

No. 13-17132 [Dist Ct. No.: 3:12-CV-03288-WHO]

IN THE
UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

JOHN TEIXEIRA; et al.,
Plaintiffs - Appellants,

vs.

COUNTY OF ALAMEDA; et al.,
Defendants - Appellees.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EXCERPT OF RECORD
(Revised Pursuant to Order: DktEntry: 29)

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INDEX / TABLE OF CONTENTS

Trial Court Docket No.	Document (File Date)	ER Page #	ER Tab #
59	Notice of Appeal (Oct. 21, 2013)	ER - 2	1
58	Judgment (Sep. 17, 2013)	ER - 7	2
56	Order Granting Defendants' Motion to Dismiss First Amended Complaint With Prejudice (Sep. 4, 2013)	ER-10	3
40	First Amended Complaint (Apr. 1, 2013)	ER-30	4
40-1	First Amended Complaint Exhibit A (Apr. 1, 2013)	ER-57	5
40-2	First Amended Complaint Exhibit B (Apr. 1, 2013)	ER-116	6
40-3	First Amended Complaint Exhibit C (Apr.1, 2013)	ER-177	7
	Civil Docket Report from District Court	ER-185	8

CERTIFICATE OF SERVICE

On April 21, 2014, I served this EXCERPT OF RECORD (Revised Pursuant to Order: DktEntry 29) by electronically filing it with the Court's ECF/CM system, which generated a Notice of Filing and effects service upon counsel for all parties in the case.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 21, 2014,

/s/ Donald Kilmer
Attorney of Record for Appellants

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10 IN THE UNITED STATES DISTRICT COURT

11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

17 Plaintiffs,

18 vs.

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

23 Defendants.

Case No. 3:12-CV-03288-WHO

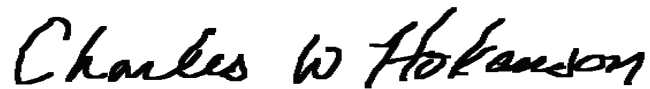
**NOTICE OF APPEAL (with Local Rule 3-2
Representation Statement attached)**

1
2 Notice is hereby given that Plaintiffs in the above named case, JOHN TEIXEIRA; STEVE
3 NOBRIGA; GARY GAMAZA; CALGUNS FOUNDATION, INC.; SECOND AMENDMENT
4 FOUNDATION, INC.; and CALIFORNIA ASSOCIATION OF FEDERAL FIREARMS LICENSEES,
5 hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Final Judgment
6 entered in this action on the September 23, 2013 [Docket # 58] and all interlocutory orders prior to entry
7 of that judgment, including, but not limited to the court's Order Granting Defendants' Motion To Dismiss
8 And Denying Plaintiff's Motion For A Preliminary Injunction entered on February 26, 2103 [Docket #
9 37] and the court's Order Granting Motion To Dismiss First Amended Complaint With Prejudice entered
10 on September 9, 2013 [Docket # 56].
11

12 A Local Rule 3-2 Representation Statement is attached hereto.
13

14 Respectfully Submitted,

15 October 21, 2013
16



17 Charles W. Hokanson
18 Attorney for All Plaintiffs
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LOCAL RULE 3-2 REPRESENTATION STATEMENT

1) All Plaintiffs and Appellants in this matter are represented by:

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2) All Defendants (Appellees) in this matter are represented by:

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Respectfully Submitted,

October 21, 2013



Charles W. Hokanson
Attorney for All Plaintiffs

DECLARATION OF SERVICE BY CM/ECF

I, Charles Hokanson, declare as follows:

1. I am a member of the bar of this court and am counsel of record in this case to all Plaintiffs and Appellants. I am over the age of 18 years and not a party to the action. My business address is 4401 Atlantic Ave, Ste 200, Long Beach, CA 90807.

2. I served the foregoing document, entitled NOTICE OF APPEAL (with Local Rule 3-2 Statement of Representation attached) on the interested parties in this action by using the Case Management/Electronic Case Filing System of the United States District Court for Northern District of California.

3. All participants in this case are registered CM/ECF users such that service will be accomplished by that system.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 21st day of October, 2013 at Long Beach, California.



Charles W. Hokanson
Attorney for All Plaintiffs

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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DIVISION OF CALIFORNIA
 10

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

Case No.: 3:12-CV-03288 (WHO)

**JUDGMENT
 FOLLOWING ORDER GRANTING
 DEFENDANTS' MOTION TO
 DISMISS**

15
 16 Plaintiffs,

17 v.

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

21 Defendants.
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1 The Court entered an Order **DISMISSING** the First Amended Complaint **WITH**
2 **PREJUDICE** for failure to state a claim upon which relief may be granted on September 9,
3 2013. Judgment is accordingly entered in favor of the Defendants and against Plaintiffs.

4 **IT IS SO ORDERED.**

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7 Dated: September 23, 2013



8

Hon. William H. Orrick

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UNITED STATES DISTRICT JUDGE

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Tab 3

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN TEIXEIRA, et al.,
Plaintiffs,
v.
COUNTY OF ALAMEDA, et al.,
Defendants.

Case No. [12-cv-03288-WHO](#)

**ORDER GRANTING MOTION TO
DISMISS FIRST AMENDED
COMPLAINT WITH PREJUDICE**

Re: Dkt. No. 44

INTRODUCTION

When the Supreme Court decided in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment confers an individual right to possess handguns in the home for self-protection—a right which the Supreme Court later held, in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), was incorporated against states and municipalities through the Fourteenth Amendment—it took pains to assure that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *Dist. of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008). The Supreme Court identified these sorts of laws as “presumptively lawful regulatory measures” and emphasized that “our list does not purport to be exhaustive.” *Id.* at 627 n.26. That assurance was reiterated in *McDonald*. 130 S. Ct. at 3047.

In this case, plaintiffs John Teixeira, Steve Nobriga, and Gary Gamaza (collectively, the “individual plaintiffs”), as well as The Calguns Foundation, Inc., Second Amendment Foundation, Inc., and California Association of Federal Firearms Licensees, Inc., seek on Second Amendment

1 and Equal Protection grounds in their First Amended Complaint (“FAC”) to invalidate an
 2 Alameda County ordinance that prohibits a gun store from being located within 500 feet of any
 3 residential district, school, other gun store, or establishment that sells liquor. Because the
 4 ordinance is a presumptively lawful regulatory measure under *Heller*, and because there is a
 5 rational basis to treat gun stores differently than other commercial retailers, after consideration of
 6 the parties’ briefs, argument of counsel, and for the reasons below, the Motion to Dismiss filed by
 7 defendants County of Alameda, Alameda Board of Supervisors (the “Board of Supervisors”),
 8 Supervisor Wilma Chan of the Alameda Board of Supervisors in her official capacity, Supervisor
 9 Nate Miley of the Alameda Board of Supervisors in his official capacity, and Supervisor Keith
 10 Carson of the Alameda Board of Supervisors in his official capacity is GRANTED WITH
 11 PREJUDICE.

12 **FACTUAL BACKGROUND**

13 The plaintiffs allege the following facts: In the fall of 2010, Teixeira, Nobriga, and
 14 Gamaza formed a partnership called Valley Guns and Ammo (“VGA”) to open a gun store in
 15 Alameda County. FAC ¶ 26. VGA conducted “market research” prior to opening its store and
 16 concluded that “a full service gun store located in San Lorenzo would be a success, in part,
 17 because existing retail establishments (e.g., general sporting good [sic] stores) do not meet
 18 customer needs and demands” based on feedback from approximately 1,400 “gun enthusiasts.”
 19 FAC ¶ 27.

20 In November 2010, the individual plaintiffs were informed that any gun store could not be
 21 located within 500 feet of any residentially zoned district, school, other gun store, or establishment
 22 that sells liquor (“disqualifying property”) as mandated by Alameda County Land Use Ordinance
 23 § 17.54.131 (the “Ordinance”). FAC ¶ 32. This “is a recent land use regulation.” FAC ¶ 34. In
 24 addition, any applicant for a gun store license must obtain a conditional use permit from the
 25 County. FAC ¶ 33. Alameda County only requires conditional use permits for retail stores selling
 26 guns. FAC ¶ 35. On information and belief, the plaintiffs allege that as of February 2013,
 27 Alameda County had 29 Federal Firearm Licensees, many of whom “are not located in
 28 commercial buildings open for retail firearm sales.” FAC ¶ 36. The plaintiffs also allege on

1 information and belief that the Ordinance’s requirements have not been imposed on “many” of the
2 29 licensees, who are either not complying or were never required to comply with the restrictions
3 imposed against VGA. FAC ¶ 37.

4 The Alameda County Planning Department told VGA that the 500-foot measurement
5 would be taken from the closest door in the proposed gun store to the front door of any
6 disqualifying property. FAC ¶ 38. Based on this requirement, the individual plaintiffs leased
7 property at 488 Lewelling Boulevard, San Leandro, California. FAC ¶ 39. The property only has
8 one door facing Lewelling Boulevard. FAC ¶ 40. A survey the individual plaintiffs obtained
9 showed that no disqualifying property is within a 500-foot radius of the front door of VGA’s
10 property. FAC ¶¶ 41-42.

11 On November 16, 2011, the West County Board of Zoning Adjustment (the “Zoning
12 Board”) was scheduled to hold a hearing to determine whether VGA should be issued a
13 conditional use permit and a variance (although the hearing was ultimately rescheduled). FAC
14 ¶ 44. A staff report based on information publicly available prior to the hearing concluded that
15 VGA’s property was less than 500 feet from a disqualifying property and recommended denying a
16 variance. FAC ¶ 44. It concluded that “[t]he measurement taken from the closest exterior wall of
17 the gun shop to the closest property line of a residentially zoned district is less than 500 feet in two
18 directions.” FAC Ex. A at 8. Specifically, the gun shop was measured to be 446 feet away from
19 residences on Albion Avenue and 446 feet away from residentially zoned properties on Paseo del
20 Rio in San Lorenzo Village, which is separated from the gun shop by Interstate 880. FAC Ex. A.
21 at 8. The County “measured from the closest building exterior wall of the gun shop to the
22 property line of the residentially zoned district.” FAC Ex. A at 3. The report reflects that there are
23 no other disqualifying properties within 500 feet of the gun store. FAC Ex. A at 8.

24 The staff report tentatively found a “public need” to “provide the opportunity to the public
25 to purchase firearms in a qualified, licensed environment.” FAC Ex. A at 9. The report also
26 tentatively found that the proposed use relates to other land uses and facilities in the vicinity, and
27 that the store would not “materially affect adversely the health or safety of persons residing or
28 working in the vicinity, or be materially detrimental to the public welfare or injurious to property

1 or improvements in the neighborhood.” FAC Ex. A at 9. However, the report found that the gun
2 store would be “contrary to the specific intent clauses or performance standards for the District in
3 which it is to be considered” based on the fact that the location does not meet the 500-foot rule.
4 FAC Ex. A at 9. It noted that one of the residential sites is on the other side of a highway, “which
5 cannot be traversed,” but the other site “can be easily accessed.” FAC Ex. A at 10. The plaintiffs
6 allege that there is a fence between the gun store and the latter site, but the report does not reflect
7 this. FAC ¶¶ 46(f)(ii)(2) and 46(g)(i). The report tentatively found that a variance for the gun
8 store “will be detrimental to persons or property in the neighborhood or to the public welfare”
9 because it is less than 500 feet away from the residentially zoned properties near Albion Avenue,
10 but “there would be no detriment” to San Lorenzo Village due to the highway. FAC Ex. A at 11.

11 The Zoning Board held the hearing on December 24, 2011, after which it issued a revised
12 staff report. The revised report acknowledged that different ways of defining the starting point for
13 the measurement would alter the distance to the nearest residentially zoned property. FAC Ex. B
14 at 5. Nonetheless, under all three ways it applied (starting from the gun shop’s building wall, front
15 door, or property line), the Zoning Board still found the gun shop to be less than 500 feet away
16 from the closest residence. FAC Ex. B. at 5. Based on these measurements, the staff
17 recommended denying a conditional use permit and variance to VGA. FAC Ex. B at 2.

18 The plaintiffs used the front door of the gun shop as a starting point to measure distance,
19 however, and submitted its own figure showing that the gun shop was at least 532 feet away from
20 the closest residence. FAC ¶ 47(c). The plaintiffs claim that the Zoning Board’s measurements
21 are wrong because it measured “from the front doors of the disqualifying residential properties to
22 the closest possible part” of VGA’s building—“a brick wall with no door.” FAC ¶ 45. By
23 “moving the end-points,” VGA did not qualify for a variance. FAC ¶ 45.

24 Despite the staff report’s recommendation, the Zoning Board passed a resolution granting
25 VGA a conditional use permit and variance. FAC Ex. C. In a December 16, 2011, letter, the
26 individual plaintiffs were informed that the resolution would be effective on December 26, 2011,
27 unless an appeal was filed with the Alameda County Planning Department. FAC ¶¶ 50, 52. On
28 February 23, 2012, the individual plaintiffs were informed that the San Lorenzo Village Homes

1 Association filed an appeal on or after December 29, 2011, challenging the Zoning Board’s
2 resolution. FAC ¶ 52. On February 28, 2012, the Board of Supervisors, “acting through
3 Supervisors CHAN, MILEY and CARSON voted to sustain the late-filed appeal” and overturned
4 the Zoning Board’s decision, thereby revoking the conditional use permit and variance granted to
5 VGA. FAC ¶ 54.

6 The plaintiffs allege that the Board of Supervisors “appeared to be acting with deliberate
7 indifference to the rights of the Plaintiffs and overt hostility to the fact that it was a gun store.”
8 FAC ¶ 55. They argue that the report found no public safety concerns with granting the permit
9 and variance, and that the 500-foot rule is “wholly arbitrary” and “erroneous and unreasonable.”
10 FAC ¶ 55. The individual plaintiffs tried to find other properties that they could use as a gun
11 store; they also commissioned a study, which found that “there are no parcels in the
12 unincorporated areas of Alameda County which would be available for firearm retail sales” due to
13 the 500-foot rule. FAC ¶¶ 60-61.

14 PROCEDURAL BACKGROUND

15 On June 25, 2012, the plaintiffs filed their original complaint asserting four causes of
16 action: (1) denial of Due Process; (2) denial of Equal Protection; (3) violation of the Second
17 Amendment on its face; and (4) violation of the Second Amendment as applied. Dkt. No. 1 ¶¶ 48,
18 50, 52, 54.¹ Following the defendants’ motion to dismiss (Dkt. No. 13) and the plaintiffs motion
19 for a preliminary injunction (Dkt. No. 21), on February 26, 2013, the Honorable Susan Illston
20 dismissed with leave to amend the plaintiffs’ Equal Protection and Second Amendment claims,
21 and denied the plaintiffs’ motion for a preliminary injunction (Dkt. No. 37).

22 The plaintiffs filed the FAC on April 1, 2013. Dkt. No. 40. In it, the plaintiffs assert that
23 the 500-foot rule “is not reasonably related to any possible public safety concerns,” and that
24 Alameda County is unable to “articulate how the ‘500 Foot Rule’ is narrowly tailored to achieve
25 any legitimate government interest.” FAC ¶ 63. The First Cause of Action alleges that the
26 defendants “have intentionally discriminated against” the individual plaintiffs by “not requiring
27

28 ¹ The parties later stipulated to dismissing the Due Process claim.

1 the [conditional use permit] of similar situated parties” and that they violated the Equal Protection
2 Clause as applied to the individual plaintiffs. FAC ¶¶ 68-75. The Second Cause of Action
3 challenges the requirements for getting a conditional use permit, in particular, the 500-foot rule,
4 which allegedly gives gun stores “different treatment from similarly situated retail businesses,” as
5 unconstitutional on its face under the Equal Protection Clause. FAC ¶ 74. The Third Cause of
6 Action challenges the Ordinance as “hav[ing] no proper basis” and being “constitutionally
7 impermissible” on its face under the Second Amendment. FAC ¶ 78. The Fourth Cause of Action
8 alleges that the 500-foot rule “is irrational as applied to the facts of this case” and thus violates the
9 Second Amendment as applied to the individual plaintiffs. FAC ¶ 80. The plaintiffs seek
10 declaratory and injunctive relief stating that the Board of Supervisor’s grant of the San Lorenzo
11 Village Homes Association’s appeal was improper and that the 500-foot rule is unconstitutional
12 facially and as-applied, and they also seek damages and attorney’s fees.

13 The defendants then moved to dismiss the FAC. Dkt. No. 44.

14 LEGAL STANDARD

15 A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the
16 pleadings fail to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). The
17 Court must “accept factual allegations in the complaint as true and construe the pleadings in the
18 light most favorable to the nonmoving party,” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519
19 F.3d 1025, 1031 (9th Cir. 2008), drawing all “reasonable inferences” from those facts in the
20 nonmoving party’s favor, *Knievel v. ESPN*, 393 F.3d 1068, 1080 (9th Cir. 2005). However, a
21 complaint may be dismissed if it does not allege “enough facts to state a claim to relief that is
22 plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial
23 plausibility when the pleaded factual content allows the court to draw the reasonable inference that
24 the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
25 “[T]he tenet that a court must accept as true all of the allegations contained in a complaint is
26 inapplicable to legal conclusions.” *Id.* at 678. Similarly, “a complaint [does not] suffice if it
27 tenders naked assertions devoid of further factual enhancement,” *id.* (quotation marks and brackets
28 omitted), and the court need not “assume the truth of legal conclusions merely because they are

1 cast in the form of factual allegations,” *W. Min. Council v. Watt*, 643 F.2d 618, 624 (9th Cir.
2 1981).

3 If a motion to dismiss is granted, a court should normally grant leave to amend unless it
4 determines that the pleading could not possibly be cured by allegations of other facts. *Cook,*
5 *Perkiss & Liehe v. N. Cal. Collection Serv.*, 911 F.2d 242, 247 (9th Cir. 1990).²

6 DISCUSSION

7 I. LAW OF THE CASE

8 The plaintiffs argue that the Court’s “ruling on the prior motion to dismiss [Order Granting
9 Defendants’ Motion to Dismiss and Denying Plaintiffs’ Motion for a Preliminary Injunction
10 (“Order”)] was clearly erroneous.” Opp’n 1. They dispute the Court’s conclusion that the
11 Ordinance is “presumptively valid,” and say that the Court was incorrect to “suggest[] that there
12 was [no] Second Amendment right outside of one’s home” (which the Court did not suggest).
13 Opp’n 1. They assert that because the ruling was only an order of this Court and not an appellate
14 court, the Court “is absolutely free to, and should,” revisit its earlier Order since the “law of the
15 case” doctrine does not apply here. Opp’n 6.

16 While it is true, as the plaintiffs say, that the “law of the case” doctrine prohibits a trial
17 court from revisiting a decision by an appellate court, Opp’n 1, it is not true that the doctrine does
18 not caution a trial court against reconsidering its own prior decisions. *See United States v. Houser*,
19 804 F.2d 565, 567 (9th Cir. 1986) (stating that “reconsideration of legal questions previously
20 decided should be avoided”). The Ninth Circuit has said that “[u]nder the ‘law of the case’
21 doctrine, a court is ordinarily precluded from reexamining an issue *previously decided by the same*
22 *court*, or a higher court, in the same case.” *United States v. Smith*, 389 F.3d 944, 948 (9th Cir.
23 2004) (citing *Richardson v. United States*, 841 F.2d 993, 996 (9th Cir. 1988)) (emphasis added).
24 “Issues that a district court determines during pretrial motions become law of the case.” *United*
25 *States v. Phillips*, 367 F.3d 846, 856 (9th Cir. 2004). “The doctrine is a judicial invention
26 designed to aid in the efficient operation of court affairs, and is founded upon the sound public

27 _____
28 ² At oral argument on the Motion to Dismiss the FAC, plaintiffs conceded that they had no
additional facts to allege in support of their claims.

1 policy that litigation must come to an end.” *Smith*, 389 F.3d at 948 (citations and quotation marks
 2 omitted). At the same time, the “law of the case” doctrine is “not an inexorable command,”
 3 *Hanna Boys Ctr. v. Miller*, 853 F.2d 682, 686 (9th Cir. 1988) (citation omitted), and is
 4 “discretionary.” *United States v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000).

5 Asking the Court to wholly revise its interpretation of the law applied in an earlier motion
 6 to dismiss merely because a new motion to dismiss is pending, without providing the Court
 7 “strong and reasonable [grounds for deciding] that the earlier ruling was wrong,” goes against the
 8 purpose and intent of the doctrine. *Smith*, 389 F.3d at 949. Here, the Court will exercise its
 9 discretion to follow the law as explained in its earlier Order.

10 **II. PLAINTIFFS DO NOT STATE A CLAIM UNDER THE SECOND AMENDMENT.**

11 **A. Third Cause of Action: Facial Second Amendment Challenge**

12 Plaintiffs facially challenge the Ordinance under the Second Amendment. “A facial
 13 challenge to a legislative [a]ct is, of course, the most difficult challenge to mount successfully,
 14 since the challenger must establish that *no* set of circumstances exists under which the [a]ct would
 15 be valid.” *United States v. Salerno*, 481 U.S. 739, 745 (1987) (emphasis added). Plaintiffs fail to
 16 sufficiently allege that the Ordinance is facially unconstitutional under the Second Amendment.

17 The Court noted in its earlier Order that “[n]either the Supreme Court nor the Ninth Circuit
 18 has articulated the precise methodology to be applied to Second Amendment claims.” Order 7.
 19 Drawing from other authorities, however, the Court applied a two-step analysis that most other
 20 courts have applied in this context. As the Fifth Circuit explained it, “the first step is to determine
 21 whether the challenged law impinges upon a right protected by the Second Amendment—that is,
 22 whether the law regulates conduct that falls within the scope of the Second Amendment’s
 23 guarantee; the second step is to determine whether to apply intermediate or strict scrutiny to the
 24 law, and then to determine whether the law survives the proper level of scrutiny.” *Nat’l Rifle*
 25 *Ass’n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185, 194
 26 (5th Cir. 2012) (citing *United States v. Greeno*, 679 F.3d 510, 518 (6th Cir. 2012)); *Heller v. Dist.*
 27 *of Columbia*, 670 F.3d 1244, 1252 (D.C. Cir. 2011) (Heller II); *Ezell v. City of Chicago*, 651 F.3d
 28 684, 701-04 (7th Cir. 2011); *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010); *United*

1 *States v. Reese*, 627 F.3d 792, 800-01 (10th Cir. 2010); *United States v. Marzzarella*, 614 F.3d 85,
2 89 (3d Cir. 2010). *But see United States v. Skoien*, 614 F.3d 638, 641-42 (7th Cir. 2010).).

3 The first step of the analysis is dispositive in this case: under the Supreme Court’s
4 decisions in *Heller* and *McDonald*, the Ordinance is presumptively lawful. Critically, as
5 previously noted, the Supreme Court has cautioned that *nothing* in the *Heller* opinion “should be
6 taken to cast doubt on . . . laws forbidding the carrying of firearms in sensitive places such as
7 schools and government buildings, or laws imposing conditions and qualifications on the
8 commercial sale of arms.” *Heller*, 554 U.S. at 626-27. The Supreme Court explained that its list
9 of “presumptively lawful regulatory measures” was “not [] exhaustive.” *Id.* at 627 n.26. It
10 reiterated these principles two years later in *McDonald*, 130 S. Ct. at 3047 (“We repeat those
11 assurances here.”), and the Ninth Circuit followed them in *Nordyke v. King*, 681 F.3d 1041, 1044
12 (9th Cir. 2012).³

13 The Ordinance, which requires that gun stores obtain a permit to operate and be at least
14 500 feet away from sensitive locations are regulatory measures, is quite literally a “law[] imposing
15 conditions and qualifications on the commercial sale of arms,” which the Supreme Court
16 identified as a type of regulatory measure that is presumptively lawful. *Heller*, 554 U.S. at 626-
17 27. In addition, the Ordinance shares the same concerns as “laws forbidding the carrying of
18 firearms in sensitive places” because it requires the selling of guns to occur at least 500 feet away
19

20 ³ The plaintiffs argue that *Heller*’s discussion of presumptively lawful regulatory measures is
21 merely dicta and provides “no basis” to decide this case. Opp’n 10-12. The Ninth Circuit has
22 explicitly rejected the contention that this portion of *Heller* is somehow not controlling. In *United*
23 *States v. Vongxay*, the court said, “[The defendant] nevertheless contends that the Court’s
24 language about certain long-standing restrictions on gun possession is dicta, and therefore not
25 binding. We disagree.” 594 F.3d 1111, 1115 (9th Cir. 2010). Even if the Supreme Court’s
26 statements were dicta, as the Ninth Circuit has repeatedly said, courts “do not treat considered
27 dicta from the Supreme Court lightly.” *United States v. Augustine*, 712 F.3d 1290, 1295 (9th Cir.
28 2013). Given the importance of the issues of first impression addressed by *Heller*, and the fact
that the Supreme Court reaffirmed its statements about presumptive lawfulness again in
McDonald, 130 S. Ct. at 3047 (“We repeat those assurances here.”), the plaintiffs cannot seriously
argue that the Supreme Court’s analysis was not “considered.” This Court follows the Supreme
Court’s guidance.

1 from schools, residences, establishments that sell liquor, and other gun stores. *Id.* It is not a total
2 ban on gun sales or purchases in Alameda County. On its face, the Ordinance is part of the
3 Supreme Court’s non-exhaustive list of regulatory measures that are constitutional under the
4 Second Amendment. *Id.*

5 While both the Supreme Court and the Ninth Circuit left unanswered precisely how broad
6 the scope of the Second Amendment is, *Nordyke*, 681 F.3d at 1044, they have not extended the
7 protections of the Second Amendment to the sale or purchase of guns. Plaintiffs have failed to
8 explain how the Ordinance unconstitutionally burdened their “core right to possess a gun in the
9 home for self-defense articulated in *Heller*” or any right they have to sell or purchase guns—“a
10 right which the U.S. Supreme Court has yet to recognize.” Order 8. The Ninth Circuit observed
11 that “[t]he Supreme Court has made it clear that the government can continue to regulate
12 commercial gun dealing.” *United States v. Castro*, No. 10-50160, 2011 WL 6157466, at *1 (9th
13 Cir. Nov. 28, 2011), *cert. denied*, 132 S. Ct. 1816 (2012). In *Nordyke v. King*, the Ninth Circuit
14 upheld an Alameda County ban on guns on County property due to such property’s nature as a
15 “sensitive” place. 681 F.3d at 1044. As another court in this circuit held, “*Heller* said nothing
16 about extending Second Amendment protection to firearm manufacturers or dealers. If anything,
17 *Heller* recognized that firearms manufacturers and dealers are properly subject to regulation”
18 *Mont. Shooting Sports Ass’n v. Holder*, CV-09-147-DWM-JCL, 2010 WL 3926029, at *21 (D.
19 Mont. Aug. 31, 2010), *adopted by* CV-09-147-DWM-JCL, 2010 WL 3909431, at *1 (D. Mont.
20 Sept. 29, 2010).

21 Nor is the Court aware of any authority outside the Ninth Circuit that would support
22 plaintiffs’ claims. The Fourth Circuit has explicitly held that “although the Second Amendment
23 protects an individual’s right to bear arms, it does not necessarily give rise to a corresponding right
24 to sell a firearm.” *United States v. Chafin*, 423 F. App’x 342, 344 (4th Cir. 2011). Analogizing
25 from the First Amendment context, the Fourth Circuit in *Chafin* cited the Supreme Court’s
26 decision in *United States v. 12 200-Foot Reels of Super 8mm. Film* for the proposition that “the
27 protected right to possess obscene material in the privacy of one’s home does not give rise to a
28 correlative right to have someone sell or give it to others.” 413 U.S. 123, 128 (1973). And the

1 Third Circuit’s understanding is persuasive that the “longstanding limitations” listed in *Heller*—
2 such as laws regulating the sale of guns—are “exceptions to the right to bear arms.” *United States*
3 *v. Marzzarella*, 614 F.3d 85, 91 (3d Cir. 2010).

4 The plaintiffs cite to two Seventh Circuit cases as support for deeming the Ordinance
5 unconstitutional: *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011), and *Moore v. Madigan*,
6 702 F.3d 933 (7th Cir. 2012). Neither helps them. In *Ezell v. City of Chicago*, where the Seventh
7 Circuit applied the same two-step approach detailed above to assess whether the lower court erred
8 in denying a preliminary injunction against the law at issue, the circuit court found that the
9 plaintiffs showed a strong likelihood of establishing that a ban on firing ranges in Chicago violated
10 the Second Amendment. But *Ezell* is inapposite because, as the Seventh Circuit noted, “[t]he
11 City’s firing-range ban is not merely regulatory; it *prohibits* the law-abiding, responsible citizens
12 of Chicago from engaging in target practice.” *Ezell*, 651 F.3d at 708. *Ezell* recognized the
13 difference between a ban and “laws that merely regulate rather than restrict, and modest burdens
14 . . . may be more easily justified.” *Id.* Here, the Ordinance merely regulates how far a gun store
15 must be from certain types of sensitive establishments—a requirement that gun stores be at least
16 500 feet from certain areas is far from the total ban on firing ranges in *Ezell*.

17 The plaintiffs’ reliance on *Moore v. Madigan* is similarly misplaced because that case also
18 involved a near-total ban, this time on carrying a gun in public. The Seventh Circuit found the law
19 to be unconstitutional, but stated that “reasonable limitations, consistent with the public safety,”
20 could save the law. 702 F.3d at 942. *Moore* does not help the plaintiffs any more than *Ezell* does:
21 the Ordinance is not a ban, and possessing a gun implicates a different interest than selling one.
22 The Ordinance is a “reasonable limitation[], consistent with the public safety” that creates a
23 “barrier” that is “*de minimis*.” Order 9.

24 Given the *Heller* court’s recognition that “laws imposing conditions and qualifications on
25 the commercial sale of arms” are “presumptively lawful,” and the fact that the Ordinance falls
26 squarely into that category by its terms, the plaintiffs fail to adequately allege that the Ordinance is
27 facially unconstitutional. They are unable to show that there is “no set of circumstances [] under
28 which the Ordinance would be valid.” *Salerno*, 481 U.S. at 745.

1 The Court’s decision that the Ordinance is presumptively lawful makes unnecessary any
2 analysis under the second step in the Second Amendment inquiry, i.e., applying the applicable
3 level of constitutional scrutiny. Suffice it to say, the Ordinance would pass any applicable level of
4 scrutiny.

5 First, the Ordinance is based on important governmental objectives. Alameda County has
6 an “interest in protecting public safety and preventing harm in populated, well-traveled, and
7 sensitive areas such as residentially-zoned districts.” Reply 6. It “has an interest in protecting
8 against the potential secondary effects of gun stores” and “a substantial interest in preserving the
9 character of residential zones.” *Id.* The Supreme Court has held that “[t]he State’s interest in
10 protecting the well-being [and] tranquility . . . of the home is certainly of the highest order.”
11 *Frisby v. Schultz*, 487 U.S. 474, 484 (1988). The Ninth Circuit also held that local governments
12 “have a substantial interest in protecting the aesthetic appearance of their communities” and “in
13 assuring safe [] circulation on their streets.” *Foti v. City of Menlo Park*, 146 F.3d 629, 637 (9th
14 Cir. 1998); *see also Schneider v. State of N.J., Town of Irvington*, 308 U.S. 147, 160 (1938)
15 (holding that municipalities have an interest in “public safety, health, [and] welfare”).

16 Second, there is a reasonable fit between the Ordinance and its objectives. Alameda
17 County’s Ordinance only regulates *where* a gun store may be located, restricting them from being
18 within 500 feet of sensitive places. While keeping a gun store 500 feet away from a residential
19 area does not guarantee that gun-related violence or crimes will not occur, the law does not require
20 a perfect match between the Ordinance’s means and objectives, nor does the law require the
21 Ordinance to be foolproof. For these same reasons, another judge in this district has upheld a
22 restriction against gun possession within 1,000 feet of a school—double the distance mandated by
23 the Ordinance here—stating that such a regulation would be constitutional “[u]nder any of the
24 potentially applicable levels of scrutiny.” *Hall v. Garcia*, No. 10-cv-3799-RS, 2011 WL 995933,
25 at *4 (N.D. Cal. March 17, 2011).

26 At oral argument, plaintiffs suggested for the first time that the appropriate analysis for
27 regulations that impinge on Second Amendment rights is the three-part analysis used in First
28 Amendment cases involving adult bookstores and movie theaters: whether the ordinance is a ban

1 or a time, place and manner regulation; whether the ordinance is content neutral or content based;
2 and, whether the ordinance is designed to serve a substantial government interest and reasonable
3 alternative avenues of communication remain available. *City of Renton v. Playtime Theaters, Inc.*,
4 475 U.S. 41, 46-47, 50 (1986) (holding that a municipal ordinance that prohibited any adult movie
5 theater from being within 1,000 feet of any residential zone, family dwelling, church, park, or
6 school is valid). The Court is unaware of (nor do the plaintiffs cite) any authority that applied this
7 analysis in the Second Amendment context, nor will it adopt this analytical framework because a
8 gun store, by its nature, does not have the expressive characteristics that allow for this sort of
9 content-based analysis. If it did, the Ordinance would pass muster anyway. First, as discussed
10 above, the Ordinance merely regulates the places where gun stores may be located, i.e., away from
11 sensitive locations, but it does not ban them. Second, the Ordinance is content-neutral because it
12 is aimed at the secondary effects of gun stores on the surrounding neighborhood, not to suppress
13 gun ownership. *City of Renton*, 475 U.S. at 48. Finally, as discussed above, the Ordinance was
14 designed to serve a substantial government interest. Furthermore, reasonable locations to operate
15 a gun store in Alameda County exist, as evidenced by the many stores that sell guns there. Thus
16 even if this alternative analysis were applicable, it would not help the plaintiffs.

17 The crux of *Heller* and *McDonald* is that there is a “personal right to keep and bear arms
18 for lawful purposes, most notably for self-defense within the home.” *McDonald*, 130 S. Ct. at
19 3044. See *United States v. Morsette*, 622 F.3d 1200, 1202 (9th Cir. 2010) (“*Heller* and *McDonald*
20 concern the right to possess a firearm in one’s home for self-defense.”). But that does not mean
21 that there is a correlative right to sell firearms. As discussed above, the Ordinance is
22 presumptively valid. It survives any applicable level of scrutiny or alternative analysis proposed
23 by the plaintiffs. Because the plaintiffs fail to adequately allege that “no set of circumstances
24 exists under which the [Ordinance] would be valid,” *Salerno*, 481 U.S. at 745, their facial
25 challenge under the Second Amendment cannot succeed. See *United States v. Kaczynski*, 551 F.3d
26 1120, 1125 (9th Cir. 2009) (“a generally applicable statute is not facially invalid unless the statute
27 can *never* be applied in a constitutional manner”) (quotation marks omitted).

28

B. Fourth Cause of Action: As-Applied Second Amendment Challenge

The plaintiffs also make an as-applied challenge to the Ordinance. “An as-applied challenge contends that the law is unconstitutional as applied to the litigant’s particular [] activity, even though the law may be capable of valid application to others.” *Foti*, 146 F.3d at 635. But the plaintiffs plead no facts showing that the Ordinance is unconstitutional as applied to them, and for the reasons discussed with respect to their facial challenge they have failed to state a claim.

The FAC states that the Ordinance “is irrational as applied to the facts of this case and cannot withstand any form of constitutional scrutiny” and has “no proper basis and [is] constitutionally impermissible.” FAC ¶¶ 80-81. These assertions are nothing more than “legal conclusions . . . cast in the form of factual allegations” and cannot support a cause of action. *W. Min. Council*, 643 F.2d at 624.

The plaintiffs also allege that “existing retail establishments (e.g., general sporting good [sic] stores) do not meet customer needs and demands. In fact, gun stores that can provide the level of personal service contemplated by VGA are a central and important resource for individuals trying to exercise their Second Amendment rights” because “they also provide personalized training and instruction in firearm safety and operation.” FAC ¶ 27. The plaintiffs also state that “[t]he burdens on the plaintiffs and their customers’ Second Amendment rights include . . . a restriction on convenient access to a neighborhood gun store,” resulting in customers’ “having to travel to other, more remote locations.” FAC ¶ 45.

Assuming the plaintiffs have standing to represent their prospective customers’ interests, it is hard to understand how these facts would support an as-applied challenge. They are equally applicable to any prospective gun store owner or customer. Further, these allegations are insufficient to show that Alameda County residents’ right to possess guns is impinged by the Ordinance. Although the plaintiffs allege that some customers may appreciate additional gun stores that provide a better level of “personal service” and “personalized training and instruction,” the plaintiffs do not allege that customers cannot buy guns in Alameda County or cannot receive training and instruction. The FAC makes quite clear that there *are* existing retail establishments operating in Alameda County that provide guns. Indeed, the FAC admits that Teixeira himself

1 “had previously owned a gun store in Castro Valley,” located in Alameda County. FAC ¶ 29.
2 Teixeira makes no allegation that the Ordinance hampered his ability to operate a gun store before,
3 nor do the plaintiffs allege that the “existing retail establishments” that sell guns are unable to
4 comply with the Ordinance.

5 The Court is unaware of any authority stating or implying that the Second Amendment
6 contemplates a right to “convenient access to a neighborhood gun store.” FAC ¶ 45. The Second
7 Amendment’s core right of the individual to possess guns is not impinged by the Ordinance as
8 applied to the plaintiffs since it merely regulates the distance that all gun stores must be from
9 certain sensitive establishments. The Ordinance is presumptively lawful. The plaintiffs’ Second
10 Amendment as-applied challenge does not state facts sufficient to support a cause of action.

11 **III. PLAINTIFFS DO NOT STATE A CLAIM UNDER THE EQUAL PROTECTION**
12 **CLAUSE.**

13 **A. Second Cause of Action: Facial Equal Protection Challenge**

14 The essence of the plaintiffs’ Equal Protection claims is that gun shops “are being treated
15 differently than other retailers because they are [] gun shop[s] and [] there is no justification for
16 such disparate treatment.” Opp’n 15. The plaintiffs point out that gun stores are required to
17 obtain conditional use permits while other retailers are not—allegedly for no apparent reason—
18 thus violating their right to Equal Protection. *Id.* at 15-16.

19 As with the facial challenge to the Ordinance under the Second Amendment, to succeed on
20 a facial challenge under the Equal Protection Clause, the plaintiffs must show “that no set of
21 circumstances exists under which the [a]ct would be valid.” *Salerno*, 481 U.S. at 745. And as
22 with the facial Second Amendment challenge, the plaintiffs fail to adequately plead that the
23 Ordinance is facially unconstitutional under the Equal Protection Clause.

24 In *Freeman v. City of Santa Ana*, the Ninth Circuit explained that “[t]he first step in equal
25 protection analysis is to identify the [] classification of groups.” 68 F.3d 1180, 1187 (9th Cir.
26 1995) (citations omitted). “To accomplish this, a plaintiff can show that the law is applied in a
27 discriminatory manner or imposes different burdens on different classes of people.” *Id.* Based on
28 the class identified, the next step is to determine the appropriate level of scrutiny. *Id.* “[U]nless a

1 classification warrants some form of heightened review because it jeopardizes exercise of a
2 fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal
3 Protection Clause requires only that the classification rationally further a legitimate state interest.”
4 *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992).

5 The plaintiffs cite no authority that gun store owners are a protected class because they
6 have an “inherently suspect characteristic,” or, as discussed above, that there is a “fundamental
7 right” to selling guns. Even assuming that gun shops constitute a cognizable class, Alameda
8 County need only have a rational basis for passing the Ordinance.

9 Under the rational basis test, a “classification must be upheld against equal protection
10 challenge if there is *any* reasonably conceivable state of facts that could provide a rational basis
11 for the classification.” *Heller v. Doe by Doe*, 509 U.S. 312, 320 (1993) (emphasis added). “A
12 legislature that creates these categories need not actually articulate at any time the purpose or
13 rationale supporting its classification. Instead, a classification must be upheld against equal
14 protection challenge if there is any reasonably conceivable state of facts that could provide a
15 rational basis for the classification. . . . Finally, courts are compelled under rational-basis review to
16 accept a legislature’s generalizations even when there is an imperfect fit between means and
17 ends.” *Id.* at 320-21 (citations and quotation marks omitted).

18 The Ordinance passes the rational basis test. The plaintiffs have not “allege[d] facts
19 sufficient to overcome the presumption of rationality that applies to government classifications.”
20 *See Wroblewski v. City of Washburn*, 965 F.2d 452, 460 (7th Cir. 1992) (applying the rational
21 basis standard on a motion to dismiss). Under a section titled “Facts Relating to the ‘500 Foot
22 Rule,’” the plaintiffs merely state in conclusory fashion that the Ordinance “is not reasonably
23 related to any possible public safety concerns a retail gun store might raise . . . [n]or does Alameda
24 County articulate how the ‘500 Foot Rule’ is narrowly tailored to achieve any legitimate
25 government interest.” FAC ¶ 63. Without pleading facts to support these conclusions, the
26 plaintiffs have not sufficiently pleaded a cause of action. Nonetheless, the defendants explain that
27 the 500-foot rule is intended to “protect[] public safety and prevent[] harm in populated, well-
28 traveled, and sensitive areas such as residentially-zoned districts,” as well as to “protect[] against

1 the potential secondary effects of gun stores” and to “preserv[e] the character of residential
2 zones.” Reply 6. They also justify their classification of gun stores separate from other retail
3 stores based on “the many state and federal laws that regulate retail firearm sales.” Br. 7 (citing
4 FAC ¶¶ 17, 19-25). As discussed above, these are legitimate aims and rationales for a local
5 government to act upon. To establish the constitutionality of the Ordinance, the defendants do not
6 have to demonstrate that treating gun stores differently from other retailers is the best way to
7 achieve those goals. The Ordinance satisfies the rational basis test.⁴

8 **B. First Cause of Action: As-Applied Equal Protection Challenge**

9 The plaintiffs fail to allege that the Ordinance as applied to them violates their Equal
10 Protection rights. “In order to claim a violation of equal protection in a class of one case, the
11 plaintiff must establish that the [government] intentionally, and without rational basis, treated the
12 plaintiff differently from others similarly situated.” *N. Pacifica LLC v. City of Pacifica*, 526 F.3d
13 478, 486 (9th Cir. 2008) (citation omitted). The plaintiff bears the burden of pleading what other
14 entities are similarly situated with him and how they are so. *Scocca v. Smith*, No. 11-cv-1318-
15 EMC, 2012 WL 2375203, at *5 (N.D. Cal. June 22, 2012). “A class of one plaintiff must show
16 that the discriminatory treatment was intentionally directed just at him, as opposed to being an
17 accident or a random act.” *N. Pacifica*, 526 F.3d at 486 (ellipses and quotation marks omitted).
18 Showing that the treatment was “intentional” does not require showing subjective ill will. *Gerhart*
19 *v. Lake Cnty., Mont.*, 637 F.3d 1013, 1022 (9th Cir. 2011).

20 The plaintiffs fail to adequately allege that the defendants treated the individual plaintiffs
21 differently from any other similarly situated party, or that the defendants did so intentionally and
22 without a rational basis. The plaintiffs state, “Plaintiffs’ position is that they are similarly situated
23

24 ⁴ Even if the Ordinance had to satisfy a heightened level of scrutiny because it jeopardizes the
25 exercise of a fundamental right, it would do so easily. Because gun stores are especially
26 susceptible to issues of public safety, which the Ordinance is intended to address, the statutory
27 classification is undoubtedly “substantially related” to Alameda County’s “important
28 governmental objective” of “protecting public safety and preventing harm.” Reply 6; *see Clark*,
486 U.S. at 461 (“To withstand intermediate scrutiny, a statutory classification must be
substantially related to an important governmental objective.”). The plaintiffs allege no facts to
show that this is not the case.

1 with all other general retailers who are entitled to open shop in commercially zoned areas.” Opp’n
 2 16. They argue that their allegation that they “are being treated differently than other retailers
 3 because they are a gun shop and that there is no justification for such disparate treatment,” coupled
 4 with their assertion that “Defendants are using zoning laws to redline or ban retail gun stores from
 5 Unincorporated Alameda County,” is sufficient to plead a violation of Equal Protection. Opp’n
 6 15-16. The plaintiffs point to the fact that before the Board of Supervisors passed the Ordinance,
 7 gun stores were “not distinguished from other retail stores.” RJN Ex. H at 4. Thus, they argue
 8 that the defendants should be estopped from claiming that gun stores are dissimilar to other
 9 retailers. Opp’n 16.

10 The plaintiffs meet none of the criteria to successfully plead that they are “a class of one.”
 11 Their allegations appear equally applicable to any other prospective gun store owner covered by
 12 the Ordinance. There is a rational basis for the Ordinance. And there is no allegation with facts
 13 showing that the plaintiffs were treated differently than others similarly situated. The plaintiffs
 14 reiterated at oral argument, as they said in their papers, that they believe gun stores are similarly
 15 situated to other commercial retailers that do not sell weapons. This is simply wrong, as
 16 underscored by plaintiffs’ recognition that gun stores are “strictly licensed and regulated by state
 17 and federal law.” By those laws and regulations Congress and state legislatures have
 18 demonstrated their understanding that gun stores are different from, say, clothing or convenience
 19 stores. FAC ¶¶ 17-24.

20 Finally, the plaintiffs’ argument that the defendants have no right to enact the Ordinance
 21 merely because gun stores were not regulated in this manner before cannot be taken seriously—
 22 otherwise, new legislation could never be passed.

23 Because the plaintiffs fail to adequately plead that the defendants intentionally treated the
 24 individual plaintiffs differently from others similarly situated with no rational basis, they fail to
 25 adequately allege a violation of Equal Protection as the Ordinance was applied to them.⁵

26
 27 ⁵ To the extent the plaintiffs plead that they are being treated differently than the other 29 Federal
 28 Firearm Licensees, their claim still fails. At oral argument, the plaintiffs made clear that this is not
 their claim, but the FAC is somewhat ambiguous on this point so the Court will address it in


1 **CONCLUSION**

2 The plaintiffs fail to adequately plead that the Ordinance is facially unconstitutional under
3 the Second Amendment and Equal Protection Clause. The plaintiffs also fail to adequately plead
4 that the Ordinance was unconstitutionally applied to them under the Second Amendment and
5 Equal Protection Clause.

6 At oral argument, the Court inquired whether the plaintiffs could or wished to plead any
7 additional facts in a further amendment to their complaint. The plaintiffs declined. Accordingly,
8 the First Amended Complaint is DISMISSED WITH PREJUDICE.

9 **IT IS SO ORDERED.**

10 Dated: September 9, 2013



11
12 WILLIAM H. ORRICK
United States District Judge

United States District Court
Northern District of California

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passing. The plaintiffs allege that many of those licensees “are not located in commercial buildings open for retail firearm sales,” and that the Ordinance’s requirements have not been imposed on “many” of the 29 licensees, who are either not complying or were never required to comply with the restrictions imposed against VGA. FAC ¶¶ 36-37. However, the plaintiffs do not explain or provide any facts to show how these licensees are similarly situated with the individual plaintiffs. *Scocca*, 2012 WL 2375203, at *5. Even assuming the 29 licensees are similarly situated, the plaintiffs do not allege any facts to *plausibly* show that the defendants *intentionally* treated the individual plaintiffs differently or that the defendants did so without a rational basis beyond the defendants’ bare assertions, e.g., that the defendants sought to “trick” the individual plaintiffs or “red-lin[e] them out of existence.” FAC ¶¶ 45, 63.

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13 Attorneys for Plaintiffs

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

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

21 Plaintiffs,

22 vs.

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

28 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)

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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

- 1 threats to their Second Amendment rights. CGF expends financial and other
2 resources in both litigation and non-litigation projects to protect the interests
3 of their patrons, members and the public-at-large. CGF brings this action on
4 behalf of itself and its supporters, who possess all the indicia of membership.
- 5 5. Plaintiff SECOND AMENDMENT FOUNDATION, INC., (SAF) is a non-
6 profit membership organization incorporated under the laws of Washington
7 with its principal place of business in Bellevue, Washington. SAF has over
8 650,000 members and supporters nationwide, including California. The
9 purposes of SAF include education, research, publishing and legal action
10 focusing on the Constitutional right to privately owned and possess firearms,
11 and the consequences of gun control. SAF expends financial and other
12 resources in both litigation and non-litigation projects to protect the Second
13 Amendment rights its members and the public-at-large. SAF brings this
14 action on behalf of itself and its members.
- 15 6. Plaintiff CALIFORNIA ASSOCIATION OF FEDERAL FIREARMS
16 LICENSEES, INC., (Cal-FFL) is a non-profit industry association of, by, and
17 for firearms manufacturers, dealers, collectors, training professionals,
18 shooting ranges, and others, advancing the interests of its members and the
19 general public through strategic litigation, legislative efforts, and education.
20 Cal-FFL expends financial and other resources in both litigation and non-
21 litigation projects to protect the interests of their members and the public-at-
22 large. Cal-FFL brings this action on behalf of itself and its members.
- 23 7. Defendant COUNTY OF ALAMEDA is a state actor located in the State of
24 California. Defendant COUNTY OF ALAMEDA is responsible for setting
25 policies and procedures relating to land use regulations within the County of
26 Alameda – including but not limited to promulgating and interpreting land
27 use regulations and granting conditional use permits and variances to those
28 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.

1 16. All conditions precedent, including exhaustion of administrative remedies
2 where required, have been performed, have occurred, are futile or
3 unnecessary where the government infringes on a fundamental right.
4

5 **FACTS**

6 *Facts Common to All Licensed Retail Gun Stores*

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

12 18. The mere presence of firearms, albeit privately owned rather than as
13 business inventory, in a residential district is beyond the control of local
14 governments under California’s preemption doctrine (Government Code §
15 53071) and statutory law. See: *Doe v. City and County of San Francisco*, 136
16 Cal. App. 3d 509 and *Fiscal v. City and County of San Francisco*, 158 Cal.
17 App. 4th 895. In other words, there is nothing in federal or state law that
18 prohibits a law abiding gun owner, who might be a collector or shooting
19 enthusiast, from owning and keeping scores of firearms and ammunition at
20 his residence. Therefore local governments like the County of Alameda
21 cannot prevent a law-abiding gun owner from collecting and storing an
22 unlimited number of firearms (and/or ammunition) in his home. Therefore, a
23 residence, and by extension, a residentially zoned district, cannot be a
24 designated as a sensitive place with respect to the mere presence of firearms.
25 See also: *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v.*
26 *Chicago*, 561 U.S. ___, 130 S.Ct. 3020 (2010).

27 19. The transportation of firearms is particularly and strictly regulated by state
28 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

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

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

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

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

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

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

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

8

9 Case Specific Facts

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

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

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

23 27. As part of their plan for opening a gun store VGA conducted market research
24 among gun enthusiasts in and around Alameda County and obtained
25 feedback from approximately 1,400 people indicating that a full service gun
26 store located in San Lorenzo would be a success, in part, because existing
27 retail establishments (e.g., general sporting good stores) do not meet
28 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

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

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

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

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

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

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

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

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

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

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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,**

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- 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.)

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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

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answers: No.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 55. The Alameda County Board of Supervisors appeared to be acting with
5 deliberate indifference to the rights of the Plaintiffs and overt hostility to the
6 fact that it was a gun store, rather than attempt to address any identifiable
7 public safety interest in a reasonable way. Indeed, the Staff Report indicated
8 there were no public safety concerns if the Variance and CUP were granted
9 (as long as VGA ensured compliance with the terms of RESOLUTION NO. Z-
10 11-70). The Staff Report only made the tautological argument that the
11 proposed gun store was allegedly less than 500 feet away from a disqualifying
12 property; without making any argument as to how this wholly arbitrary
13 distance is somehow relevant to land use regulations involving gun stores.

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

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

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

24 59. Furthermore, a well and reasonably regulated market for firearms and
25 ammunition is essential to the safety and liberty of all residents in any given
26 community. The proliferation of retail firearm dealers, reasonably regulated
27 in a way that confines gun ownership to law-abiding persons who receive the
28 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,

- 1 f. A person addicted to narcotics,
- 2 g. A person under indictment in any court for a crime punishable by
- 3 imprisonment for a term exceeding one year,
- 4 h. A person who has been discharged from the military under
- 5 dishonorable conditions,
- 6 i. A person who is a fugitive from justice
- 7 67. Plaintiffs allege on information and belief that the County has not conducted
- 8 (or cited) any *secondary effects* study to back up any claim that the “500 foot
- 9 rule” serves any compelling, let alone any important, government interest
- 10 which is required when courts look at “land-use” regulations impacting First
- 11 and Second Amendment rights. See generally: *Ezell v. City of Chicago*, 651
- 12 F.3d 684, 2011 U.S. App. LEXIS 14108. (7th Cir., July 6, 2011).

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

- 13
- 14
- 15 68. Plaintiffs repeat and reallege each of the allegations set forth above in
- 16 paragraphs 1 through 67 above, and incorporate them by reference as though
- 17 fully set forth herein.
- 18 69. Plaintiffs TEIXEIRA, NOBRIGA and GAMAZA have been denied equal
- 19 protection of the law under the Fourteenth Amendment to the United States
- 20 Constitution in that the Defendants have intentionally discriminated against
- 21 them and engaged in unreasonable conduct by enacting and enforcing
- 22 regulations that are inapplicable or unenforced against similar situated
- 23 parties. Particularly, Defendant’s singling out the plaintiffs business as one
- 24 that is subject to requirements, including the necessity of a Conditional Use
- 25 Permit and the particulars of obtaining such a permit, but not requiring the
- 26 same of similar situated parties violates the Constitution’s guarantee of
- 27 equal protection.
- 28 70. Plaintiffs are engaged in, or assisting others in exercising a core fundamental

1 right, the Government’s actions infringe on a fundamental right.

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

4 72. The government’s actions lack a proper basis and are constitutionally
5 impermissible.

6
7 **SECOND CLAIM FOR RELIEF**
(Equal Protection - Facial Challenge)

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

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

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

19
20 **THIRD CLAIM FOR RELIEF**
(Second Amendment - Facial Challenge)

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

24 77. Alameda’s zoning laws requiring that gun stores obtain a Conditional Use
25 Permit and be located 500 feet away from residential zones are unreasonable
26 on their face and cannot withstand any form of constitutional scrutiny under
27 the Second Amendment to the United States Constitutional as that right is
28

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 GAMAZA. 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 GAMAZA 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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Tab 5



**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.

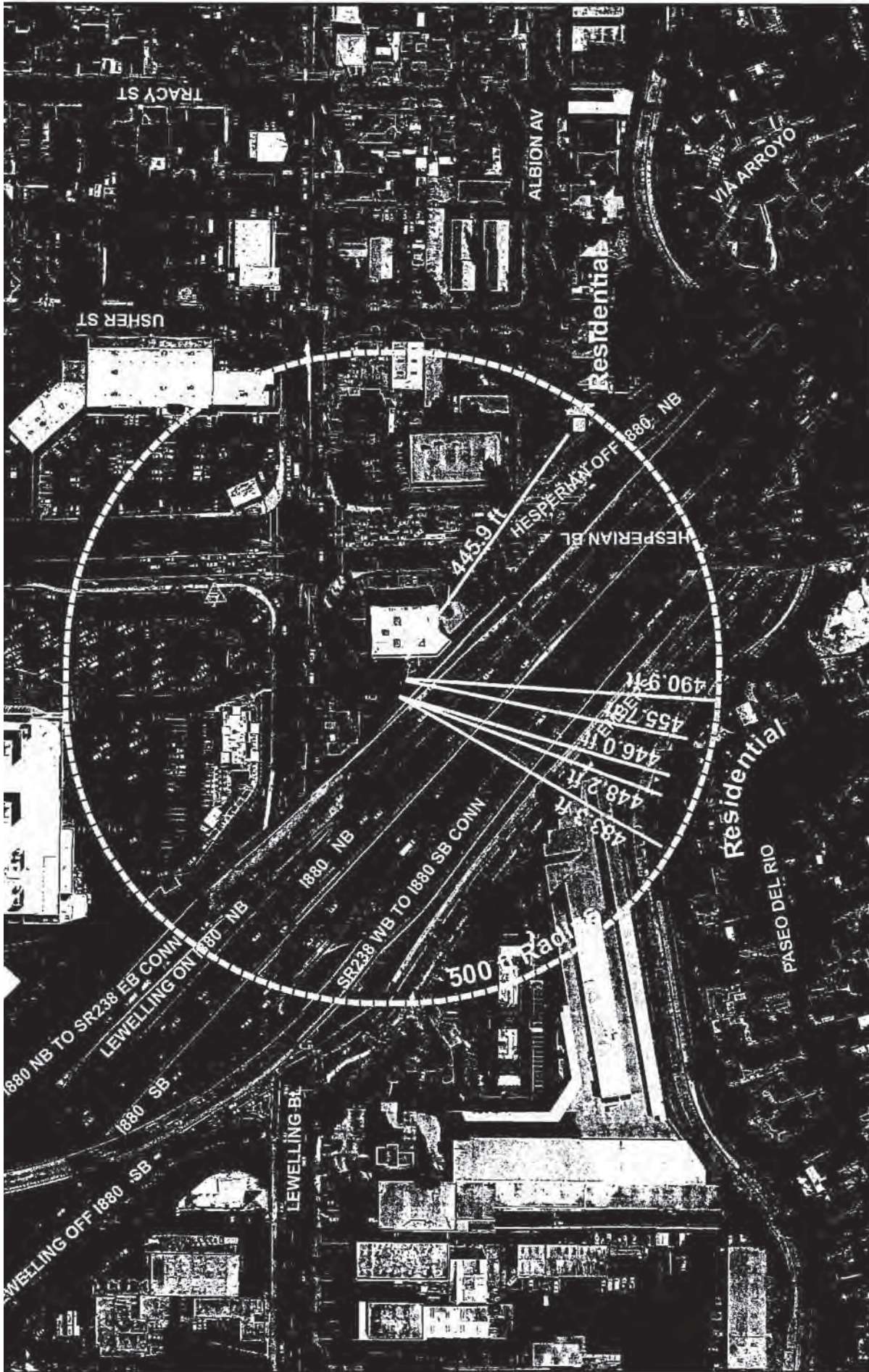
PRE-HEARING RECOMMENDATION

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

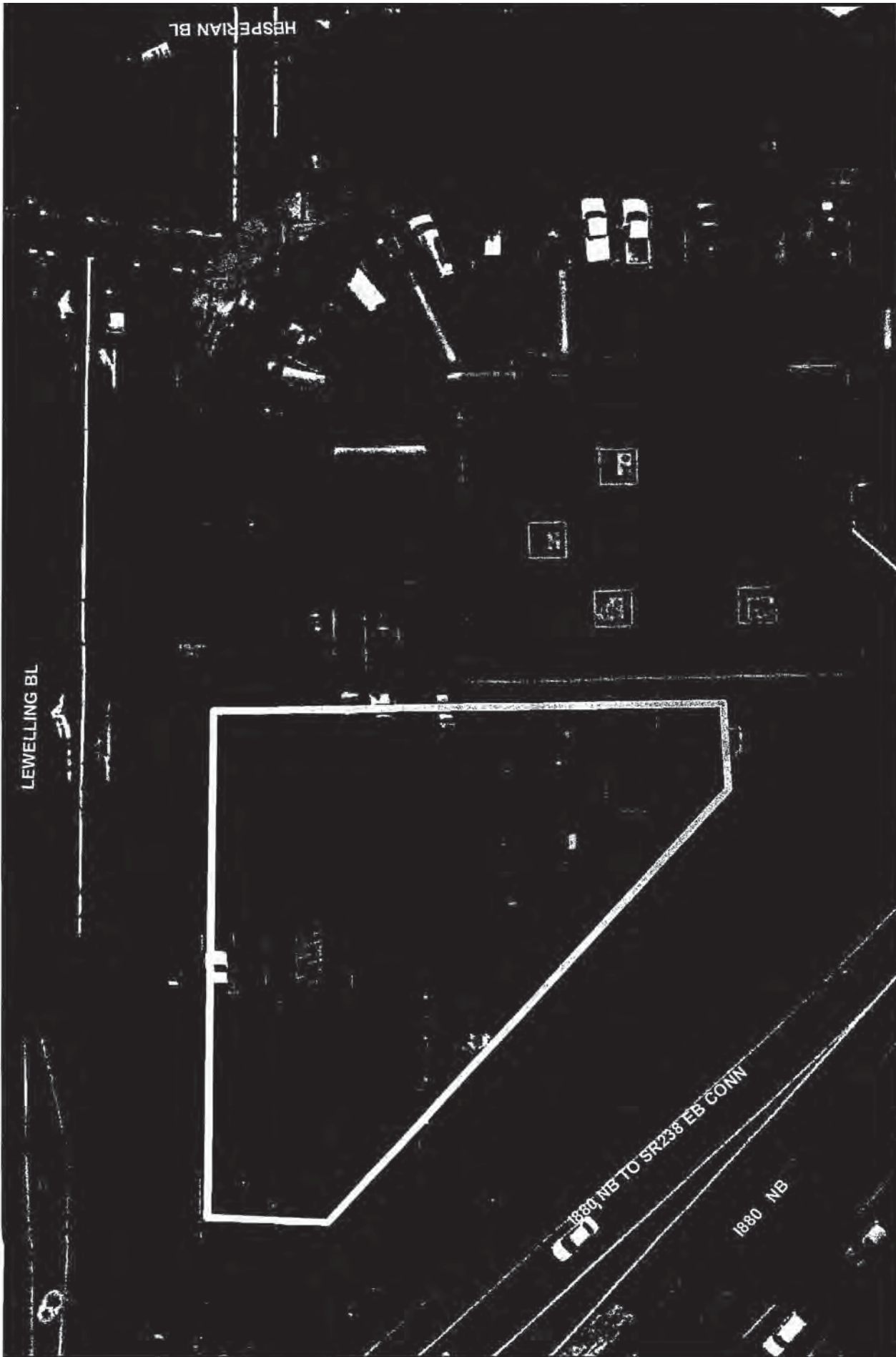
Exhibits
Referral Responses
Correspondence
Photographs
Distance Study

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



PLN2011-00096
DISTANCE STUDY

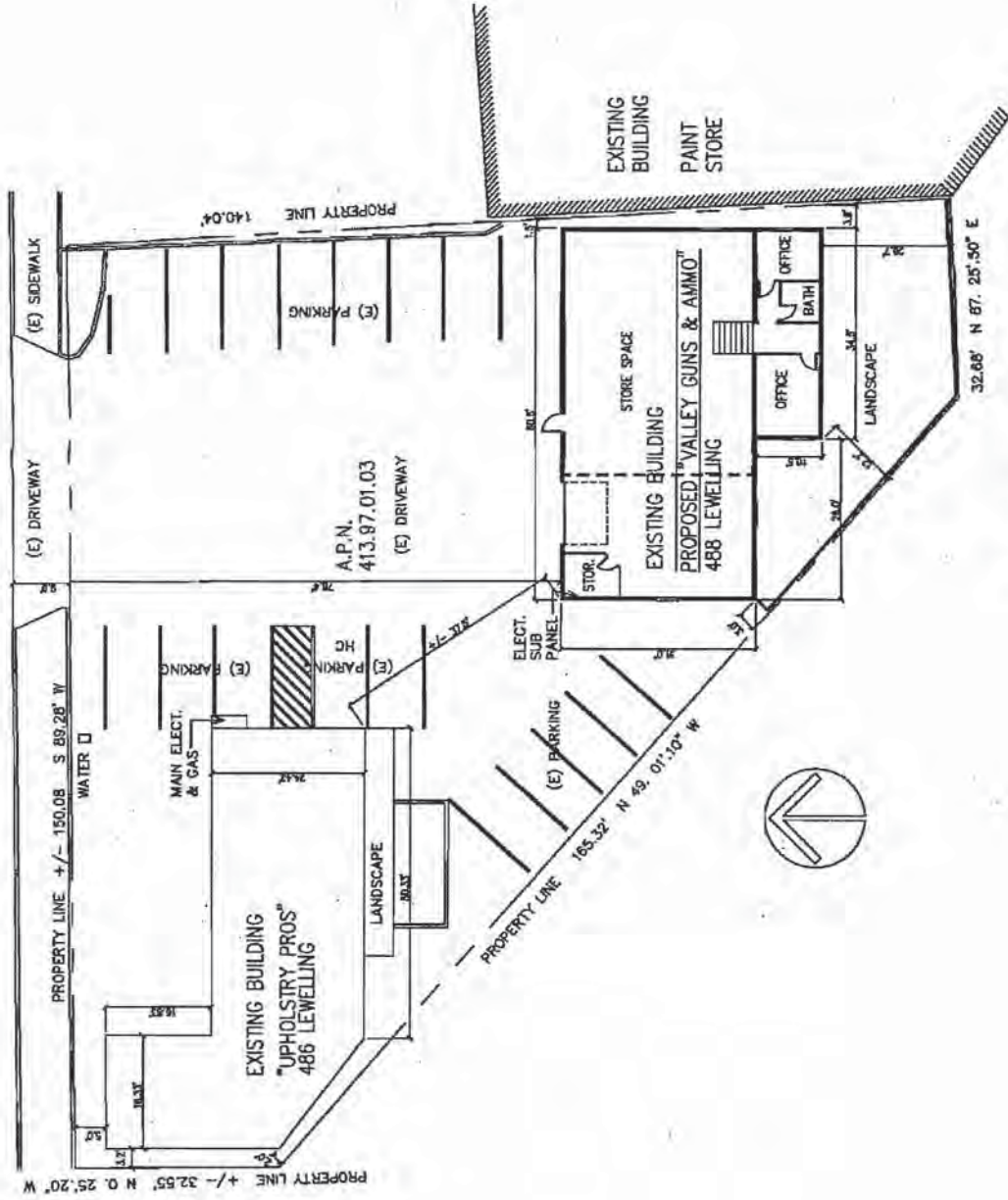
Alameda County CDA - Planning Department



PLN2011-00096
AERIAL PHOTO

Alameda County CDA - Planning Department

LEWELLING BLVD. SAN LORENZO, CA.



SITE PLAN & FLOOR PLAN
SCALE 1/8" = 1'-0"



PLN2011-00096

SITE PLAN

Alameda County CDA - Planning Department





FILE COPY

EXHIBIT A

JUL 01 2011

CLP

PLN 2011-00096



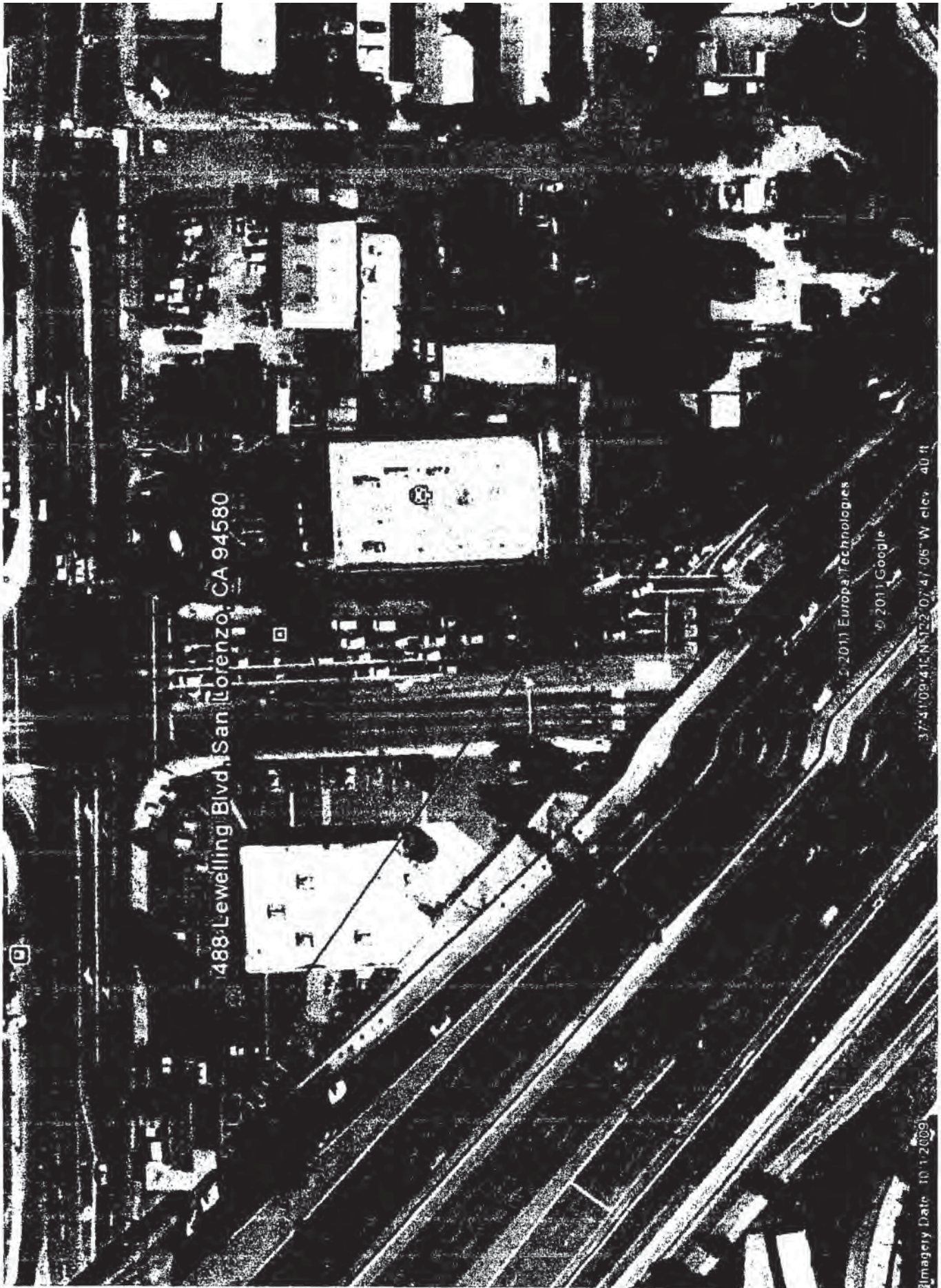
SUBJECT PROPERTY

EXHIBIT A

JUL 01 2011

CUP

PLN 2011-00096



488 Lewelling Blvd, San Lorenzo, CA 94580

© 2011 Europa Technologies

© 2011 Google

Imagery Date: 10/12/09
37°41'08.41\"/>

Single Family Res

504.63 FT



488 Lewelling Blvd, San Lorenzo, CA 94580

© 2011 Europa Technologies

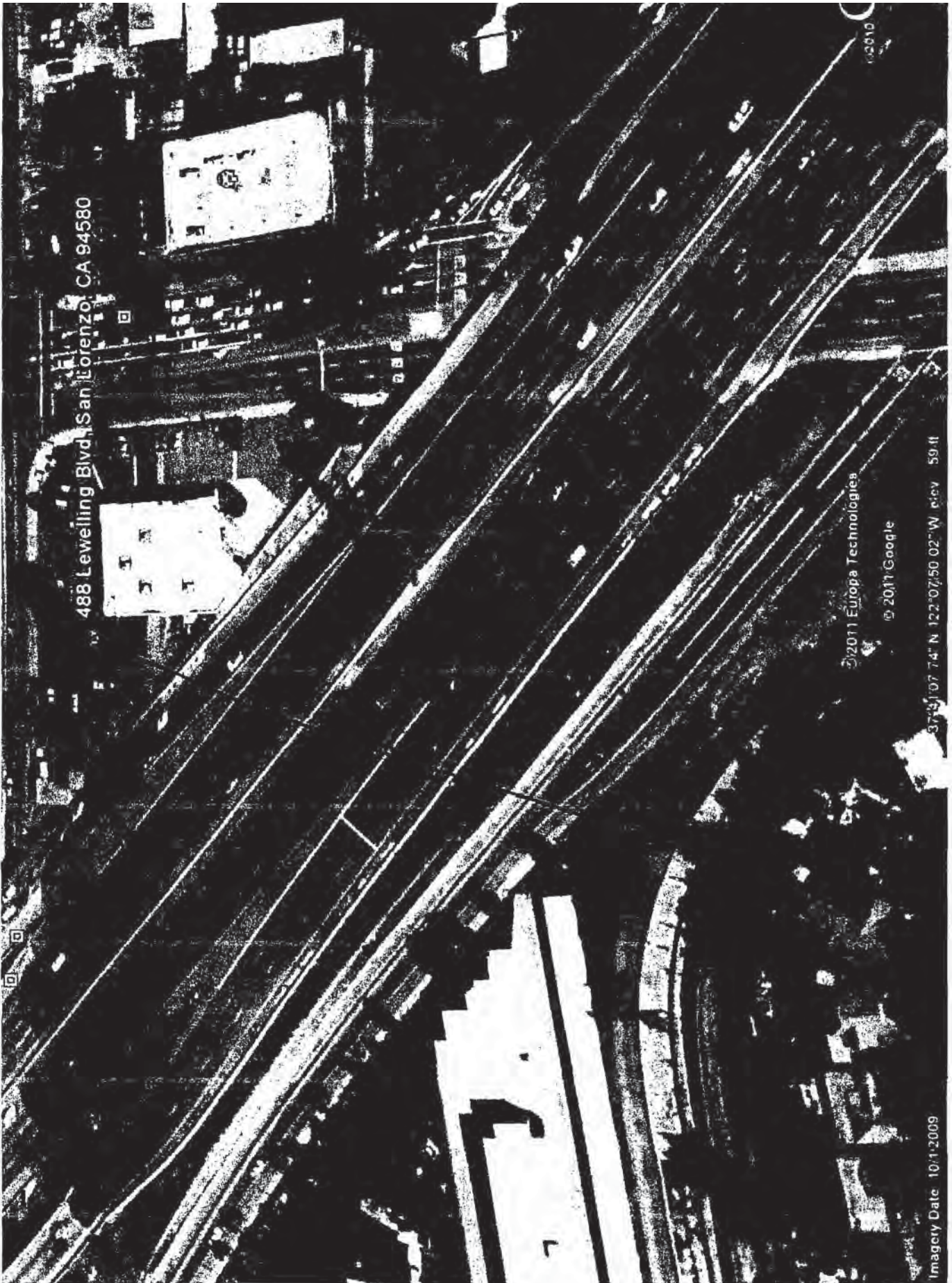
© 2011 Google

37°41'10.42" N, 122°07'47.04" W, elev. 411 ft

Imagery Date: 10/1/2009

Multi Family Res

630. FT



Lt 01.262

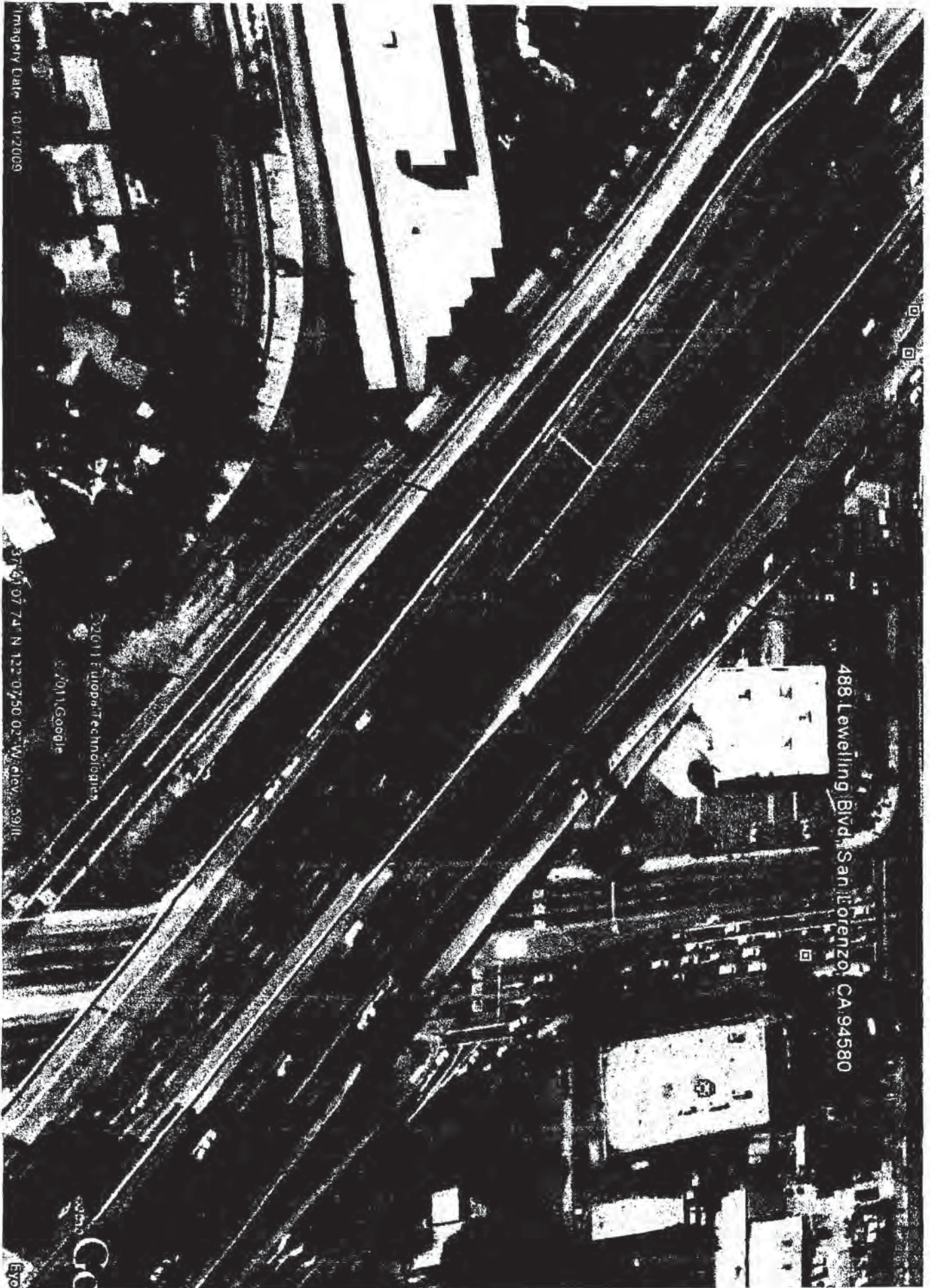
SHOP TO PROPERTY line

Imagery Date 10/1/2009

© 2011 Europa Technologies

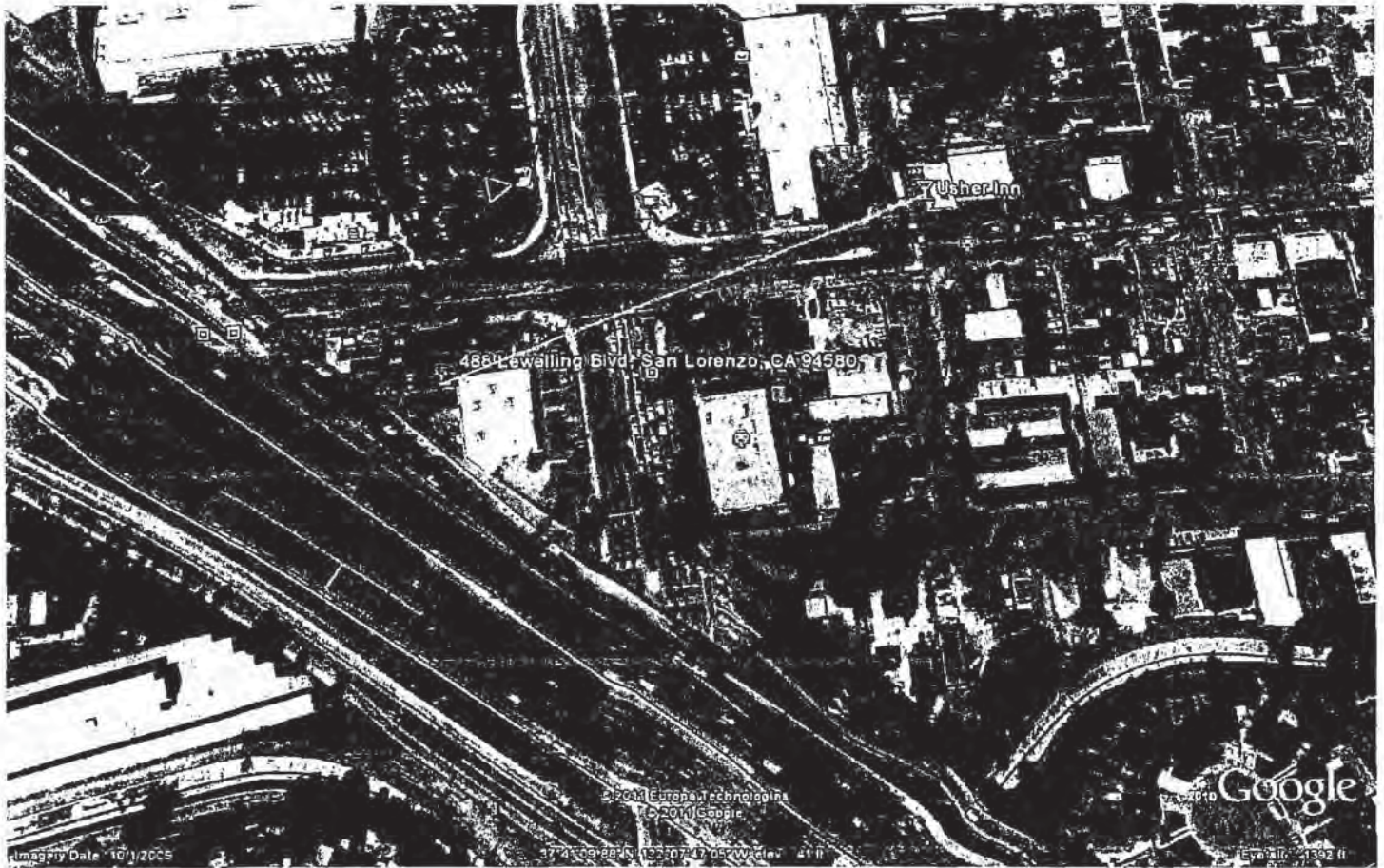
© 2011 Google

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



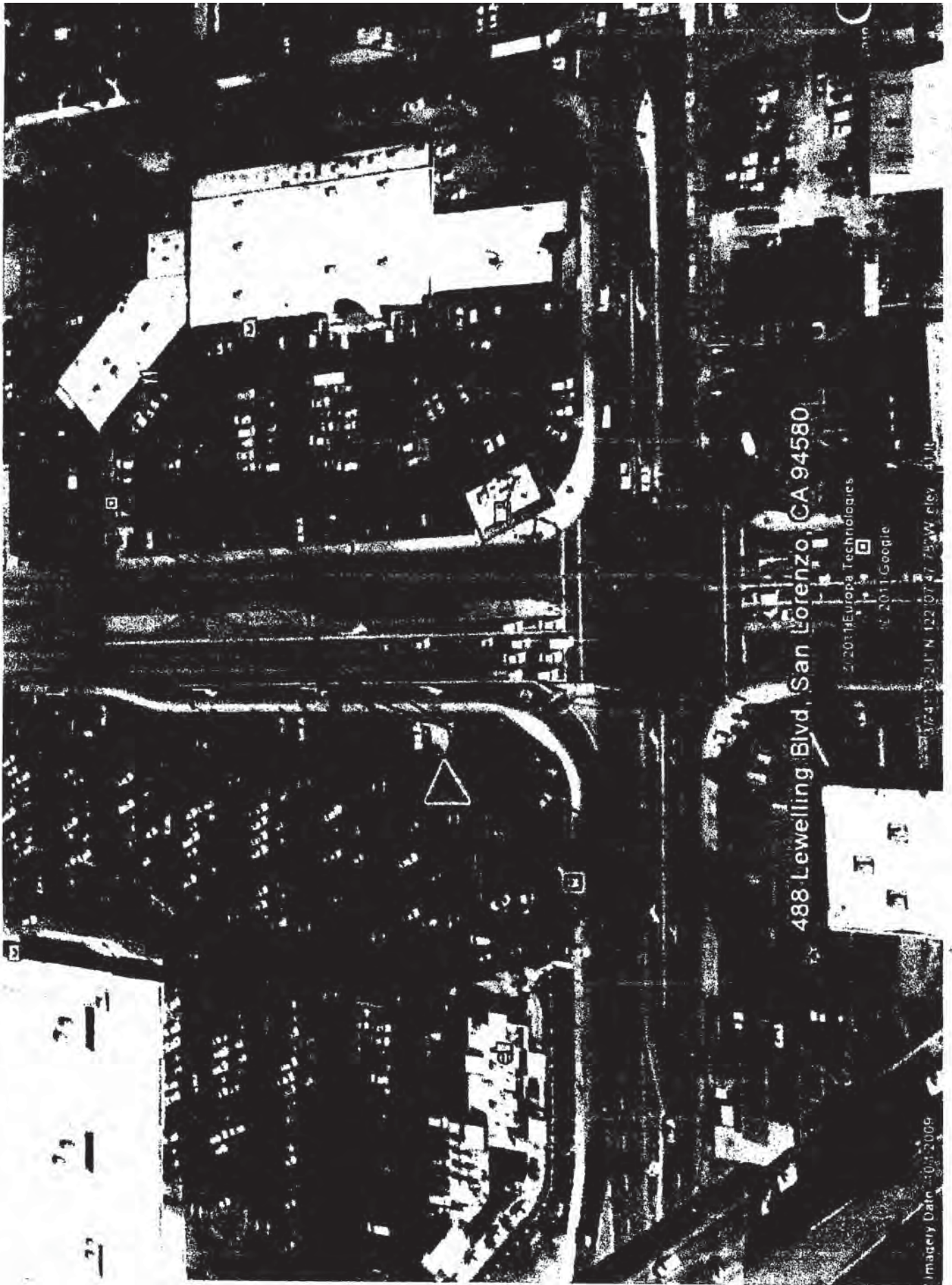
WALMART

505.6 FT



660,91 FEET

SHOP TO INN.



488 Lewelling Blvd, San Lorenzo, CA 94580

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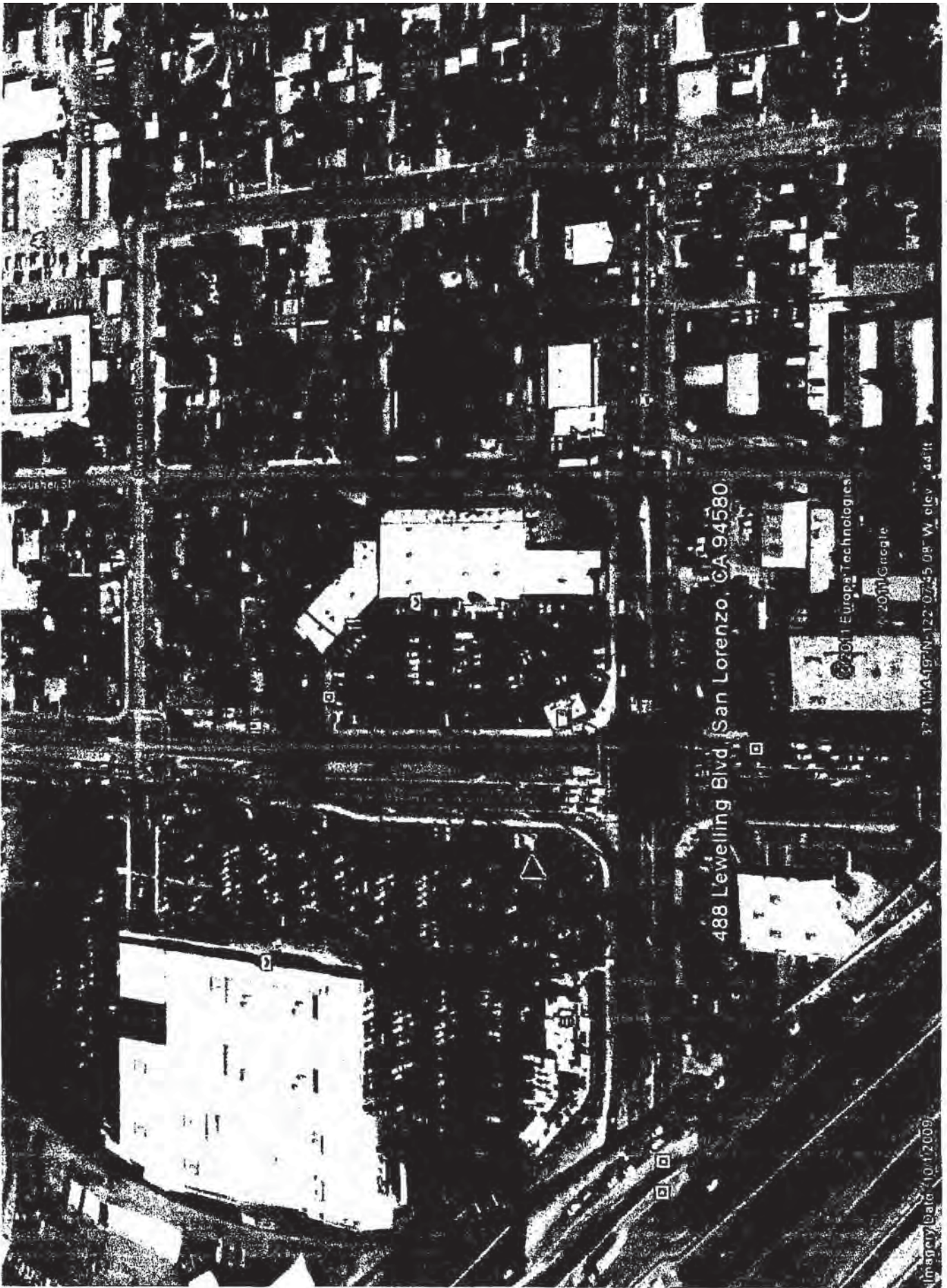
© 2011 Google

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

Imagery Date: 10/13/2009

620.95 FEET

SHOP TO B165



1066.8 FT SCHOOL MAIN YARD

V-3876

THE COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY
HAYWARD, CALIFORNIA

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

BELL

PAGE

B.

V-6509

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, CALIFORNIA

On motion of ~~Supervisor~~ Clerk of Board ~~Supervisor~~ and approved by the following vote: Ayes: Supervisors ~~Supervisor~~ and Chairman Casper - 3 Noes: Supervisors ~~Supervisor~~ Excused ~~Supervisor~~ Supervisors ~~Supervisor~~ - 2

OCT. 16, 1974

THE FOLLOWING RESOLUTION WAS ADOPTED: VARIANCE GRANTED NUMBER 168227

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 8 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 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.

DEC 2 '76
DEC 14 1976

ad/

S. Littlewood

Casper

RE

Chairman



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.

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

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-----

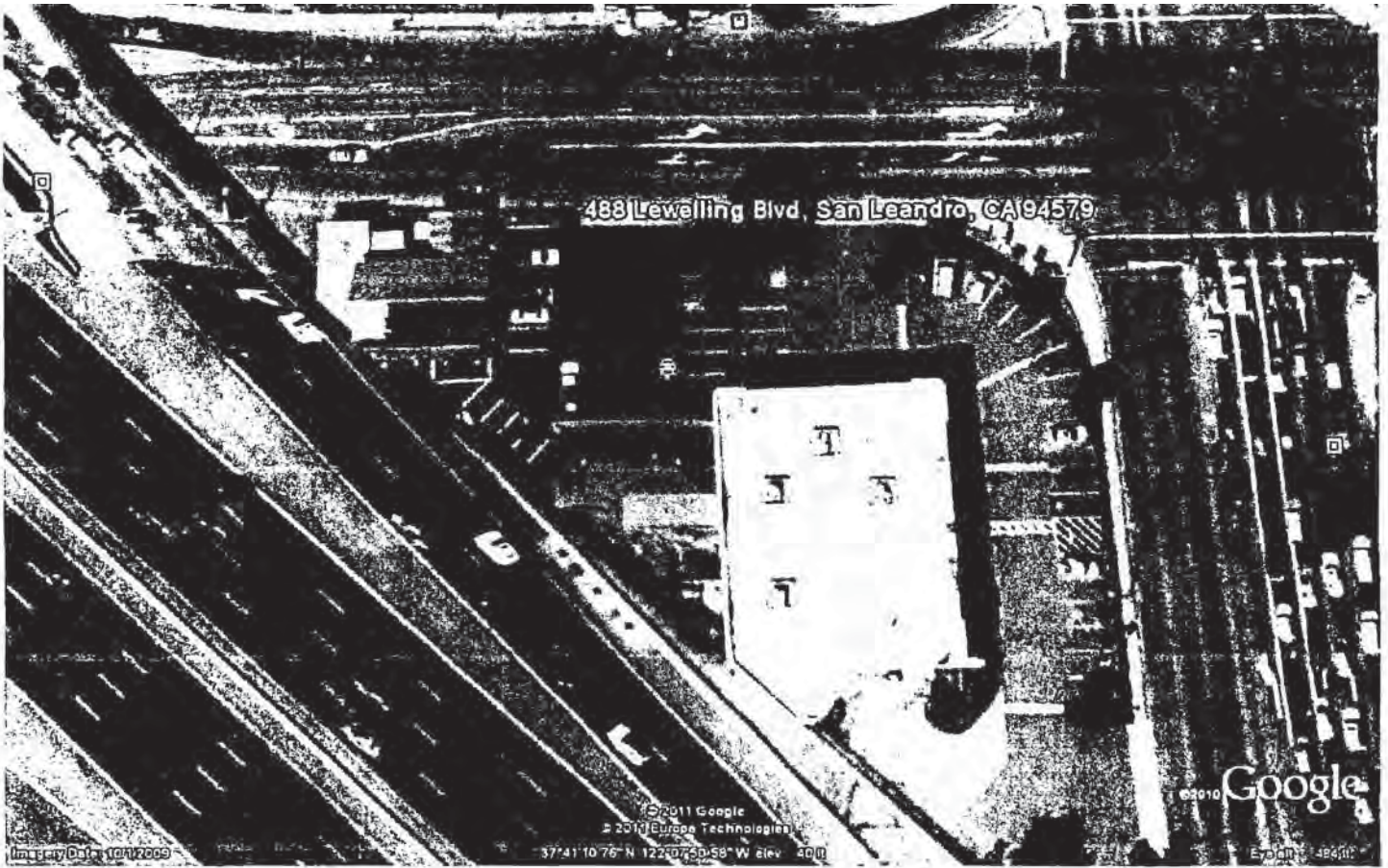
From: ricohscanner@acgov.org [<mailto:ricohscanner@acgov.org>]
Sent: Monday, October 24, 2011 1:56 PM
To: Tarbell, Richard, CDA
Subject: Scanned Document Attached

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 0 1 2011

CWP

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.

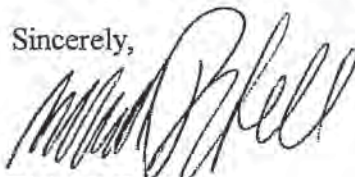
1. Details on the security gate installed across the display area shall be provided during the building permit process.
2. During the Building Permit Process, Exit signs and Emergency Lighting will be required. Please show the locations on the plans.
3. A Knox Box shall be provided near the entry and 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 Ing 8/11/2011

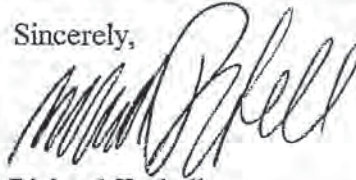
PROJECT REFERRAL

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



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

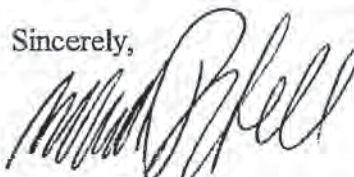
PROJECT REFERRAL

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



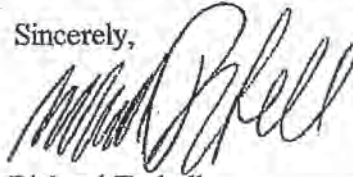
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Richard Tarbell
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Manteca, Ca 95336

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

TL No Comment - Date 8/11/11

Attachments

Jon Lead
PLANNING & ZONING 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
MATERIALS ARIU LEVI
ALAMEDA CO. ZONING
ENFORCEMENT

ACPWA TRAFFIC

CHP (WEST) ROBERT TUAZON

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*

*sent: [unclear]
NO BRAGG*

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

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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.

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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

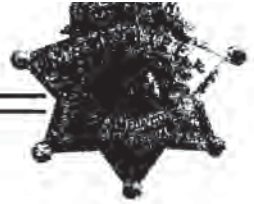
Owner: GRAVES, MARY K TR 3325 Lenard Dr, Castro Valley, Ca 94546

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. ✓

- 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. ✓

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. ✓

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 - Bldg PERMIT Required -
Alla Luz*

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
Subject: Re Gun Shop

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Tarbell, Richard, CDA

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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>
Sent: Monday, September 26, 2011 3:06 PM
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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

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

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

Queries to: ricohscanner@acgov.org

Tab 6



**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 Categorical 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.

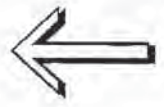
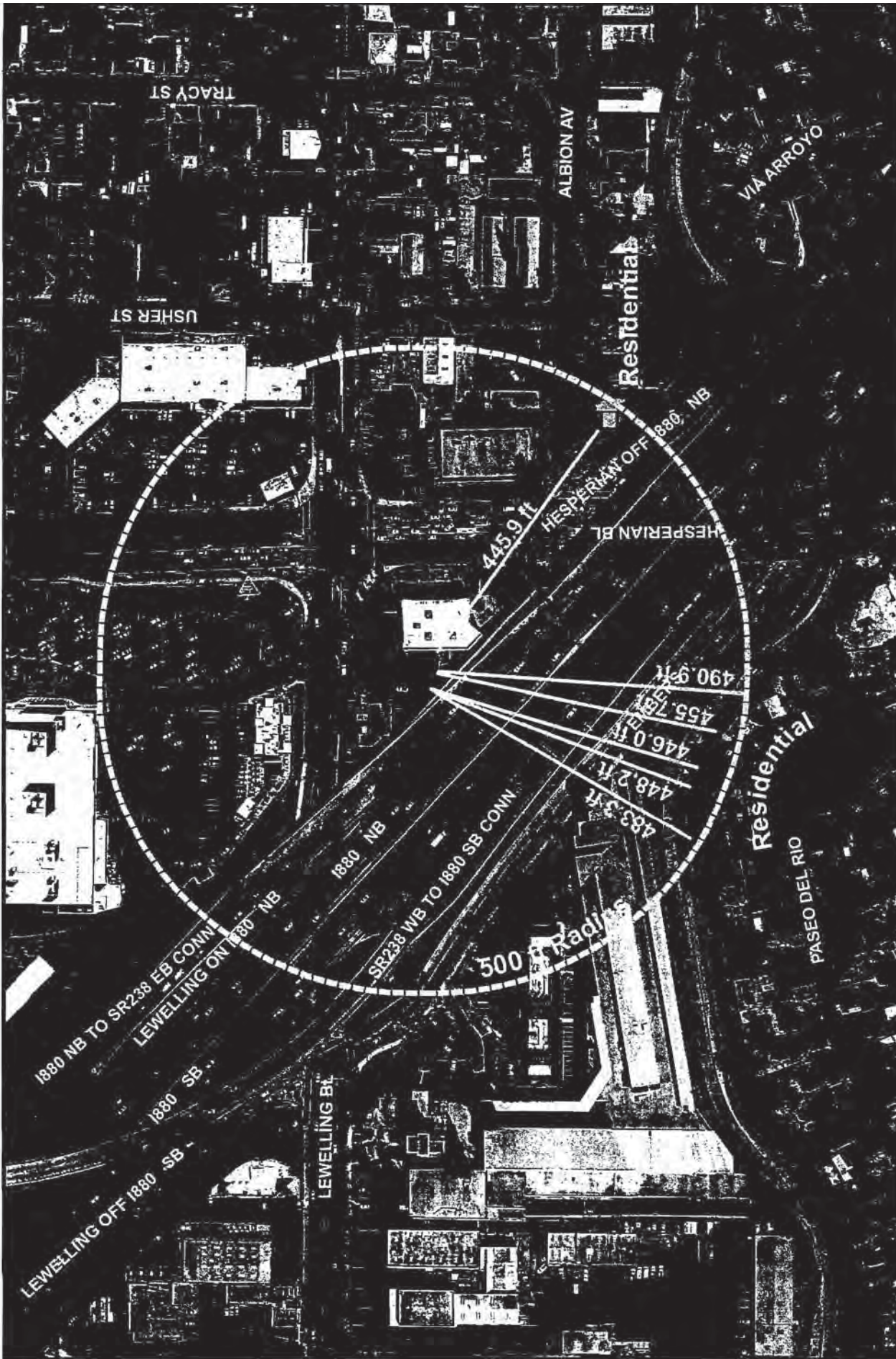
PRE-HEARING RECOMMENDATION

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

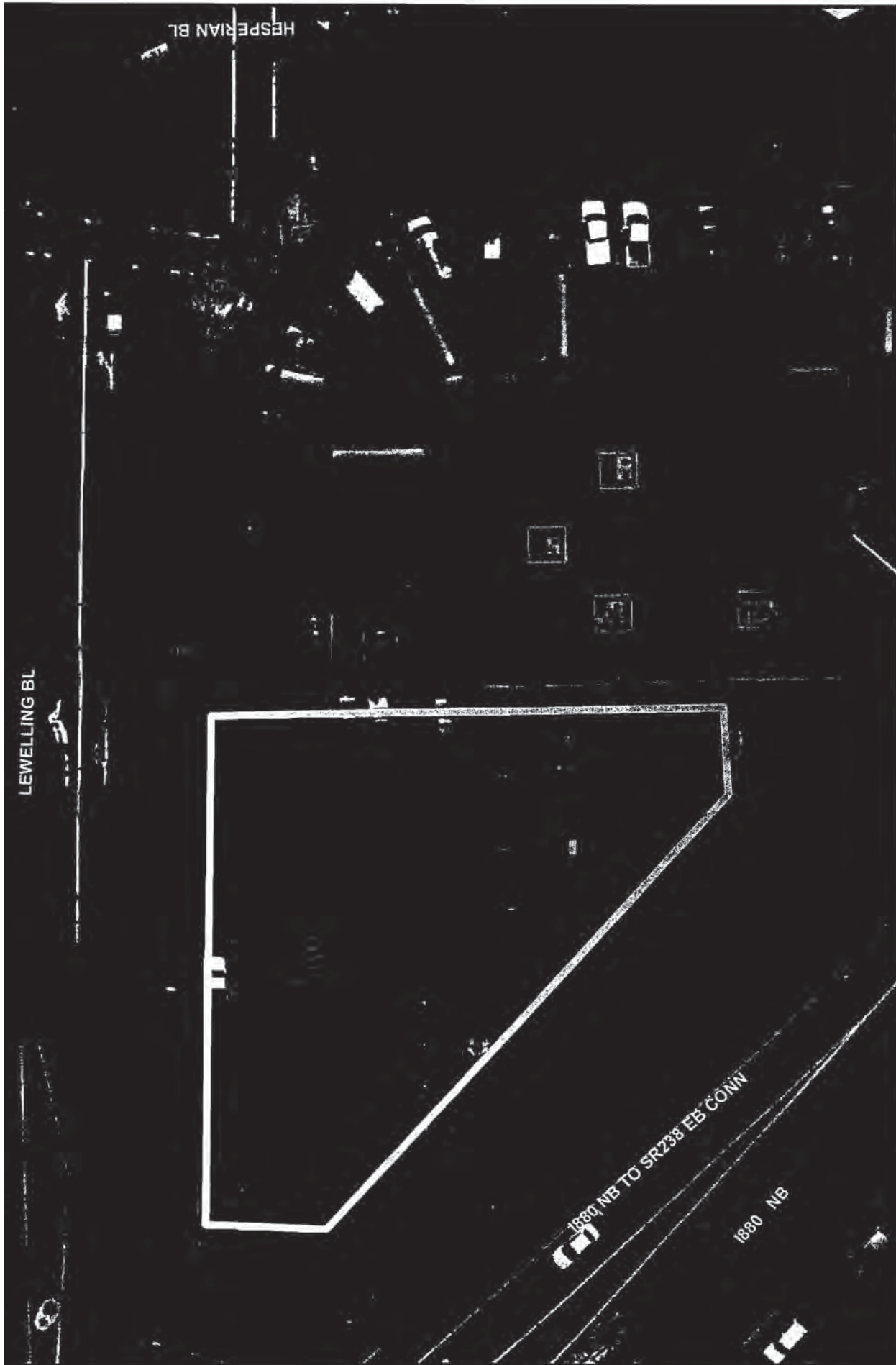
- Exhibits
- Referral Responses
- Correspondence
- Photographs
- Distance Study

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



PLN2011-00096
DISTANCE STUDY

Alameda County CDA - Planning Department

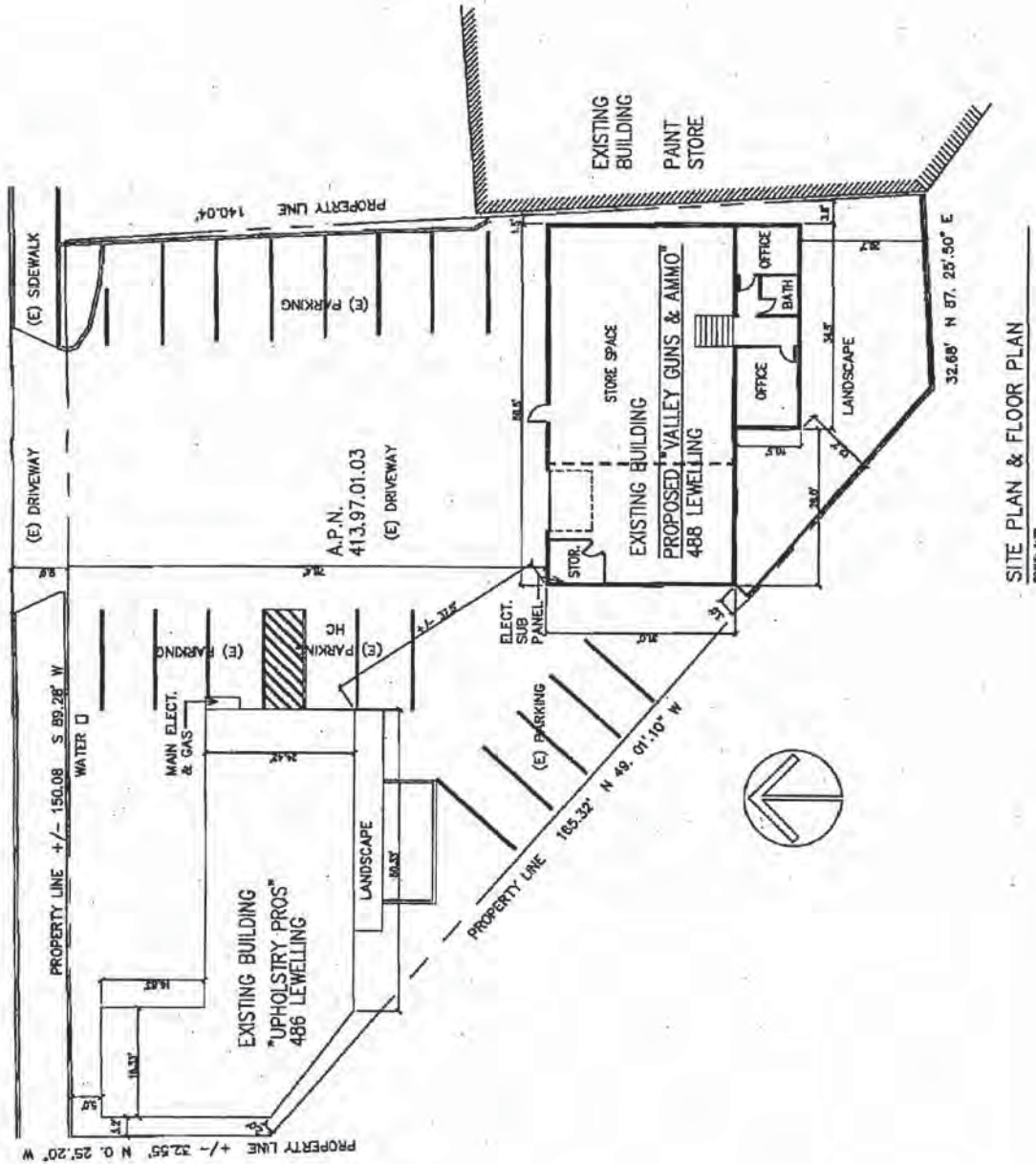


PLN2011-00096

AERIAL PHOTO

Alameda County CDA - Planning Department

LEWELLING BLVD. SAN LORENZO, CA.

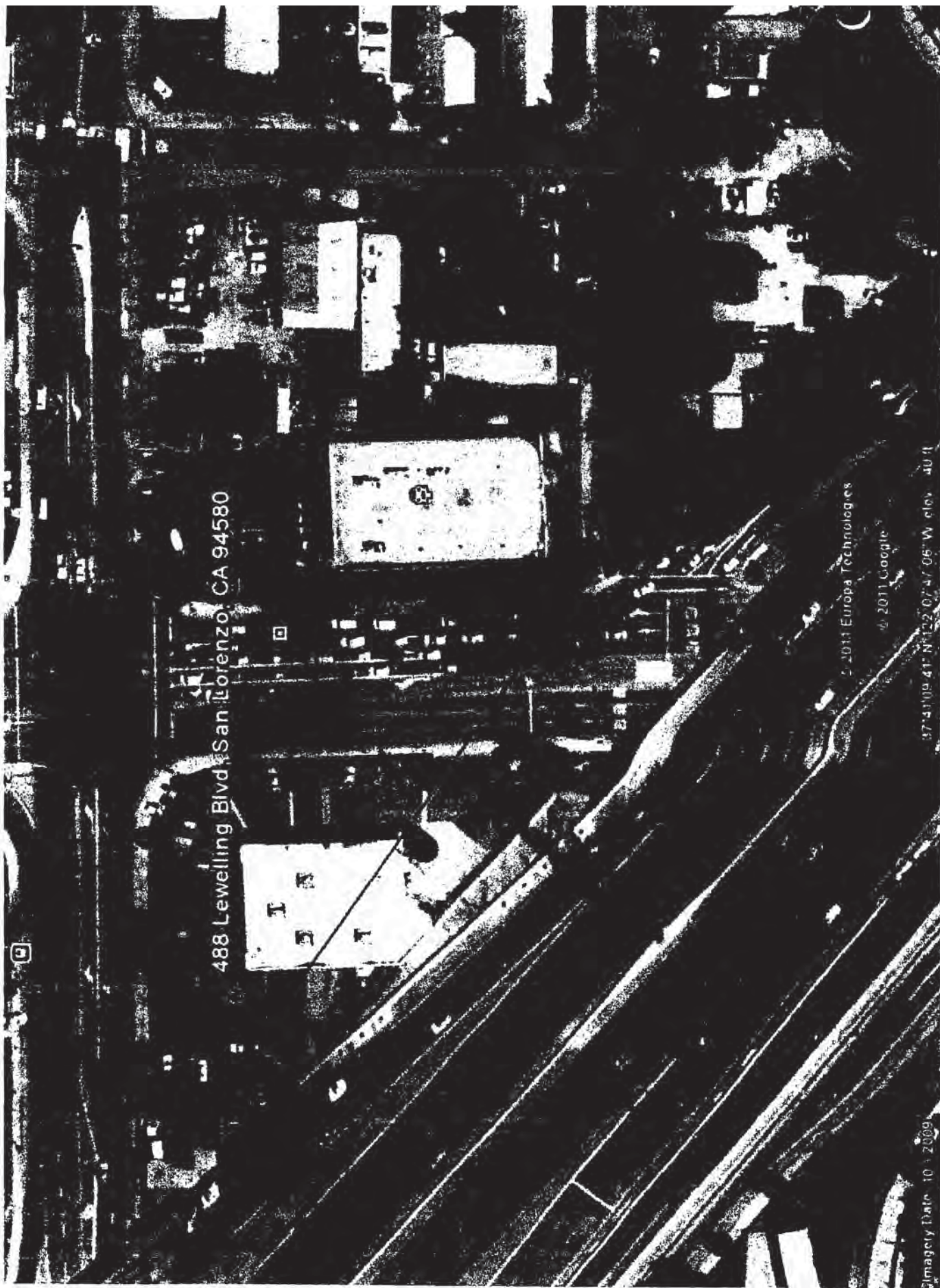


SITE PLAN & FLOOR PLAN
SCALE 1/8" = 1'-0"



PLN2011-00096
SITE PLAN

Alameda County CDA - Planning Department

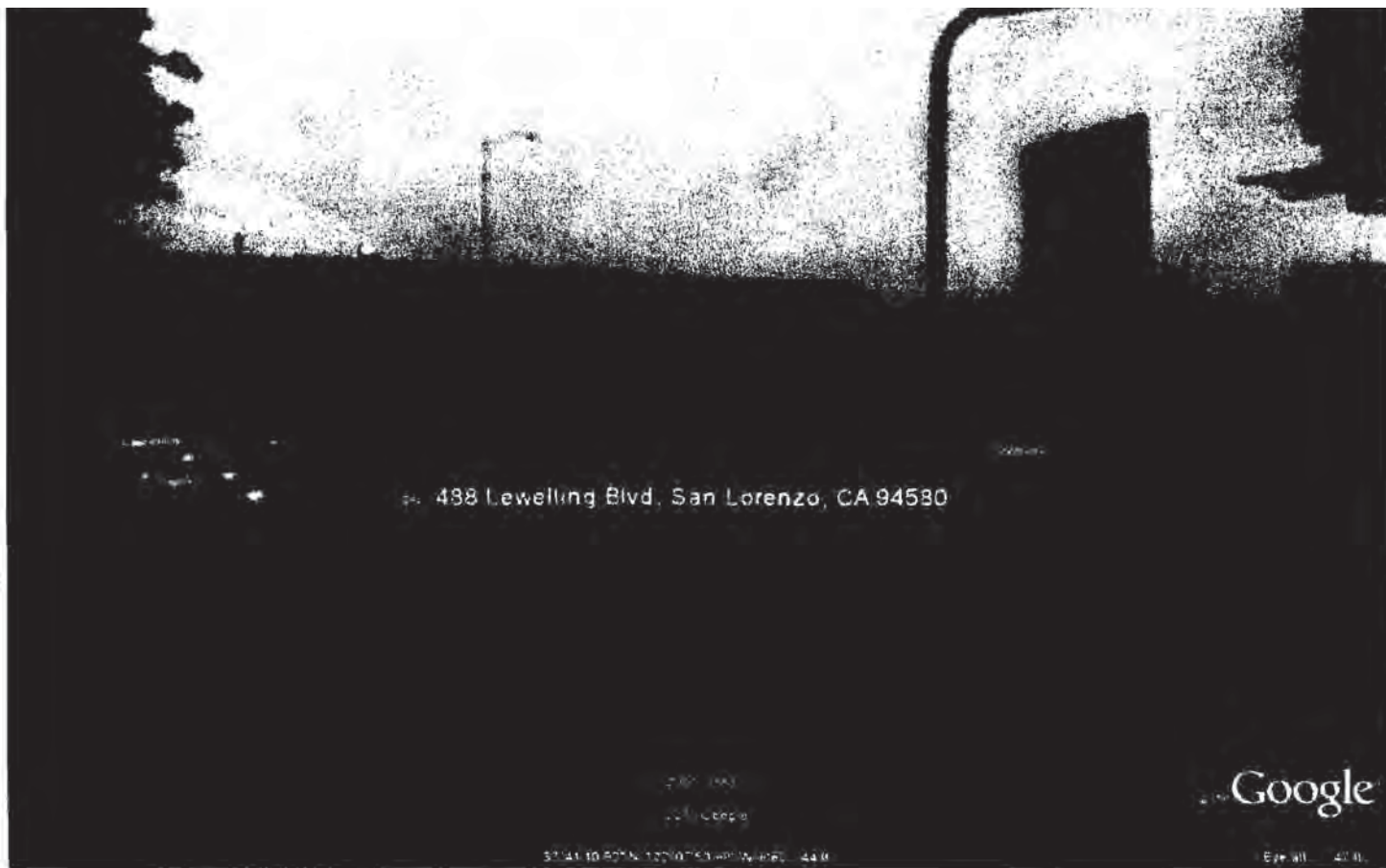


Single Family Res

504.63 FT



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FILE COPY

EXHIBIT A

JUL 0 1 2011

CUA

PLN 2011-00096



SUBJECT PROPERTY

EXHIBIT A

JUL 01 2011

CMR

PLN 2011-00096



488 Lewelling Blvd, San Lorenzo, CA 94580

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Imagery Date: 01/17/08

Multi Family Res

630. FT



L.T. 07.2009

488 Lewelling Blvd, San Lorenzo, CA 94580

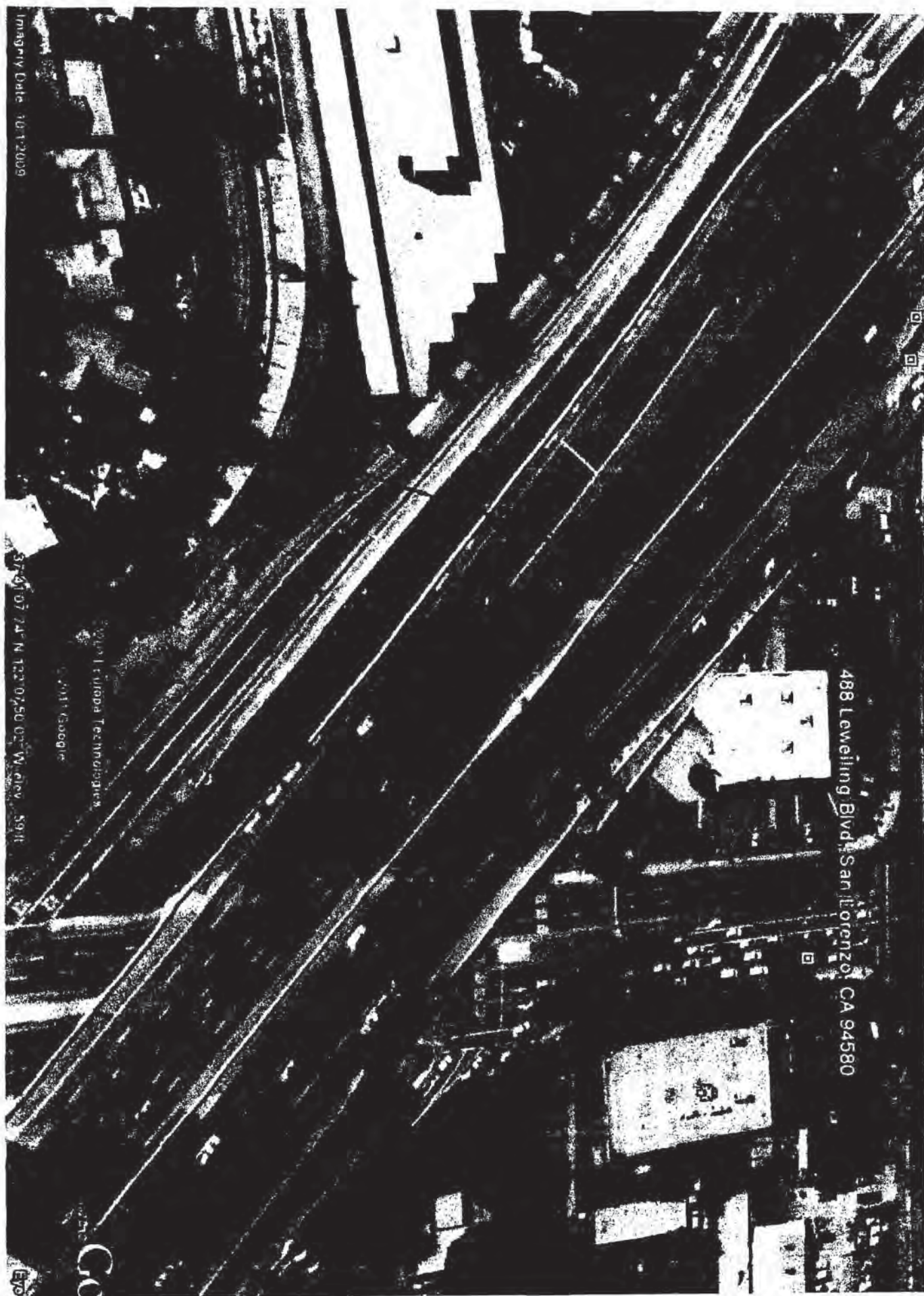
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37°51'07.74" N 122°07'50.02" W elev: 59 ft

Imagery Date: 10/1/2009

SHOP TO PROPERTY line

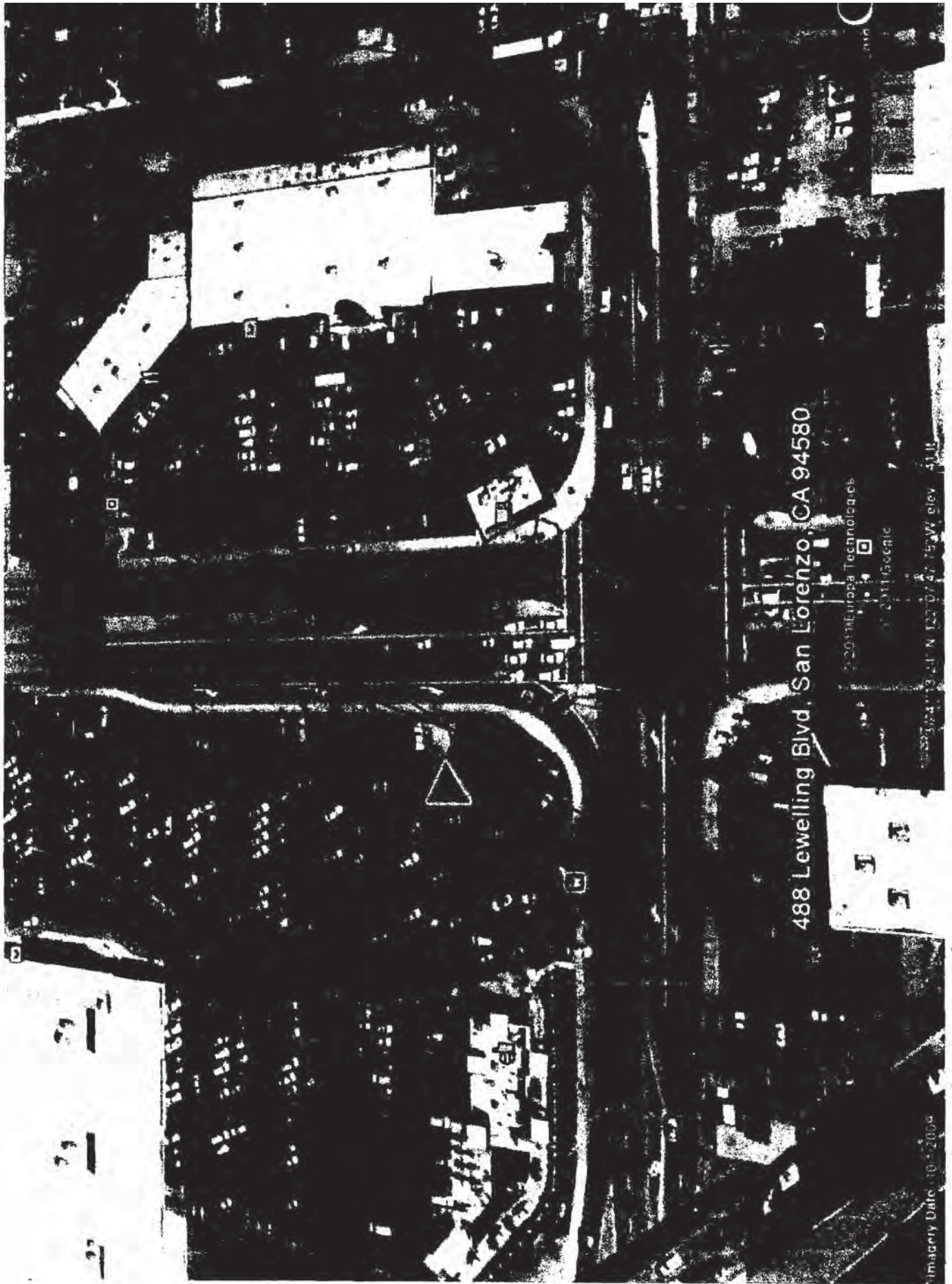


505.6 FT WALMART

660,91 FEET

SHOP TO INN.





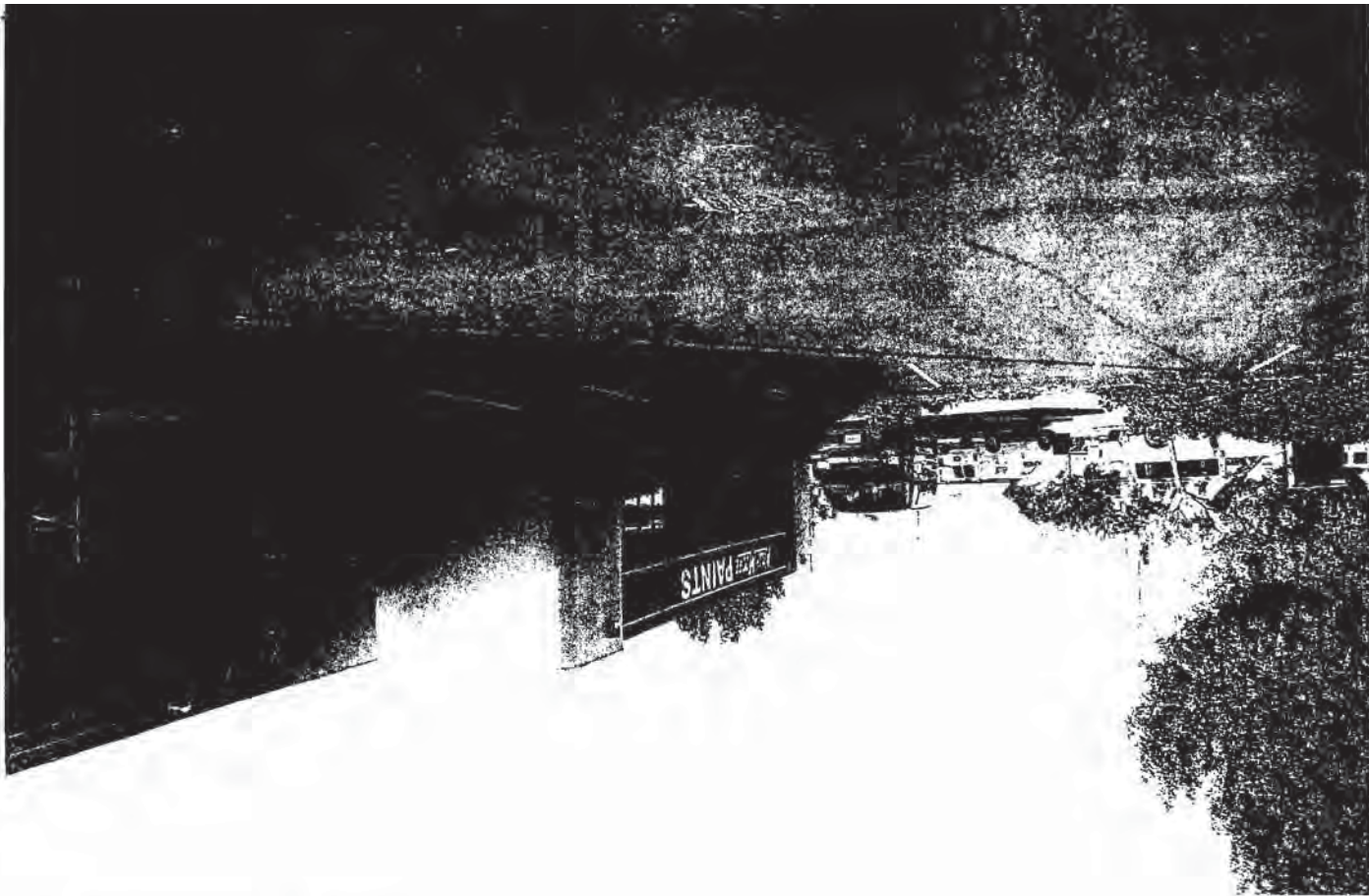
FEET

620.95

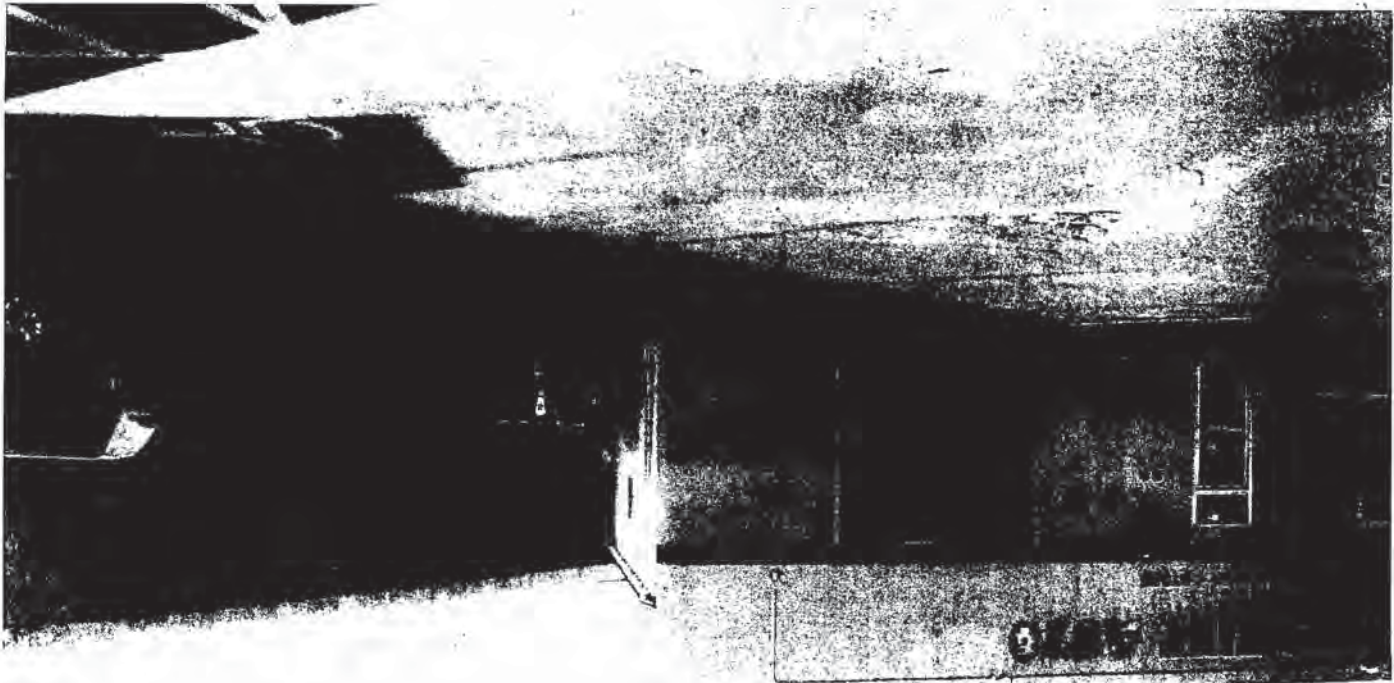
SHOP TO BIG 5



106618 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 this 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

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA

On motion of ~~Supervisor~~ Chairman Cooper and approved by the following vote:

Ayes: Supervisors ~~_____~~ and Chairman Cooper - 3

Noes: Supervisors ~~_____~~

Excused ~~Supervisor~~ Supervisor ~~_____~~ - 2

V-6509

OCT 16, 1974

THE FOLLOWING RESOLUTION WAS ADOPTED VARIANCE GRANTED NUMBER 169227

WHEREAS, at a hearing held on October 16, 1974, the Alameda County Zoning Administrator disapproved the application of Eller Outdoor Advertising Company of California (less: Mary Groves and Anthony and Pete Rossi (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 8 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 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 (less: and Mary Groves and Anthony and Pete Rossi (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 Ordinance.

DEC 2 '76
DEC 14 1976

S. Littleblow

Copy

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.

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

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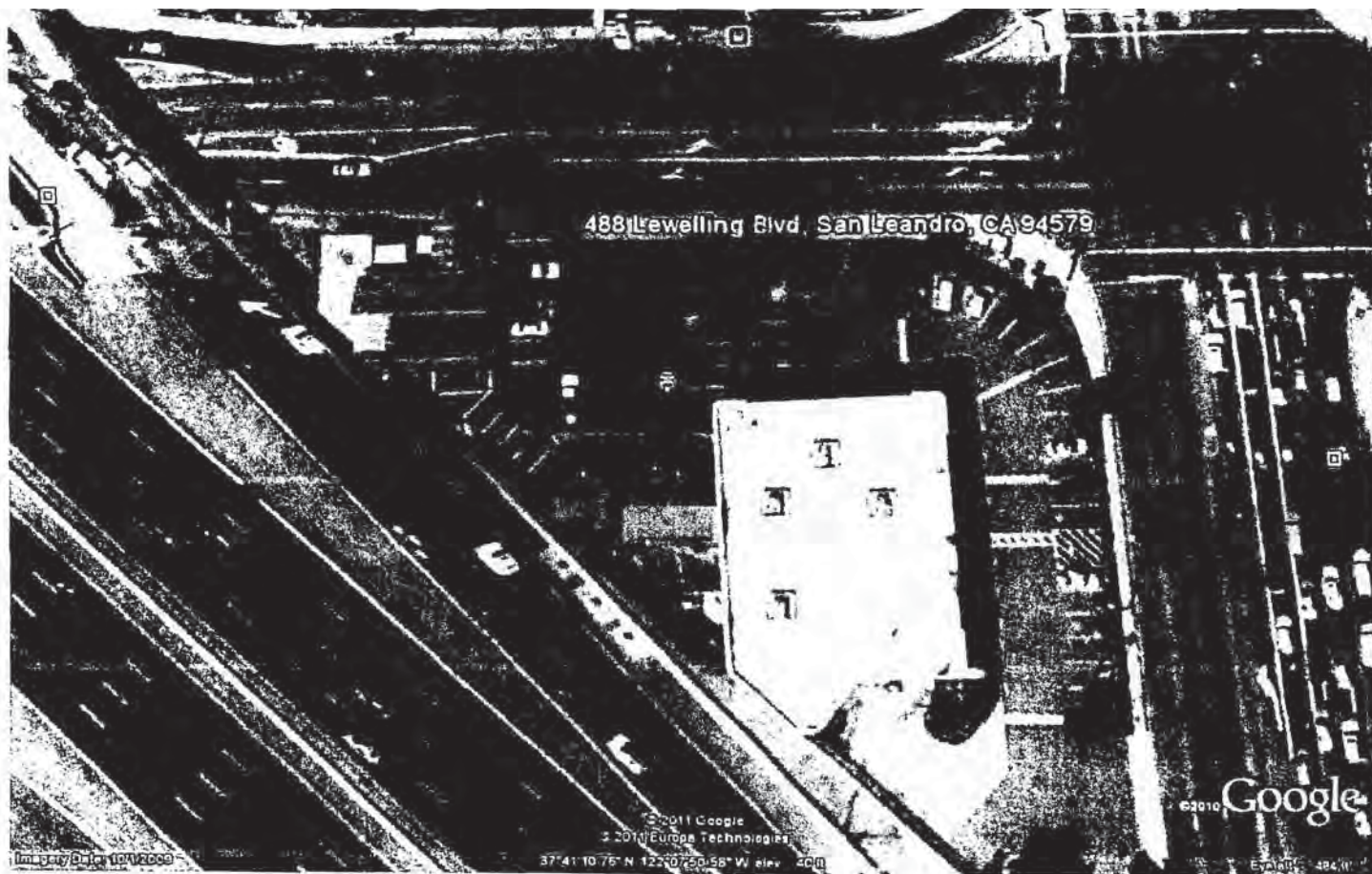
-----Original Message-----

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 Builders permit.*

Allen Ly 8/11/2011

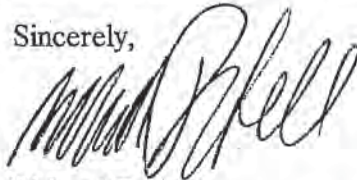
PROJECT REFERRAL

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Richard Tarbell
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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

gr

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

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

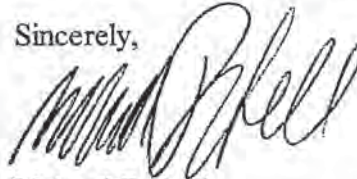
PROJECT REFERRAL

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



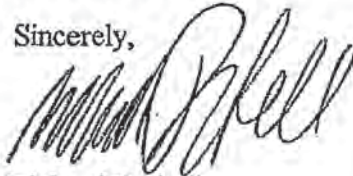
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Date: August 1, 2011

RE: Case No. PLN2011-00096

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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

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
ACPWA TRAFFIC

ENV HEALTH HAZARDOUS
MATERIALS ARIU LEVI
ALAMEDA CO. ZONING
ENFORCEMENT

CHP (WEST) ROBERT TUAZON

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*

*sent: 6/1/11
NOBREGS*

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

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

Sheldon D. Gilbert, Fire Chief

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CITY OF NEWARK
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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,

→

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

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

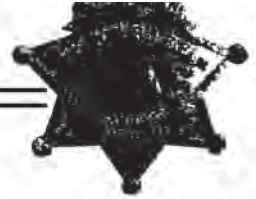
Owner: GRAVES, MARY K TR 3325 Lenard Dr, Castro Valley, Ca 94546

No Comment - Date 8/31/11

gr

Attachments

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.

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



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

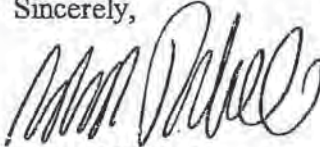
GJA:DEA:fjb

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 - Buldy PERMIT Required -
Alla Ly

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

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"exceptions".....

Respectfully Submitted
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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>
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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

Tab 7



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:

RESOLUTION NO. Z-11-70
DECEMBER 14, 2011
PAGE 2

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.

RESOLUTION NO. Z-11-70
DECEMBER 14, 2011
PAGE 3

- (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.

RESOLUTION NO. Z-11-70
DECEMBER 14, 2011
PAGE 4

- (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

RESOLUTION NO. Z-11-70
DECEMBER 14, 2011
PAGE 5

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.

RESOLUTION NO. Z-11-70
DECEMBER 14, 2011
PAGE 6

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

Tab 8

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:12-cv-03288-WHO**

Teixeira et al v. County of Alameda et al
Assigned to: Hon. William H. Orrick
Case in other court: 13-17132
Cause: 42:1983 Civil Rights Act

Date Filed: 06/25/2012
Date Terminated: 09/09/2013
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

John Teixeira

represented by **Donald E.J. Kilmer , Jr**
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ATTORNEY TO BE NOTICED

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Plaintiff

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ATTORNEY TO BE NOTICED

Charles William Hokanson
(See above for address)
ATTORNEY TO BE NOTICED

Jason A. Davis
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Plaintiff

Gary Gamaza

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Charles William Hokanson

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Jason A. Davis
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Plaintiff

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Charles William Hokanson
(See above for address)
ATTORNEY TO BE NOTICED

Jason A. Davis
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Second Amendment Foundation (SAF), Inc.

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Jason A. Davis
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Plaintiff

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Charles William Hokanson
(See above for address)
ATTORNEY TO BE NOTICED

Jason A. Davis
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ATTORNEY TO BE NOTICED

V.

Defendant

County of Alameda

represented by **Mary Ellyn Gormley**
Office of the County Counsel
County of Alameda
1221 Oak Street, Suite 450
Oakland, CA 94612
(510) 272-6700
Fax: 510-272-5020
Email: mary.ellyn.gormley@acgov.org
ATTORNEY TO BE NOTICED

Defendant

Alameda Board of Supervisors
as a policy making body

represented by **Mary Ellyn Gormley**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Wilma Chan
in her official capacity

represented by **Mary Ellyn Gormley**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Nate Miley
in his official capacity

represented by **Mary Ellyn Gormley**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Keith Carson
in his official capacity

represented by **Mary Ellyn Gormley**
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/25/2012	<u>1</u>	COMPLAINT with Jury Demand, against Alameda Board of Supervisors, Keith Carson, Wilma Chan, County of Alameda, Nate Miley (Filing fee \$ 350, receipt number 34611075590). Filed by Gary Gamaza, Steve Nobriga, John Teixeira, Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Second Amendment Foundation (SAF), Inc.. (jlm, COURT STAFF) (Filed on 6/25/2012) Modified on 6/26/2012 (jlm, COURT STAFF). (Additional attachment(s) added on 6/27/2012: # <u>1</u> Civil Cover Sheet) (cjl, COURT STAFF). Modified on 6/27/2012 (cjl, COURT STAFF). (Entered: 06/26/2012)
06/25/2012	<u>2</u>	ADR SCHEDULING ORDER: Case Management Statement due by 9/20/2012. Case Management Conference set for 9/27/2012 01:30 PM. (Attachments: # <u>1</u> Standing Order – KAW)(jlm, COURT STAFF) (Filed on 6/25/2012) (Entered: 06/26/2012)
06/25/2012	<u>3</u>	Summons Issued as to Alameda Board of Supervisors, Keith Carson, Wilma Chan, County of Alameda, Nate Miley. (jlm, COURT STAFF) (Filed on 6/25/2012) (cjl, COURT STAFF). (Entered: 06/26/2012)
06/28/2012	<u>4</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Calguns Foundation (CGF), Inc., Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira.. (Kilmer, Donald) (Filed on 6/28/2012) (Entered: 06/28/2012)
07/02/2012	<u>5</u>	CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (sisS, COURT STAFF) (Filed on 7/2/2012) (Entered: 07/02/2012)
07/03/2012	<u>6</u>	ORDER REASSIGNING CASE. Case reassigned to Judge Hon. Susan Illston for all further proceedings. Magistrate Judge Kandis A. Westmore no longer assigned to the case. Signed by the Executive Committee on July 3, 2012. (cjl, COURT STAFF) (Filed on 7/3/2012) (Entered: 07/03/2012)
07/10/2012	7	CLERKS NOTICE Initial Case Management Conference set for 9/28/2012 02:30 AM in Courtroom 10, 19th Floor, San Francisco. This is a docket text entry only, there is no document associate with this notice. (tfS, COURT STAFF) (Filed on 7/10/2012) (Entered: 07/10/2012)
07/10/2012	<u>8</u>	JUDGE ILLSTON'S STANDING ORDER (tfS, COURT STAFF) (Filed on 7/10/2012) (Entered: 07/10/2012)
08/01/2012	<u>9</u>	WAIVER OF SERVICE Returned Executed filed by Wilma Chan, Nate Miley, Keith Carson, County of Alameda. Service waived by Wilma Chan waiver sent on

		7/2/2012, answer due 8/31/2012; Nate Miley waiver sent on 7/2/2012, answer due 8/31/2012; Keith Carson waiver sent on 7/2/2012, answer due 8/31/2012; County of Alameda waiver sent on 7/2/2012, answer due 8/31/2012. (Gormley, Mary Ellyn) (Filed on 8/1/2012) (Entered: 08/01/2012)
08/23/2012	<u>10</u>	STIPULATION WITH PROPOSED ORDER <i>re: case management</i> filed by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Kilmer, Donald) (Filed on 8/23/2012) (Entered: 08/23/2012)
08/24/2012	<u>11</u>	ORDER GRANTING REQUEST TO CONTINUE CASE MANAGEMENT CONFERENCE, Motions terminated: <u>10</u> STIPULATION WITH PROPOSED ORDER <i>re: case management</i> filed by California Association of Federal Firearms Licensees (Cal-FFL), Second Amendment Foundation (SAF), Inc., Calguns Foundation (CGF), Inc., Gary Gamaza, Steve Nobriga, John Teixeira. Initial Case Management Conference set for 11/2/2012 02:30 PM in Courtroom 10, 19th Floor, San Francisco.. Signed by Judge Susan Illston on 8/23/12. (tfS, COURT STAFF) (Filed on 8/24/2012) (Entered: 08/24/2012)
09/10/2012	<u>12</u>	WAIVER OF SERVICE Returned Executed filed by Wilma Chan, Nate Miley, Keith Carson, County of Alameda. (Gormley, Mary Ellyn) (Filed on 9/10/2012) (Entered: 09/10/2012)
09/27/2012	<u>13</u>	MOTION to Dismiss filed by Alameda Board of Supervisors, Keith Carson, Wilma Chan, County of Alameda, Nate Miley. Motion Hearing set for 10/18/2013 11:00 AM in Courtroom 4, 3rd Floor, Oakland before Magistrate Judge Kandis A. Westmore. Responses due by 10/11/2012. Replies due by 10/18/2012. (Attachments: # <u>1</u> Memorandum of Points and Authorities in Support of Motion to Dismiss, # <u>2</u> Proposed Order, # <u>3</u> Request for Judicial Notice, # <u>4</u> Proposed Order)(Gormley, Mary Ellyn) (Filed on 9/27/2012) (Entered: 09/27/2012)
10/05/2012	<u>14</u>	STIPULATION WITH PROPOSED ORDER <i>to set hearing and filing deadlines</i> filed by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Kilmer, Donald) (Filed on 10/5/2012) (Entered: 10/05/2012)
10/11/2012	<u>15</u>	ORDER: Initial Case Management Conference set for 11/2/12 is continued to 1/25/2013 02:30 PM in Courtroom 10, 19th Floor, San Francisco., Motions terminated: <u>14</u> STIPULATION WITH PROPOSED ORDER <i>to set hearing and filing deadlines</i> filed by California Association of Federal Firearms Licensees (Cal-FFL), Second Amendment Foundation (SAF), Inc., Calguns Foundation (CGF), Inc., Gary Gamaza, Steve Nobriga, John Teixeira.. Signed by Judge Susan Illston on 10/5/12. (tfS, COURT STAFF) (Filed on 10/11/2012) (Entered: 10/11/2012)
10/17/2012	16	CLERKS NOTICE Continuing Motion Hearing, Set/Reset Deadlines as to <u>13</u> MOTION to Dismiss . Motion Hearing set for 12/20/12 is continued 12/21/2012 09:00 AM in Courtroom 10, 19th Floor, San Francisco before Hon. Susan Illston. This is a docket text entry only, there is no document associated with this notice.(tfS, COURT STAFF) (Filed on 10/17/2012) (Entered: 10/17/2012)
11/05/2012	<u>17</u>	Declaration of Gene Hoffman <i>in Support of <u>21</u> Request for Preliminary Injunction</i> filed by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Kilmer, Donald) (Filed on 11/5/2012) Modified on 11/6/2012 (ysS, COURT STAFF). (Entered: 11/05/2012)
11/05/2012	<u>18</u>	Declaration of Alan Gottlieb <i>in Support of <u>21</u> Request for Preliminary Injunction</i> filed by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Kilmer, Donald) (Filed on 11/5/2012) Modified on 11/6/2012 (ysS, COURT STAFF). (Entered: 11/05/2012)
11/05/2012	<u>19</u>	Declaration of Brandon Combs <i>in support of <u>21</u> Request for Preliminary Injunction</i> filed by Calguns Foundation (CGF), Inc., California Association of Federal

		Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Attachments: # <u>1</u> Exhibit Ex A: CA Prohibited Persons)(Kilmer, Donald) (Filed on 11/5/2012) Modified on 11/6/2012 (ysS, COURT STAFF). (Entered: 11/05/2012)
11/05/2012	<u>20</u>	Declaration of Steve Nobriga, John Teixeira, Gary Gamaza <i>in support of</i> <u>21</u> <i>Request for Preliminary Injunction</i> filed by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P, # <u>17</u> Exhibit Q, # <u>18</u> Exhibit R, # <u>19</u> Exhibit S)(Kilmer, Donald) (Filed on 11/5/2012) Modified on 11/6/2012 (ysS, COURT STAFF). (Entered: 11/05/2012)
11/05/2012	<u>21</u>	MOTION for Preliminary Injunction filed by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. Motion Hearing set for 12/21/2012 09:00 AM in Courtroom 10, 19th Floor, San Francisco before Hon. Susan Illston. Responses due by 11/30/2012. Replies due by 12/7/2012. (Kilmer, Donald) (Filed on 11/5/2012) (Entered: 11/05/2012)
11/16/2012	<u>22</u>	RESPONSE (re <u>13</u> MOTION to Dismiss) filed by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Kilmer, Donald) (Filed on 11/16/2012) (Entered: 11/16/2012)
11/30/2012	<u>23</u>	RESPONSE (re <u>21</u> MOTION for Preliminary Injunction) filed by Alameda Board of Supervisors, Keith Carson, Wilma Chan, County of Alameda, Nate Miley. (Attachments: # <u>1</u> Declaration, # <u>2</u> Declaration)(Gormley, Mary Ellyn) (Filed on 11/30/2012) (Entered: 11/30/2012)
12/03/2012	<u>24</u>	REPLY (re <u>13</u> MOTION to Dismiss) filed by Alameda Board of Supervisors. (Attachments: # <u>1</u> Exhibit Request for Judicial Notice in Support of Defendants' Reply ISO Motion to Dismiss)(Gormley, Mary Ellyn) (Filed on 12/3/2012) (Entered: 12/03/2012)
12/04/2012	<u>25</u>	NOTICE of Manual Filing of Exhibit T by Plaintiffs re <u>20</u> Declaration in Support. (ysS, COURT STAFF) (Filed on 12/4/2012) (Entered: 12/07/2012)
12/04/2012	<u>26</u>	EXHIBIT T (DVD) to re <u>20</u> Declaration in Support filed by Calguns Foundation (CGF), Inc.. (Related document(s) <u>20</u>) (ysS, COURT STAFF) (Filed on 12/4/2012) (Entered: 12/07/2012)
12/07/2012	<u>27</u>	REPLY (re <u>21</u> MOTION for Preliminary Injunction) filed by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Attachments: # <u>1</u> Exhibit A)(Kilmer, Donald) (Filed on 12/7/2012) (Entered: 12/07/2012)
12/07/2012	<u>28</u>	ERRATA re <u>20</u> Declaration in Support., <u>21</u> MOTION for Preliminary Injunction by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Kilmer, Donald) (Filed on 12/7/2012) (Entered: 12/07/2012)
12/14/2012	<u>29</u>	STATEMENT OF RECENT DECISION pursuant to Civil Local Rule 7-3.d filed by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Kilmer, Donald) (Filed on 12/14/2012) (Entered: 12/14/2012)
12/18/2012	<u>30</u>	ORDER RE: SUPPLEMENTAL BRIEFING; RE-SETTING HEARING (Illston, Susan) (Filed on 12/18/2012) (Entered: 12/18/2012)
12/19/2012		Set/Reset Deadlines as to <u>21</u> MOTION for Preliminary Injunction , <u>13</u> MOTION to Dismiss . Supplemental Briefs (not to exceed 30 pages) due by 1/25/2013. Motion

		Hearing re-set to 2/22/2013 09:00 AM in Courtroom 10, 19th Floor, San Francisco before Hon. Susan Illston. (tlS, COURT STAFF) (Filed on 12/19/2012) (Entered: 12/19/2012)
01/16/2013	<u>31</u>	STIPULATION WITH PROPOSED ORDER <i>Vacate CMC</i> filed by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Kilmer, Donald) (Filed on 1/16/2013) (Entered: 01/16/2013)
01/17/2013	<u>32</u>	ORDER Initial Case Management Conference set for 1/25/13 is continued to 3/29/2013 02:30 PM in Courtroom 10, 19th Floor, San Francisco.. Signed by Judge Susan Illston on 1/17/13., Motions terminated: <u>31</u> STIPULATION WITH PROPOSED ORDER <i>Vacate CMC</i> filed by California Association of Federal Firearms Licensees (Cal-FFL), Second Amendment Foundation (SAF), Inc., Calguns Foundation (CGF), Inc., Gary Gamaza, Steve Nobriga, John Teixeira. (tfS, COURT STAFF) (Filed on 1/17/2013) (Entered: 01/17/2013)
01/25/2013	<u>33</u>	Brief re <u>13</u> MOTION to Dismiss <i>Defendants Supplemental Brief in Support of Motion to Dismiss</i> filed by Alameda Board of Supervisors, Keith Carson, Wilma Chan, County of Alameda, Nate Miley. (Related document(s) <u>13</u>) (Gormley, Mary Ellyn) (Filed on 1/25/2013) (Entered: 01/25/2013)
01/25/2013	<u>34</u>	Brief <i>Supplemental (see Doc #30)</i> filed by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Kilmer, Donald) (Filed on 1/25/2013) (Entered: 01/25/2013)
02/21/2013	35	CLERKS NOTICE : the motion to dismiss and for preliminary injunction has been taken off calendar and the motions are deemed submitted without argument. The Court will issue an order shortly. This is a docket text entry only, there is no document associated with this notice. (tfS, COURT STAFF) (Filed on 2/21/2013) (Entered: 02/21/2013)
02/26/2013	<u>36</u>	DISREGARD – FILED IN ERROR; ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND DENYING PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION <u>13 21</u> (Illston, Susan) (Filed on 2/26/2013) Modified on 2/26/2013 (Illston, Susan). (Entered: 02/26/2013)
02/26/2013	<u>37</u>	ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND DENYING PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION re <u>13</u> , <u>21</u> motions. If plaintiffs wish to amend the complaint, they must do so no later than March 15, 2013.(Illston, Susan) (Filed on 2/26/2013) Modified on 2/27/2013 (ysS, COURT STAFF). (Entered: 02/26/2013)
03/08/2013	<u>38</u>	STIPULATION WITH PROPOSED ORDER <i>Reset CMC and Extend Time to File Amended Complaint</i> filed by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Kilmer, Donald) (Filed on 3/8/2013) (Entered: 03/08/2013)
03/12/2013	<u>39</u>	ORDER: Initial Case Management Conference set for 3/29/13 is continued 4/26/2013 02:30 AM in Courtroom 10, 19th Floor, San Francisco. Plaintiffs shall have until April 1, 2013 to file any amended complaint. Signed by Judge Susan Illston on 3/11/13., Motions terminated: <u>38</u> STIPULATION WITH PROPOSED ORDER <i>Reset CMC and Extend Time to File Amended Complaint</i> filed by California Association of Federal Firearms Licensees (Cal-FFL), Second Amendment Foundation (SAF), Inc., Calguns Foundation (CGF), Inc., Gary Gamaza, Steve Nobriga, John Teixeira. (tfS, COURT STAFF) (Filed on 3/12/2013) Modified on 3/13/2013 (ysS, COURT STAFF). (Entered: 03/12/2013)
04/01/2013	<u>40</u>	AMENDED COMPLAINT (<i>First</i>) against All Defendants. Filed by Gary Gamaza, Steve Nobriga, John Teixeira, Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Second Amendment Foundation (SAF), Inc.. (Attachments: # <u>1</u> Exhibit Exhibit A, # <u>2</u> Exhibit Exhibit B, # <u>3</u> Exhibit Exhibit C)(Kilmer, Donald) (Filed on 4/1/2013) (Entered: 04/01/2013)

04/02/2013		Set/Reset Hearing Initial Case Management Conference set for 4/26/2013 02:30 PM in Courtroom 10, 19th Floor, San Francisco. (tfS, COURT STAFF) (Filed on 4/2/2013) (Entered: 04/02/2013)
04/18/2013	<u>41</u>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options <i>filed by Plaintiffs</i> (Kilmer, Donald) (Filed on 4/18/2013) (Entered: 04/18/2013)
04/18/2013	<u>42</u>	STIPULATION WITH PROPOSED ORDER <i>to continue CMC</i> filed by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Kilmer, Donald) (Filed on 4/18/2013) (Entered: 04/18/2013)
04/24/2013	<u>43</u>	ORDER Initial Case Management Conference set for 8/9/2013 02:30 PM in Courtroom 10, 19th Floor, San Francisco.. Signed by Judge Susan Illston on 4/23/13. (tfS, COURT STAFF) (Filed on 4/24/2013) (Entered: 04/24/2013)
05/28/2013	<u>44</u>	MOTION to Dismiss <i>Plaintiffs' First Amended Complaint</i> filed by County of Alameda. Motion Hearing set for 8/8/2013 09:00 AM in Courtroom 10, 19th Floor, San Francisco before Hon. Susan Illston. Responses due by 6/11/2013. Replies due by 6/18/2013. (Attachments: # <u>1</u> Memorandum of Points and Authorities, # <u>2</u> Request for Judicial Notice, # <u>3</u> Proposed Order, # <u>4</u> Exhibit E, # <u>5</u> Exhibit F through L)(Gormley, Mary Ellyn) (Filed on 5/28/2013) (Entered: 05/28/2013)
05/30/2013	<u>45</u>	Declaration in Support of <u>44</u> MOTION to Dismiss <i>Plaintiffs' First Amended Complaint -- Declaration of Mary Ellyn Gormley in Support of Request for Judicial Notice re Motion to Dismiss Amended Complaint</i> filed by County of Alameda. (Related document(s) <u>44</u>) (Gormley, Mary Ellyn) (Filed on 5/30/2013) (Entered: 05/30/2013)
06/03/2013	<u>46</u>	STIPULATION WITH PROPOSED ORDER <i>resetting motion hearing and CMC</i> filed by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Kilmer, Donald) (Filed on 6/3/2013) (Entered: 06/03/2013)
06/11/2013	<u>47</u>	ORDER GRANTING <u>46</u> STIPULATION WITH PROPOSED ORDER <i>resetting motion hearing and CMC</i> filed by California Association of Federal Firearms Licensees (Cal-FFL), Second Amendment Foundation (SAF), Inc., Calguns Foundation (CGF), Inc., Gary Gamaza, Steve Nobriga, John Teixeira.. Signed by Judge Susan Illston on 6/11/13. (tfS, COURT STAFF) (Filed on 6/11/2013) (tfS, COURT STAFF). (Entered: 06/11/2013)
06/11/2013		Set/Reset Deadlines as to <u>44</u> MOTION to Dismiss <i>Plaintiffs' First Amended Complaint</i> . Motion Hearing set for 8/16/2013 09:00 AM in Courtroom 10, 19th Floor, San Francisco before Hon. Susan Illston. (tfS, COURT STAFF) (Filed on 6/11/2013) (Entered: 06/11/2013)
06/11/2013		Set/Reset Hearing Initial Case Management Conference set for 8/9/13 is continued to 8/16/2013 02:30 PM in Courtroom 10, 19th Floor, San Francisco. (tfS, COURT STAFF) (Filed on 6/11/2013) (Entered: 06/11/2013)
06/27/2013		CASE REASSIGNED to the Honorable William H. Orrick, United States District Judge. All parties must review the reassignment order posted at http://cand.uscourts.gov/orders/who-order.pdf and comply with its requirements, including submitting a case management statement. This is a text only docket entry. The reassignment order associated with this notice may be viewed at http://cand.uscourts.gov/orders/who-order.pdf. Signed by Executive Committee on 6/27/13. (ysS, COURT STAFF) (Filed on 6/27/2013) (Entered: 06/27/2013)
07/03/2013	<u>48</u>	STIPULATION WITH PROPOSED ORDER <i>re: Case Management</i> filed by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Kilmer, Donald) (Filed on 7/3/2013) (Entered: 07/03/2013)
07/08/2013	<u>49</u>	STIPULATION AND ORDER re <u>48</u> STIPULATION WITH PROPOSED ORDER <i>re: Case Management</i>. Case Management Statement due by

		8/28/2013. Motion Hearing and Case Management Conference set for 9/4/2013 02:00 PM in Courtroom 2, 17th Floor, San Francisco before Hon. William H. Orrick. Signed by Judge 07/08/2013 on 07/08/2013. (jmdS, COURT STAFF) (Filed on 7/8/2013) (Entered: 07/09/2013)
07/19/2013	<u>50</u>	RESPONSE (re <u>44</u> MOTION to Dismiss <i>Plaintiffs' First Amended Complaint</i>) filed by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Hokanson, Charles) (Filed on 7/19/2013) (Entered: 07/19/2013)
08/02/2013	<u>51</u>	REPLY (re <u>44</u> MOTION to Dismiss <i>Plaintiffs' First Amended Complaint</i>) <i>Defendant County of Alameda's Reply in Support of Motion to Dismiss Plaintiffs' First Amended Complaint</i> filed by Alameda Board of Supervisors, Keith Carson, Wilma Chan, County of Alameda, Nate Miley. (Gormley, Mary Ellyn) (Filed on 8/2/2013) (Entered: 08/02/2013)
08/06/2013	<u>52</u>	AFFIDAVIT in Support re <u>44</u> MOTION to Dismiss <i>Plaintiffs' First Amended Complaint Statement of recent decision i/s/o motion to dismiss plaintiff's FAC</i> filed by Alameda Board of Supervisors. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>44</u>) (Gormley, Mary Ellyn) (Filed on 8/6/2013) (Entered: 08/06/2013)
08/28/2013	<u>53</u>	CASE MANAGEMENT STATEMENT <i>Joint Case Management Statement</i> filed by Alameda Board of Supervisors, Keith Carson, Wilma Chan, County of Alameda, Nate Miley. (Gormley, Mary Ellyn) (Filed on 8/28/2013) (Entered: 08/28/2013)
08/30/2013	<u>54</u>	STATEMENT OF RECENT DECISION pursuant to Civil Local Rule 7-3.d filed by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira. (Related document(s) <u>50</u>) (Hokanson, Charles) (Filed on 8/30/2013) (Entered: 08/30/2013)
09/04/2013	<u>55</u>	Minute Entry: Motion Hearing held on 9/4/2013 before William H. Orrick re <u>13</u> Motion to Dismiss. Motion taken under advisement; written order to follow. Discovery stayed pending issuance of the order. (Court Reporter FTR 2:20-2:22) (jmdS, COURT STAFF) (Date Filed: 9/4/2013) (Entered: 09/05/2013)
09/09/2013	<u>56</u>	ORDER GRANTING <u>44</u> MOTION TO DISMISS FIRST AMENDED COMPLAINT WITH PREJUDICE by Judge William H. Orrick. (jmdS, COURT STAFF) (Filed on 9/9/2013) (Entered: 09/09/2013)
09/17/2013	<u>57</u>	Proposed Order re <u>56</u> Order on Motion to Dismiss by Alameda Board of Supervisors. (Attachments: # <u>1</u> Proposed Order)(Gormley, Mary Ellyn) (Filed on 9/17/2013) (Entered: 09/17/2013)
09/23/2013	<u>58</u>	JUDGMENT FOLLOWING ORDER GRANTING DEFENDANTS MOTION TO DISMISS. Signed by Judge William H. Orrick on 09/23/2013. (jmdS, COURT STAFF) (Filed on 9/23/2013) (Entered: 09/23/2013)
10/21/2013	<u>59</u>	NOTICE OF APPEAL re <u>58</u> Judgment to the 9th CCA Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira.(Appeal fee of \$455 receipt number 0971-8096471 paid.) (Hokanson, Charles) (Filed on 10/21/2013) Modified on 10/22/2013 (aaaS, COURT STAFF). (Additional attachment(s) added on 10/28/2013: # <u>1</u> USCA NUMBER: 13-17132) (aaa, COURT STAFF). (Entered: 10/21/2013)
10/22/2013	<u>60</u>	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira re <u>59</u> Notice of Appeal, (aaaS, COURT STAFF) (Filed on 10/22/2013) (Additional attachment(s) added on 10/22/2013: # <u>1</u> Civil Docket) (aaaS, COURT STAFF). (Entered: 10/22/2013)
10/22/2013	<u>61</u>	Copy of <u>59</u> Notice of Appeal and Docket sheet mailed to all counsel and to all parties without an e-mail address. (aaaS, COURT STAFF) (Filed on 10/22/2013)

		(Additional attachment(s) added on 10/22/2013: # <u>1</u> Civil Docket) (aaaS, COURT STAFF). (Entered: 10/22/2013)
10/28/2013	<u>62</u>	USCA Case Number 13-17132 for <u>59</u> Notice of Appeal, filed by California Association of Federal Firearms Licensees (Cal-FFL), Second Amendment Foundation (SAF), Inc., Calguns Foundation (CGF), Inc., Gary Gamaza, Steve Nobriga, John Teixeira. (aaa, COURT STAFF) (Filed on 10/28/2013) (Entered: 10/28/2013)
02/07/2014	<u>63</u>	Transcript Designation Form for proceedings held on 09/04/2013 before Judge WHO, re <u>59</u> Notice of Appeal, Transcript due by 2/14/2014. (Hokanson, Charles) (Filed on 2/7/2014) (Entered: 02/07/2014)
02/07/2014	<u>64</u>	TRANSCRIPT ORDER by Calguns Foundation (CGF), Inc., California Association of Federal Firearms Licensees (Cal-FFL), Gary Gamaza, Steve Nobriga, Second Amendment Foundation (SAF), Inc., John Teixeira for Court Reporter FTR - San Francisco. (Hokanson, Charles) (Filed on 2/7/2014) (Entered: 02/07/2014)
03/07/2014	<u>65</u>	Transcript of Proceedings held on 9/4/13, before Judge William H. Orrick. Court Reporter/Transcriber Candace Yount, Telephone number 415-994-5619, email: candace.yount@gmail.com. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerks Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 6/5/2014. (Related documents(s) <u>64</u>) (Yount, Candace) (Filed on 3/7/2014) (Entered: 03/07/2014)
04/14/2014	<u>66</u>	ORDER of USCA: Appellee's opposed motion to dismiss for lack of prosecution is denied; as to <u>59</u> Notice of Appeal, filed by California Association of Federal Firearms Licensees (Cal-FFL), Second Amendment Foundation (SAF), Inc., Calguns Foundation (CGF), Inc., Gary Gamaza, Steve Nobriga, John Teixeira (aaa, COURT STAFF) (Filed on 4/14/2014) (Entered: 04/14/2014)