



June 22, 2021

VIA OVERNIGHT DELIVERY

Rockridge Community Planning Council
4900 Shattuck Ave.
P.O. Box 22504
Oakland, California 94609

Re: Letter of Intent (the “2021 Letter”) from Rockridge Community Planning Council dated April 2, 2021

Dear Members of RCPC, BPOD and FANS:

Safeway is very proud that its store at 6310 College Avenue, Oakland, California (the “Safeway Project”) has been serving the community for over five (5) years. The Safeway Project could not have been completed without the collaboration of Rockridge Community Planning Community (“RCPC”), Berkeleyans for Pedestrian Oriented Development (“BPOD”) and Friends and Neighbors of College Avenue (“FANS”). RCPC’s 2021 letter, while on RCPC letterhead is also signed by representatives of BPOD and references meetings at which members of FANS communicated to RPCP concerns which the 2021 Letter purportedly addresses. For purposes of convenience, in this letter, Safeway shall refer to all interested covered by the 2021 Letter as RCPC interests, regardless of which neighborhood group may have raised the issue.

RCPC’s 2021 Letter, now asks Safeway to contribute the Improvement Funds¹, totaling \$400,000, from the Settlement Agreement and Release of Claims, dated as of December 18, 2012, and the Letter Agreement Amendment Settlement Agreement, dated January 6, 2014 (collectively, the “Settlement Agreement”), to implement additional Improvement Measures to address alleged impacts from the Safeway Project. The 2021 Letter claims that the Improvement Measures are necessary because of alleged heightened vehicular traffic along Hillegass, Alcatraz, and Benevue Avenues based on a 2018 traffic study prepared by Fehr and Peers (the “Traffic Study”) comparing pre-project and post-project traffic. The 2021 Letter admits that the Traffic Study “only looked at residential side streets and did not look at traffic on Alcatraz between Telegraph Avenue and College Avenue.” The Improvement Measures that RCPC discusses in the 2021 Letter appear to be designed to address traffic on residential side streets only.

As you know, as part of Mitigation Measure TRANS-2 in the EIR for the Safeway Project, Safeway was required to install left-turn lanes on both the northbound and southbound portions of College Avenue at the intersection of College Avenue and Alcatraz Avenue. The left-turn lanes

¹ Capitalized terms not defined in the letter shall have the same meaning as used in the Settlement Agreement.

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were critical for minimizing wait times at that intersection. However, BPOD members strongly objected to the southbound left-turn lane from College onto Alcatraz, in violation of Section 8 of the Settlement Agreement, whereby BPOD covenanted and agreed that “they will not hinder Safeway’s efforts to obtain from City, and any other agencies with permitting jurisdiction over the Project, any and all approvals required for the construction and operation of the Project.” Despite the covenant not to interfere, BPOD objected to Safeway’s efforts to obtain approvals and to complete the Project.

As a direct result of BPOD’s objections and interference, the southbound left-turn lane and signal on College Avenue that was specifically intended to reduce wait times and mitigate traffic issues was never installed. My January 26, 2015 letter to RCPC, BPOD and FANS noted that if the left-turn lane was not implemented, then “wait times at that intersection likely will increase significantly, which could lead to other traffic problems in the area...and, of course, Safeway will be blamed for it.” Unfortunately, my words proved to be prophetic, as Safeway is now being blamed by RCPC for an alleged increase in traffic in the area. Because Safeway was prevented from installing the left-turn lane on College Avenue, a domino effect may have been created whereby wait times to make a left turn increased, and ultimately, traffic in the area around the Safeway Project may also have increased. If Safeway had been able to install the left-turn lane and signal, then we would have had a baseline in 2015 of traffic with all mitigation measures in place, and we could have obtained a true measurement of the impact of the Safeway Project on traffic in 2017 when the Traffic Study was prepared or even now in 2021. Now, we will never know what the level of traffic would have been if all traffic mitigation measures were implemented as planned.

As stated in Section 3 of the Settlement Agreement, the Improvement Funds are earmarked for the “implementation of improvement measures to address possible, unforeseen adverse effects that the Project might have on the neighborhood surrounding the Project...” The Improvement Funds are not intended to provide funds for RCPC to use for improvements at its discretion. As I stated in my January 26, 2015 letter, increased wait times and traffic as a result of the inability of Safeway to install the left-turn lane was foreseeable and it is not an “unforeseen adverse effect” for which the Improvement Funds are available.

Further, the increased traffic on the residential side streets cannot be directly tied to the Safeway Project. The Traffic Study states that “while 2017 traffic volumes are noticeably higher on Hillegass Avenue and Woolsey Street, the 2017 volumes on most monitored streets are generally lower or similar to 2013. Volumes are noticeably lower on Alcatraz Avenue between

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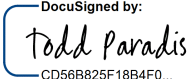
College and Claremont Avenues, and Colby Street between 61st and 62nd Streets.” In other words, traffic actually decreased on Alcatraz Avenue between College and Claremont Avenues where the Safeway Project is located and on Colby Avenue. It appears that the traffic mitigation measures that Safeway was allowed to implement worked, and if Safeway had been permitted to install the southbound left-turn lane, traffic and wait times would have been further mitigated. Moreover, the Traffic Study itself does not establish a direct tie between the alleged increased traffic on Hillegass Avenue and Woolsey Street and the Safeway Project. As a result, the increased traffic in 2017 on Hillegass and Woolsey could be due to other reasons, including an increase in the general population.

Therefore, Safeway respectfully objects to the 2021 Letter because it has reasonably determined pursuant to Section 3(A)(ii)(b) of the Settlement Agreement that the Improvement Measure would not address a problem that has been caused by the Project. However, as a show of good faith, if RCPC is able to timely implement the southbound left-turn lane on College Avenue as originally planned, and if traffic volumes are still high after the left-turn lane is installed, then Safeway would reconsider the use of the Improvement Funds for the proposed Improvement Measures.

If RCPC intends to pursue the Improvement Measure despite Safeway’s objection, then as set forth in Section 3(A)(iii) please provide Safeway with a copy of the Improvement Request that is submitted to the Oakland Planning and Zoning Director or his or her designee, and Safeway will submit its objections as set forth in the Settlement Agreement.

If you have any questions regarding the above-referenced matters, I would be happy to schedule a call to discuss.

Very truly yours,

DocuSigned by:

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Todd Paradis

cc: Natacha Epley (via email)

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