like to be able to make efficient use of the times that I show up. If you give me a heads-up before the meeting, I can come to the meeting prepared with answers.

Regards,

Rodrigo Orduña, AICP, Bay-Friendly QLP
Senior Planner
Alameda County Planning Department
Community Development Agency

rodrigo.orduna@acgov.org
telephone 510-670-6503
facsimile 510-785-8793

399 Elmhurst Street, Suite 141
Permit Center
Hayward, CA 94544
<http://www.acgov.org/cda>

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From: Cherryland Community Association [<mailto:cca.bod@gmail.com>]
Sent: Thursday, September 08, 2011 9:41 PM
To: Orduna, Rodrigo, CDA
Subject: Planning Application Comments

Hi Rodrigo,

Here are CCA Board comments on applications we reviewed this evening:

Gun store on Llewelling:
The Board is split.

Strong feelings in opposition were:

-This provides no benefit to the community. CUPs in our business district should be granted for a reason - such

Cherryland

as it stimulates the kind of business we want here or there is a community need. While we understand this gun store may sell guns to police, which are not accessible at every gun store, we don't have many Sheriff's living our area, so they should be guns in their own neighborhood.

~~This business is not locally owned. We want to stimulate more locally owned businesses in our area, especially in our business district. We may feel differently about this gun store coming in if the owner was going to live above the store.~~

~~There are plenty of stores to buy guns. Big 5, the gun shop in Castro Valley on Redwood Road are two examples.~~

~~This is not the type of business we want in our business district.~~

~~It is bad for future business development in our area, this is not only going to not attract what we want, it is GOING TO ATTRACT what we DON'T want~~

~~There is a reason we have a restriction on gun store locations relative to residences and sensitive receptors. There is no compelling reason at all to allow this gun store in our neighborhood, even if it is owned by a police man.~~

Feelings for the gun store were not strongly for, but also not against. Reasons that were given for having the gun store were:

-It is a tax paying store.

-Everyone should have a gun.

I hope this application will be going through significant community process, in particular in the Ashland Community, where there is not a community organization the County relies on for input. I would like to know what outreach has been done about this in Ashland and how the County plans to get input from residents of Ashland, in particular those living adjacent to the location of the store.

Susan

--

Susan

Susan Beck, President

Cherryland Community Association

"Never doubt that a small group of committed citizens can change the world. Indeed it's the only thing that ever has."

Margaret Mead (1901-1978)

www.cherryland-ca.org

✓
ZONING ENFORCEMENT

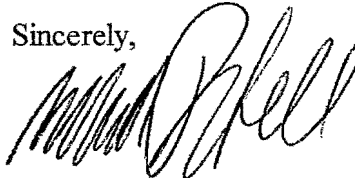
PROJECT REFERRAL

Date: August 1, 2011

RE: Case No. PLN2011-00096

If you have any questions, please contact me at the above number.

Sincerely,



Richard Tarbell
Development Planning Division
richard.tarbell@acgov.org

cc: Applicant: VALLEY GUNS & AMMO // NOBRIGA, STEVE 1196 Silver Trail Lane,
Manteca, Ca 95336

Owner: GRAVES, MARY K TR 3325 Lenard Dr, Castro Valley, Ca 94546

✓ No Comment - Date 8/15/11

Attachments



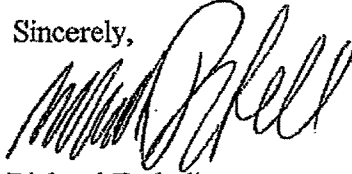
PROJECT REFERRAL

Date: August 1, 2011

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Richard Tarbell
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Manteca, Ca 95336

Owner: GRAVES, MARY K TR 3325 Lenard Dr, Castro Valley, Ca 94546

TL No Comment - Date 8/11/11

Attachments

John Lead
PLANNING & HOUSING MANAGER

Tarbell, Richard, CDA

From: TLiao@ci.san-leandro.ca.us
Sent: Thursday, August 11, 2011 2:15 PM
To: Tarbell, Richard, CDA
Cc: JTudor@ci.san-leandro.ca.us
Subject: re: pln2011-00096 gun shop in unincorporated san leandro
Attachments: SL No Comment Ltr.pdf

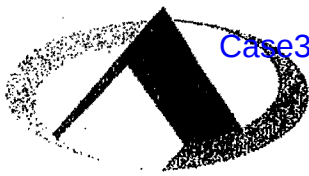
Hi Richard:

Attached is my confirmation of no comment for the proposed gun shop in the unincorporated area location of 488 Lewelling Blvd. The City Planning Division has no comment on this proposed business use because it is outside of the City's Zoning Code jurisdiction.

Is this signed .pdf sufficient or do you need the original signed hard copy mailed to you?

I've also forwarded your letter to our Police Department so see if they may have any questions or comments for you on this proposed business.

Tom Liao, Planning and Housing Manager
City of San Leandro Community Development Dept.
Planning and Housing Services Divisions
835 East 14th St.
San Leandro, CA 94577
510-577-6003 (office)
510-577-6007 (fax)
e-mail: tliao@ci.san-leandro.ca.us
www.sanleandro.org



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

Chris Bazar
Agency Director

PROJECT REFERRAL

Albert Lopez
Planning Director

Date: August 1, 2011

224
West Winton Ave
Room 111

RE: Case No. PLN2011-00096

Conditional Use Permit

Hayward
California
94544

Due Date: August 22, 2011

phone
510.670.5400
fax
510.785.8793

ACPWA BUILDING DEPARTMENT
ALAMEDA CO. FIRE DEPT.

ACPWA LAND DEVELOPMENT
SHERIFF PERMITS DEP. FRANK
BUSCHHUETER

www.acgov.org/cda

PLANNING TECHNICIAN

ALAMEDA CO. REDEVELOPMENT
AGENCY

ENV HEALTH HAZARDOUS

ACPWA TRAFFIC

MATERIALS ARIU LEVI

ALAMEDA CO. ZONING

CHP (WEST) ROBERT TUAZON

ENFORCEMENT

CITY OF SAN LEANDRO PLANNING

ASHLAND AREA COMMUNITY
ASSOC

CHERRYLAND COMMUNITY
ASSOC.

SAN LORENZO VILLAGE HOMES
ASSOC.

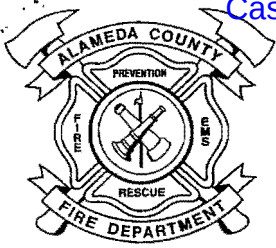
BRIAN WASHINGTON

The following application is referred to you for your information and recommendation:
to allow the operation of a gun shop, located at 488 Lewelling Blvd (Ashland),
Side: S; Distance: 140 ft; Direction: W; Of Cross St: Hesperian Blvd
APN: 413-0097-001-03

This project is categorically exempt from the provisions of the California
Environmental Quality Act (CEQA), and State and County CEQA Guidelines (Section
15301 - Class 1, Existing Facilities), as the project is limited to the operation,
maintenance, and permitting of an existing use, structure(s) or facilities with minor
repair or alteration, involving negligible or no expansion of the use beyond that
existing at the time that the County takes action on this project, or is otherwise
consistent with CEQA Guidelines for Class 1 projects.

Receipt of your comments by the indicated due date will enable the inclusion of
relevant information in the preparation of a written staff report; otherwise, please
initial and date below that your organization, department or agency has no comment
and return this notice by the indicated due date.

Please send a copy of your recommendation(s) to the applicant.



Alameda County Fire Department

*Proudly serving the Unincorporated Area of Alameda County
and the communities of San Leandro, Dublin, Newark
the Lawrence Berkeley National Laboratory and
the Lawrence Livermore National Laboratory*

Sheldon D. Gilbert, Fire Chief

ADMINISTRATION
835 E. 14th Street, Suite 200
San Leandro, CA 94577
(510) 618-3490
(510) 618-3445 Fax

EMS DIVISION
1426 164th Avenue
San Leandro, CA 94578
(510) 618-3485
(510) 276-5915 Fax

TRAINING DIVISION
1426 164th Avenue
San Leandro, CA 94578
(510) 618-3485
(510) 276-5915 Fax

**ALAMEDA COUNTY
REGIONAL EMERGENCY
COMMUNICATIONS
CENTER (ACRECC)**
7000 East Avenue, L-388
Livermore, CA 94550
(925) 422-5194
(925) 422-5730 Fax

**FIRE PREVENTION
OFFICES:**

ALAMEDA COUNTY
399 Elmhurst Street
Room 120
Hayward, CA 94544
(510) 670-5853
(510) 887-5836 Fax

CITY OF SAN LEANDRO
835 E. 14th Street
San Leandro, CA 94577
(510) 577-3317
(510) 577-3419 Fax

CITY OF DUBLIN
100 Civic Plaza
Dublin, CA 94568
(925) 833-6606
(925) 833-6628 Fax

CITY OF NEWARK
37101 Newark Blvd.
Newark, CA 94560
(510) 578-4218
(510) 578-4281 Fax

September 8th, 2011

Alameda County
Community Development Agency
Planning Department
224 West Winton Ave., Room 111
Hayward, California 94544

TO:	Richard Tarbell	CC	Graves
FROM:	County Fire Prevention		
	Alameda County Fire Prevention Office		
SUBJECT:	PLN 2011-0096, Condition Use Permit to allow the operation Of a gun shop located at 488 Lewelling Blvd. in Ashland.		

APPLICATION NOT COMPLETE FOR FIRE REQUIREMENTS – WITH CUSTOMER FOR RESPONSE

Fire Staff does not recommend that discretionary approval be given until the following issues are addressed and Fire Conditions are issued.

Re-submittal Required. A re-submittal is required for this project. Submit the revised plan along with a copy of any necessary reference materials, cut-sheets, listing sheets and calculations. Include a written itemized response to each comment and where in the re-submittal the specific change or information requested can be found.

Errors & Omissions. The purpose of code enforcement is to provide a means to help ensure projects are built to the codes, regulations and standards applicable to the project. Two methods are used towards this goal. First, is the review of the plans, second, are field inspections associated with the work. Between these two methods, it is hoped that all code deficiencies are discovered and corrected.

It is important to note that approval of the plan does not constitute permission to deviate from any code requirement and shall not be construed to be a permit for, or an approval of, any violation of the applicable statute, regulation, code or standard. Approval of a plan or permit presuming to give authority to violate or cancel the provision of any applicable statute, regulation, code or standard shall not be valid.

Alternate Means. Any alternate means or equivalences shall be submitted in writing explaining the code provision that will be deviated from, the justification for such deviation, and an explanation on how this deviation meets the intent of the code and the equivalent level of safety intended by the code. This letter and supporting documents must be reviewed and approved for the deviation to be considered acceptable.

Items to Be Addressed with Required Re-submittal

1. How much Smokeless powder will be stored on site?
Response: _____
2. Provide Manufacture Specifications on the ATF approved Container.
Response: _____

*sent: 9/14/11
NOBBERS*

3. Please indicate the Occupant load of the facility as two exits may be required and only one is shown.

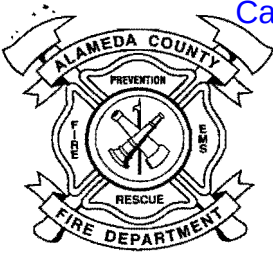
Response:_____

4. Provide details on the security gate installed across the display area. Is there an emergency release device to prevent people from stranded?

Response:_____

5. During the Building Permit Process, Exit signs and Emergency Lighting will be required. Please show the locations on the plans.

Response:_____



Alameda County Fire Department

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the Lawrence Berkeley National Laboratory and
the Lawrence Livermore National Laboratory*

Sheldon D. Gilbert, Fire Chief

ADMINISTRATION

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(925) 833-6628 Fax

CITY OF NEWARK
37101 Newark Blvd.
Newark, CA 94560
(510) 578-4218
(510) 578-4281 Fax

August 22, 2011

Alameda County
Community Development Agency
Planning Department
224 West Winton Ave., Room 111
Hayward, California 94544

TO:	Richard Tarbell	CC	Graves
FROM:	County Fire Prevention		
	Alameda County Fire Prevention Office		
SUBJECT:	PLN 2011-0096, Condition Use Permit to allow the operation Of a gun shop located at 488 Lewelling Blvd. in Ashland.		

APPLICATION NOT COMPLETE FOR FIRE REQUIREMENTS – WITH CUSTOMER FOR RESPONSE

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Re-submittal Required. A re-submittal is required for this project. Submit the revised plan along with a copy of any necessary reference materials, cut-sheets, listing sheets and calculations. Include a written itemized response to each comment and where in the re-submittal the specific change or information requested can be found.

Errors & Omissions. The purpose of code enforcement is to provide a means to help ensure projects are built to the codes, regulations and standards applicable to the project. Two methods are used towards this goal. First, is the review of the plans, second, are field inspections associated with the work. Between these two methods, it is hoped that all code deficiencies are discovered and corrected.

It is important to note that approval of the plan does not constitute permission to deviate from any code requirement and shall not be construed to be a permit for, or an approval of, any violation of the applicable statute, regulation, code or standard. Approval of a plan or permit presuming to give authority to violate or cancel the provision of any applicable statute, regulation, code or standard shall not be valid.

Alternate Means. Any alternate means or equivalences shall be submitted in writing explaining the code provision that will be deviated from, the justification for such deviation, and an explanation on how this deviation meets the intent of the code and the equivalent level of safety intended by the code. This letter and supporting documents must be reviewed and approved for the deviation to be considered acceptable.

Items to Be Addressed with Required Re-submittal

1. Will there be various types of gun powder sold at this site?

Response: _____

2. If gun powder is to be stored on-site, how is it being stored?

Response: _____

3. Please indicate the Occupant load of the facility as two exits may be required and only one is shown.
Response:_____
4. Identify the locations of the Fire Extinguishers.
Response:_____
5. Please indicate on the site plan if there are Exit signs or emergency lighting.
Response:_____
6. Please indicate the type of hardware on the front door. Only single action hardware is allowed on the door.
Response:_____
7. Identify the location of the Knox Box.
Response:_____

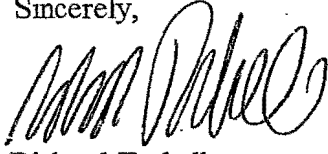
PROJECT REFERRAL

Date: August 29, 2011

RE: Case No. PLN2011-00096

If you have any questions, please contact me at the above number.

Sincerely,



Richard Tarbell
Development Planning Division
richard.tarbell@acgov.org

cc: Applicant: VALLEY GUNS & AMMO // NOBRIGA, STEVE 1196 Silver Trail Lane,
Manteca, Ca 95336

Owner: GRAVES, MARY K TR 3325 Lenard Dr, Castro Valley, Ca 94546

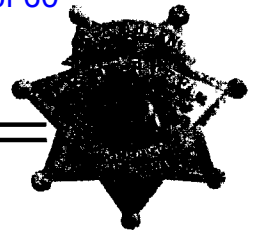
☒ No Comment - Date 8/31/11

Attachments

JR

Alameda County Sheriff's Office

Eden Township Substation
15001 Foothill Boulevard, San Leandro, CA 94578-1008



Gregory J. Ahern, Sheriff

Director of Emergency Services
Coroner - Marshal

August 23, 2011

Alameda County Community Development Agency
224 West Winton Avenue #111
Hayward, CA 94544

Attention: Richard Tarbell

RE: PLN2011-00096

My staff reviewed the attached application and advised me of the following concerns. The Sheriff's Office has experienced a large volume of calls for service to retail stores in unincorporated Alameda County in the past year with a majority of the calls involving property crimes. This would significantly increase the likelihood of calls for service including thefts, burglaries, and robberies. The Sheriff's Office would like to see additional security features added to the building including a security/hold up alarm, video surveillance system, additional exterior lighting, heavy security doors and locks, also shatter resistant windows. X

Additionally, the Sheriff's Office would require the gun shop to comply with the following applicable laws and regulations:

Office of the Attorney General California Department of Justice, Dangerous Weapons Control Laws Title 2 Part 4. X

- Dangerous Weapons, Penal Codes 12000 thru 12809.
- Security Requirements for Firearms Dealers, Penal Code 12071.
- Imitation Firearms, Sniperscopes and Switchblades, Penal Codes 469 thru 654k.
- Mental Health, Welfare and Institutions Codes 8100 thru 8108.
- Second Hand Dealers, Business and Professions Code 21641.

Page 2

U.S. Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives, Federal Firearms Regulations. X

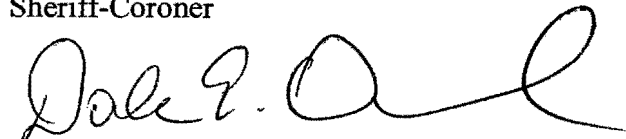
- Gun Control Act, 18 United States Code, Chapter 44.
- National Firearms Act, 26 United States Code, Chapter 53.
- Arms Export Control Act, 22 United States Code, Chapter 2778.
- National Instant Criminal Background Check, Title 28 CFR, Chapter 1.

The gun shop would be required to submit to an application process with the Alameda County Sheriff's Office for a Retail Firearms Dealer License, per Penal Code 12071. Y

Additionally, the gun shop would be required to comply with the applicable sections of the Alameda County General Ordinance regarding Firearms and Dangerous Weapons, Chapter 9.12. Y

If further assistance is needed, please contact Deputy Frank Buschhueter at (510) 667-3620.

Gregory J. Ahern,
Sheriff-Coroner



Dale E. Amaral, Captain
Law Enforcement Services
Eden Township Substation

GJA:DEA:fjb

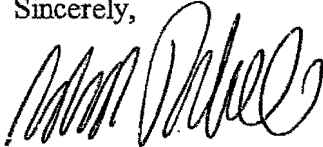
PROJECT REFERRAL

Date: August 29, 2011

RE: Case No. PLN2011-00096

If you have any questions, please contact me at the above number.

Sincerely,



Richard Tarbell
Development Planning Division
richard.tarbell@acgov.org

cc: Applicant: VALLEY GUNS & AMMO // NOBRIGA, STEVE 1196 Silver Trail Lane,
Manteca, Ca 95336

Owner: GRAVES, MARY K TR 3325 Lenard Dr, Castro Valley, Ca 94546

☒ No Comment - Date 9/16/2011

Attachments

BID - Buld, PERMIT Required.
Alla Lz

Tarbell, Richard, CDA

To: David Zechman; 'Susan Beck'; 'cca.bod@gmail.com'; 'kathleen@slvha.com'
Cc: Patti Hart; Cheryl Christensen; Molly Billalon; Desiree Sanchez
Subject: RE: Letter to recognize Mr. Teixeira and recommend him.

To answer your question - Mr. Teixeira is one of the partners in the proposed gun shop.

Richard Tarbell, Planner

Alameda County Community Development Agency

Planning Department

Phone (510) 670-5400

Fax: (510) 785-8793

Email: richard.tarbell@acgov.org

CONFIDENTIALITY NOTICE: This e-mail message including attachments, if any, is intended only for the person(s) or entity(ies) to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: David Zechman [<mailto:dzechman@prodigy.net>]
Sent: Monday, September 26, 2011 4:17 PM
To: Tarbell, Richard, CDA; 'Susan Beck'; 'cca.bod@gmail.com'; 'kathleen@slvha.com'
Cc: Patti Hart; Cheryl Christensen; Molly Billalon; Desiree Sanchez
Subject: Re: Letter to recognize Mr. Teixeira and recommend him.

Mr. Tarbell. I am replying to all and copying the other members of the Ashland Community Association Board.

Who is Mr. Teixeira? It is not the name of the owner on the paperwork I received, but rather Steve Nobriga is named.

At any rate, I don't believe the letter of recommendation is relevant. Zoning already prohibits the location of a gun shop here--whether properly run or not. Such laws are there to preserve neighborhoods and protect residents. I believe your department's job is to uphold and enforce these laws. Please don't nullify these laws by granting an exception just because someone asks. Enough already. Just follow the law and say no.

Thank you,
David Zechman, President
Ashland Community Association

ASHLAND

From: "Tarbell, Richard, CDA" <richard.tarbell@acgov.org>
To: 'Susan Beck' <soozebeck@gmail.com>; 'cca.bod@gmail.com' <cca.bod@gmail.com>; 'kathleen@slvha.com' <kathleen@slvha.com>; 'dzechman@prodigy.net' <dzechman@prodigy.net>
Sent: Monday, September 26, 2011 3:06 PM
Subject: Letter to recognize Mr. Teixeira and recommend him.

For your consideration:

Find attached a letter to speak for and recommend one of the principles of the Gun shop application from Former Alameda County Sheriff Charles Plummer.

Richard Tarbell, Planner
Alameda County Community Development Agency
Planning Department
Phone (510) 670-5400
Fax: (510) 785-8793
Email: richard.tarbell@acgov.org

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-----Original Message-----

From: ricohscanner@acgov.org [mailto:ricohscanner@acgov.org]
Sent: Monday, September 26, 2011 10:30 AM
To: Tarbell, Richard, CDA
Subject: Scanned Document Attached

This E-mail was sent from "RNP01F60E" (Aficio MP C6501).

Scan Date: 09.26.2011 13:30:18 (-0400)
Queries to: ricohscanner@acgov.org

Tarbell, Richard, CDA

To: PatiHart@aol.com
Subject: RE: Re Gun Shop

Patti:
Thank you for your response and input.

Richard Tarbell, Planner

Alameda County Community Development Agency

Planning Department

Phone (510) 670-5400

Fax: (510) 785-8793

Email: richard.tarbell@acgov.org

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From: PatiHart@aol.com [<mailto:PatiHart@aol.com>]

Sent: Monday, September 26, 2011 6:47 PM

To: Tarbell, Richard, CDA; soozebeck@gmail.com; kathleen@slvha.com; cca.bod@gmail.com

Subject: Re Gun Shop

Zoning already prohibits the location of a gun shop in our area. ...this is not needed.....
we have enough problems without this. Please spare us another "exception"....we have become a dumping ground for "exceptions".....

Respectfully Submitted
Patti Hart
677 Paradise Blvd
Hayward, Ca (In Ashland)
V.P. Ashland Community Assn
Block Captain Paradise Blvd

ASHLAND

Tarbell, Richard, CDA

From: PatiHart@aol.com
Sent: Monday, September 26, 2011 6:47 PM
To: Tarbell, Richard, CDA; soozebeck@gmail.com; kathleen@slvha.com; cca.bod@gmail.com
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Tarbell, Richard, CDA

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Sent: Monday, September 26, 2011 4:17 PM
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Cc: Patti Hart; Cheryl Christensen; Molly Billalon; Desiree Sanchez
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Thank you,
David Zechman, President
Ashland Community Association

From: "Tarbell, Richard, CDA" <richard.tarbell@acgov.org>
To: 'Susan Beck' <soozebeck@gmail.com>; "'cca.bod@gmail.com'" <cca.bod@gmail.com>; "'kathleen@slvha.com'" <kathleen@slvha.com>; "dzechman@prodigy.net" <dzechman@prodigy.net>
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Richard Tarbell, Planner
Alameda County Community Development Agency
Planning Department
Phone (510) 670-5400
Fax: (510) 785-8793
Email: richard.tarbell@acgov.org

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-----Original Message-----

From: ricohscanner@acgov.org [mailto:ricohscanner@acgov.org]
Sent: Monday, September 26, 2011 10:30 AM
To: Tarbell, Richard, CDA
Subject: Scanned Document Attached



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

December 16, 2011

Chris Bazar
Agency Director

Albert Lopez
Planning Director

224
West Winton Ave.
Room 111

Hayward
California
94544

phone
510.670.5400
fax
510.785.8793

www.acgov.org/cda

Valley Guns & Ammo
Attention: Steve Nobriga
1196 Silver Trail Lane
Manteca, CA 95336

Dear Applicant:

Enclosed is a copy of the resolution which was adopted by the West County Board of Zoning Adjustments at the public hearing held Wednesday, December 14, 2011 on your application for Variance and Conditional Use Permit, PLN-2011-00096.

The resolution is effective on the eleventh day following the action unless within that period there is an appeal filed with the Planning Department at the above address, or with the Clerk of the Board, Alameda County Board of Supervisors, Administration Building, 1221 Oak Street, Oakland, California, 94612. If you choose to appeal this action, your appeal should make reference to the application number and the date of the hearing as well as the reasons for the appeal. We will continue to bill staff costs against your deposit until the appeal is resolved. If anyone other than you, the applicant, or your representative wishes to appeal this action, there is an appeal fee of \$250.00. In this case we will not continue to bill you for staff costs.

If you have any questions concerning this matter, please free to contact this office.

Sincerely,

Phil Sawrey-Kubicek
Senior Planner

PSK: ybg

Enclosure:

**RESOLUTION NO. Z-11-70 OF
THE WEST COUNTY BOARD OF ZONING ADJUSTMENTS
ADOPTED AT THE HEARING OF DECEMBER 14, 2011, CONCERNING VARIANCE
and CONDITIONAL USE PERMIT, PLN-2011-00096**

WHEREAS VALLEY GUNS & AMMO and STEVE NOBRIGA have filed for VARIANCE and CONDITIONAL USE PERMIT PLN-2011-00096, to allow the operation of a gun shop, and at a distance of less than 500 feet from a residentially zoned district, where 500 feet is required, in a FA (Freeway Access) District according to the *Ashland and Cherryland Business District Specific Plan*, allowing large scale, general commercial land uses that benefit from freeway access and exposure, located at 488 Lewelling Boulevard, south side, approximately 140 feet west of Hesperian Boulevard, in the unincorporated Ashland area of Alameda County, designated County Assessor's Parcel Number: 413-0097-001-03; and

WHEREAS the Board did hold a public hearing on said application at the hour of 1:30 p.m. on the 16th day of November and the 14th day of December, 2011, in the Alameda County Building, 224 West Winton Avenue, Public Hearing Room, Hayward, California; and

WHEREAS it satisfactorily appears from affidavits on file that proper notice of said public hearing was given in all respects as required by law; and

WHEREAS this application has been reviewed in accordance with the provisions of the California Environmental Quality Act and has been found to be categorically exempt; Article 19, Section 15303, Class 3, New Construction or Conversion of Small Structures. Consisting of construction and location of limited numbers of new, small facilities or structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure; and

WHEREAS a Pre-Hearing Analysis was submitted recommending the application be denied; and

WHEREAS the Applicant and a Representative appeared at said public hearings and presented testimony in support of the application; and

WHEREAS Neighbors appeared at said public hearings and offered testimony in opposition to the application; and

WHEREAS Neighbors appeared at said public hearings and offered testimony in support of the application; and

WHEREAS the Board did hear and consider all said reports, recommendations and testimony as hereinabove set forth;

NOW THEREFORE

BE IT RESOLVED that the Board finds that:

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VARIANCE

- (a) There are special circumstances applicable which deprive the property of privileges enjoyed by other properties in the vicinity under the identical zoning classification. Highway 880, multi-lane thoroughfare Hesperian Boulevard, and walls and fences create a physical obstruction that does not allow direct traversable access at a distance less than 500 feet from the site to a residentially zoned district.
- (b) The granting of the application will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone as the proximity of the placement of Highway 880 located southwest of the property, Hesperian Boulevard thoroughfare, and walls and fences create a physical obstruction not allowing direct traversable access at a distance less than 500 feet from the site to a residentially zoned district. This situation is unique.
- (c) The use will not be detrimental to persons or property in the neighborhood or to the public welfare with the Conditions of Approval undertaken as contained herein.

CONDITIONAL USE PERMIT

- (a) The use is required by the public need as there is a need to provide the opportunity to the public to purchase firearm sales in a qualified licensed establishment. Unincorporated Alameda County currently has four (4) licensed firearms sales business. The necessary number of firearms sales establishments to serve the public need is left up to the market.
- (b) The use will be properly related to other land uses and transportation and service facilities in the vicinity. The district in which the proposed sales activity is to occur is appropriate as the firearms sales shop is located in a mixed use retail/commercial area on a major thoroughfare where the surrounding public streets, and freeway access are adequate and all necessary improvements and services are available. The *Eden Area General Plan* calls for "Mixed uses" in the "General Commercial" designation, which is where this site is located. However, the General Plan goal to promote a "variety of uses" did not consider "gun store/firearms sales" as part of that desirable mix of uses.

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- (c) The use, if permitted, under all the circumstances and conditions of this particular case, will not materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injuries to property or improvements in the neighborhood as the applicant possesses, in current form, all of the firearms dealer licenses required by federal and state law. The applicant has the required licenses and is knowledgeable about the firearms business operation having 38 years of prior firearms shop business ownership and experience. Firearms shall be properly licensed, inspected, and security installed and shall meet all applicable life-safety, and fire code requirements, with proper inventory security devices, and no adverse effects are otherwise anticipated.
- (d) The use will not be contrary to the specific intent clauses or performance standards established for the District in which it is to be considered. Although the Zoning Ordinance requires a Conditional Use Permit for firearms sales, and does not allow firearms sale within 500 feet of a residentially zoned district; elementary, middle or high school; pre-school or day care center; other firearms sales business; or liquor stores or establishments in which liquor is served; and the site proposed with this application is approximately 446 feet from a residentially zoned district. A Variance was submitted as part of this application, and has been approved.

ADDITIONAL CONDITIONAL USE PERMIT FINDINGS:

- (a) The district in which the proposed sales activity is to occur is appropriate as the *Eden Area General Plan* calls for "mixed uses" in the "General Commercial" designation, which is where this site is located. A gun store is an appropriate use in the district and will promote the goal to have a "variety of uses".
- (b) The subject premises is within five hundred (500) feet of a residentially zoned district. However, Highway 880, multi-lane thoroughfare Hesperian Boulevard, and walls and fences create a physical obstruction that does not allow direct traversable access at a distance less than 500 feet from the site to a residentially zoned district. A variance has been approved for the reduced 500 foot distance.
- (c) The applicant will possess all of the firearms dealer licenses required by federal and state law. The applicant is knowledgeable about the firearms business operation having 38 years of prior firearms shop business ownership and experience.

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- (d) The applicant has been informed that, in addition to a conditional use permit, the applicant is required to obtain a firearms dealer license issued by the County of Alameda before sale activity can commence, and that information regarding how such license may be obtained has been provided to the applicant. Staff has discussed the licensing requirements with the applicant in meetings and he is aware of the licensing requirements.
- (e) The subject premises will be in full compliance with the requirements of the applicable building codes, fire codes and other technical codes and regulations which govern the use, occupancy, maintenance, construction or design of the building or structure. The premises is required to undergo alterations to bring it into full compliance with codes, regulations, occupancy, maintenance, construction, and safety design for the gun shop use.
- (f) The applicant will provide sufficient detail regarding the intended compliance with the Penal Code requirements for safe storage of firearms and ammunition to be kept at the subject place of business and building security. The applicant has had prior experience with the Code requirements to operate firearms and ammunition sales type of business, and as shown the firearms will be kept safe and secure.

NOW THEREFORE

BE IT FURTHER RESOLVED that the Board does hereby approve the said application as shown by materials labeled Exhibit "A" on file with the Alameda County Planning Department subject to the following conditions:

1. This use permit is for the issuance of Conditional Use Permit, PLN-2011-00096 to Valley Guns & Ammo to allow the operation of a gun shop, located at 488 Lewelling Boulevard, south side, approximately 140 feet west of Hesperian Boulevard, in the unincorporated Ashland area of Alameda County, designated County Assessor's Parcel Number: 413-0097-001-03.
2. The subject premises shall be in full compliance with the requirements of the applicable building codes, fire codes and other technical codes and regulations which govern the use, occupancy, maintenance, construction or design of the building or structure. The use shall comply at all times with the requirements of the following agencies and County Departments:
 - a) Alameda County Fire Department
 - b) Alameda County Public Works Agency, Building Inspection Department
 - c) Alameda County Environmental Health Department
 - d) Alameda County Sheriff's Department

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3. A Security Plan shall be submitted for approval to the Planning Director and the Sheriff's Office prior to the issuance of a Certificate of Occupancy. The installation of the plan shall include an alarm system, lighting, security gates, doors and windows.
4. A site plan with elevations shall be submitted for approval to the Planning Director which includes exterior improvements. The exterior improvements shall include paint, signage, lighting, and landscaping.
5. The subject place of business and building security shall at all times be in compliance with Penal Code requirements for safe storage of firearms and ammunition. Two, 14 foot security gate shall secure rifles and handguns.
6. The entire premises must remain trash/debris and graffiti free at all times.
7. The Hours of Operation shall be from 10:00 a.m. to 5:00 p.m. Tuesday through Saturday. Closed on Sunday and Monday.
8. The business shall remain under the ownership and control of the applicants. The Alameda County Planning Director shall be notified within ten working days of any transfer and/or sale of the business. Notification shall include the effective date of the change, and the name and phone number of the new owner.
9. A mandatory review shall be conducted one year and five years from approval of Conditional Use Permit, PLN-2011-00096. One, and five years after the date of this approval, at the option of the County, considering any information that has been received, following notice as required for the original permit, this Conditional Use Permit, PLN-2011-00096 may be set for public hearing as was provided for the original permit. At said public hearing the mandatory one year and five year review will evaluate if conditions of approval may be added or deleted, or conditions may be modified so as to enable the continued making of the affirmative findings above. Any conditions of approval modified or added shall have the same force and effect as if originally imposed. Review costs shall be borne by the applicant.

Pursuant to Section 17-52.070 of the Alameda County Zoning Ordinance said Variance shall be implemented with a term of three (3) years of its issuance or it shall be of no force or effect. Said Variance shall remain revocable for cause in accordance with Section 17-54.030 of the Alameda County Zoning Ordinance.

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Pursuant to Section 17-52.050 of the Alameda County Zoning Ordinance said Conditional Use Permit shall be implemented within a term of three (3) years of its issuance or it shall be of no force or effect. If implemented, said Conditional Use Permit shall remain revocable for cause in accordance with Section 17-54.030 of the Alameda County Zoning Ordinance.

WEST COUNTY BOARD OF ZONING ADJUSTMENTS
ALAMEDA COUNTY PLANNING DEPARTMENT