



DATE: May 16, 2023

TO: Planning Commission

FROM: Brian Oh, Community Development Director

SUBJECT: **APPEAL OF A PLANNING ADMINISTRATIVE DECISION TO DENY A MINOR USE PERMIT FOR THE FLOODWAY LLC PROJECT LOCATED AT 4875 PETALUMA BOULEVARD NORTH/4951 STONY POINT ROAD FILE NO. PLAP-2023-0001**

RECOMMENDATION

It is recommended that the Planning Commission conduct the required public hearing and approve a Resolution (**Attachment A**) denying the appeal and upholding the administrative decision to deny the Minor Use Permit for the Floodway project File No. PLUP-2022-0027.

In making the decision to deny approval of the requested Minor Use Permit (MUP), staff determined that (1) the proposed development project is not consistent with the General Plan in that the **Floodway** land use designation and other policies or programs seek to prohibit new development in the Floodway, and (2) the proposed “community marketplace” use is not a use conditionally allowed in the Floodway zoning district, is not a permitted use in the Floodway zoning district, and is not similar to other uses permitted in the Floodway zoning district. Additionally, any commercial land use providing public use facilities or places of public accommodation should be supported by minimum required development, including appropriately surfaced parking, vehicle circulation areas, pedestrian pathways, and outdoor lighting for uses proposing to operate outside of daylight hours.

Pursuant to IZO [§24.090.G](#), the review authority may consider any issue involving the matter that is the subject of the appeal and take the following applicable action(s): (1) Affirm, affirm in part, or reverse the action, determination, or decision that is the subject of the appeal and (2) Adopt additional conditions of approval that may address issues or concerns other than the subject of the appeal. Any decision by the Planning Commission is appealable to the City Council.

BACKGROUND

Overview

The proposed project site is an undeveloped parcel abutting the Petaluma River located at the northwest corner of the intersection of Petaluma Blvd N. and Stony Point Rd. addressed as 4875 Petaluma Blvd North, Assessor Parcel Number 007-422-028. The General Plan Land Use designation is **Floodway**, and it is zoned *Floodway*. On October 24, 2022, the appellant submitted MUP application PLUP-2022-0027 proposing to use the property as a “community marketplace”. The community marketplace would host mobile food vendors, artisans, artists, food growers and producers, local beer and wine producers, musicians, and such – all of a mobile or transient nature – on a daily basis. Participating vendors would generally be offered the opportunity to operate seven days a week from 6 A.M. to 12 A.M., which may vary by business needs. A proposed site plan depicts parking areas, a customer seating area, mobile vendor areas, vehicle drive aisles, and portable restrooms/wash stations. A summary project description is provided in the ***Project Description*** section of this staff report, with the application project description provided in **Attachment B – Project Information**.

Figure 1: Proposed development project location



(Source: City GIS, May 16, 2023)

Planning review of the MUP application determined that the proposed land use was neither consistent with the General Plan description of the **Floodway** land use designation nor allowed as a permitted by-right or conditionally permitted land use in the *Floodway* zoning district. On March 6, 2023, the Planning Manager informed the appellant of the administrative decision to deny the request for Minor Use Permit, at an in-person meeting and by letter (**Attachment E – Floodway Denial Letter**). On March 13, 2023, the appellant filed a timely appeal of the decision in accordance with requirements contained in IZO [§24.090 Appeals](#), hereby referred to as “Appeal” (**Attachment F – Floodway Appeal Letter**). Pursuant to §24.090.E and F, a report was prepared, and the subject appeal public hearing before the Planning Commission was scheduled in a timely manner. Notices of the public hearing, including publication in the Argus-Courier, mailing to

property owners within 1000 feet of the project site, and posting of onsite signage, were completed per IZO [§24.100](#) Public Notice.

This Appeal public hearing staff report presents project facts provided in the MUP application materials; discussion about staff review of the application for consistency with applicable plans and policies, as well as compliance with applicable regulations and conclusions reached concerning staff's inability to make required findings; Planning's response to the Appeal; and recommendation to the Planning Commission concerning Appeal decision, as well as alternatives to consider. Key definitions and regulatory references are provided in the following section to facilitate Planning Commission's review.

Key definitions and regulatory references

Development – Floodway and Flood Plain regulations define development as “Any man-made change to improved or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading, excavation, drilling operations, permanent storage of equipment and materials (i.e., lumber yards, junk yards, vehicle storage yards, etc.), excluding the improvement or maintenance of public roads.” (IZO [§6.030.I](#))

Development Project – IZO defines a development project as “Any project which would, if carried out, establish or permit to be established any new or changed use of any real property, building, structure or sign.” (IZO [§28.020.D](#))

Development Permit - A zoning permit, grading permit or building permit or any other permit, certificate, or license pertaining to the erection, construction, reconstruction, moving, conversion, alteration, or addition to any building or structure and the use of any land, building or premise, per the procedure set forth in Section 6.070(B). (IZO [§6.030.J](#))

Floodway land use designation – The **Floodway** land use designation is described in the General Plan as “the channel of the Petaluma River or other watercourse and the adjacent land areas that must be reserved in order to discharge the “base flood” without cumulatively increasing the water surface elevation more than one foot. No new development is allowed. (Petaluma General Plan 2025, Section 1.2, p. 1-8)

Floodway zoning district – The *Floodway* zoning district is used to identify the area referred to as the regulatory floodway. It includes the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot. The Petaluma River Basin Flood Plain and Floodway Areas are defined as those areas of Special Flood Hazard identified by the Federal Insurance Administration through a scientific and engineering report entitled “Flood Insurance Study for the City of Petaluma”, dated August 1979, with accompanying Flood Boundary and Floodway Map; and accompanying Flood Insurance Rate Maps. Any official revisions or updates thereto are adopted by reference and declared to be a part of the Ordinance. (IZO [Chapter 6 Floodway and Flood Plain Districts](#))

Zoning Permit – A permit issued by the Director that allows special activity temporary (60 consecutive days or less unless otherwise restricted) uses of private property. Special activities include (1) Outdoor sale of Christmas trees, pumpkins, or other produce, goods or merchandise; (2) Outdoor swap meets or flea markets; (3) Carnivals, circuses, rodeos, fairs, festivals, tent sales, open air theaters, exhibits, games of skill, rides, booths, concession stands and other temporary entertainment events open to the public which are held out-of-doors. (IZO [§7.070 Short-Term Activities](#))

Zoning Administrator (ZA) – A role established in IZO Section 24.020 in order to achieve improved coordination in the administration of this Zoning Ordinance; to increase the efficiency of zoning proceedings; to reduce the time consumed in processing applications for the various permits and reviews prescribed in this Zoning Ordinance and to relieve the Planning Commission of certain routine functions in order that it may focus its attention on its primary responsibility of comprehensive planning. Established in the Community Development Department, the ZA is the Community Development Director, and the Director may delegate authority and duties of the ZA to other staff members as required or appropriate to ensure discharge of the ZA’s functions and effective administration of the IZO. (IZO [§24.020 Zoning Administrator](#))

Planning Review Timeline and Activity

Planning review of MUP applications generally takes 12-16 weeks. After review by City staff, a decision is issued, subject to a 14-day appeal period. IZO [§24.090 Appeals](#) directs that a report shall be prepared and a public hearing by the appropriate review authority scheduled in a timely manner. Below are key dates and actions taken from the time of application and appeal submittals to the public hearing.

Date	Action
April 19, 2022	Floodplain Administrator meeting with appellant
October 24, 2022	Minor Use Permit application submitted
November 15, 2022	Planning preliminary determination letter issued
November 28, 2022	Planning receives direction from appellant
December 1, 2022	Planning commences with a full review of the MUP application
February 28, 2023	Planning issues denial letter
March 6, 2023	Planning hosts meeting with appellant
March 13, 2023	Appeal letter is filed
May 13, 2023	Public Notice distributed
May 23, 2023	Public Hearing

Planning staff cannot confirm if they spoke with the appellant before the appellant acquired the property. However, individual City staff calendar records indicate that on April 19, 2022, Floodplain Administrator/Deputy Public Works Director Gina Benedetti Petnic met with the appellant. Benedetti Petnic recalls informing the appellant that the City does not support the development of any structures within the Floodway, temporary or otherwise, as they would impede floodwater flows and reduce the carrying capacity of the Floodway. Benedetti Petnic also recalls referring the appellant to Planning Division for questions about General Plan policies and IZO regulations. Planning staff do not have a record of being contacted by the project applicant.

Planning staff regularly work with applicants during a project’s pre-application phase to provide information about goals, policies, and regulations that would apply to a development proposal; however, Planning staff was not invited to provide pre-application input prior to the submittal of the MUP application; therefore, Planning asserts that this application was not submitted pursuant

to the recommendation of the Planning Division. Staff understand that the proposed project application is based upon the appellant's interpretation of regulations in the City's Implementing Zoning Ordinance (IZO) Chapter 6 – Floodway and Flood Plain Districts.

Pursuant to IZO [§24.030\(C\)](#), a Planning entitlement application is deemed submitted when required application materials and the required cost recovery fee deposit(s) are received¹. Minor Use Permit application PLUP-2022-0027 was submitted online on October 24, 2022, and payment of the required cost recovery deposit was received on November 3, 2022. Because it was proposing development of a property known to be located in the highly restricted Floodway zoning district², the project immediately drew staff's attention. Rather than incurring cost recovery charges against an application that may not successfully complete review, staff initiated a preliminary review of the application as a customer service to the applicant.

On November 15, 2022, following an initial review that included analysis of the proposed land use for compliance with IZO §6.050 and reviews by Building Division and the City Engineer, Planning concluded that the proposed community marketplace land use is not supported by current Floodway District land use regulations. It shared this initial determination with the appellant on November 15, 2023, stating that "the proposed community marketplace on the parcel at 4875 Petaluma Blvd North and within the boundaries of the Floodway is not a land use that the IZO allows as a permitted use or upon obtaining a Zoning Permit or a Conditional Use Permit." Additionally, staff suggested land uses that may be allowed, subject to short-term Zoning Permit approval; indicated that if the applicant directs staff to proceed with MUP review, it could not make required findings to approve the application; that a decision to deny approval could be appealed to Planning Commission; and informed the applicant that cost recovery had not been charged for the initial review but that Planning would do so if it proceeds with review of the application. (**Attachment C** – Floodway Preliminary Determination Letter)

The appellant's response to the November 15, 2022 letter, challenged Planning Division's review and conclusion, and the appellant directed the Planning staff to proceed with review of the MUP application. (**Attachment D** – Floodway Determination Letter Rebuttal) With this instruction, Planning staff established a project cost recovery account and began formal review on December 1, 2022.

On February 28, 2023, the Planning Division concluded a thorough review of Minor Use Permit application PLUP-2022-0027 and informed the applicant via letter that Planning was unable to find that the proposed community marketplace use is not a conditional use that may be allowed

¹ The City utilizes a cost recovery model for most Planning entitlement applications. Under this model, the applicant will pay all staff time and materials costs. Applicants agree to this by completing and submitting the required Cost Recovery Form with application materials. (See Attachment E, PLUP-2022-0027 Cost Recovery Form.)

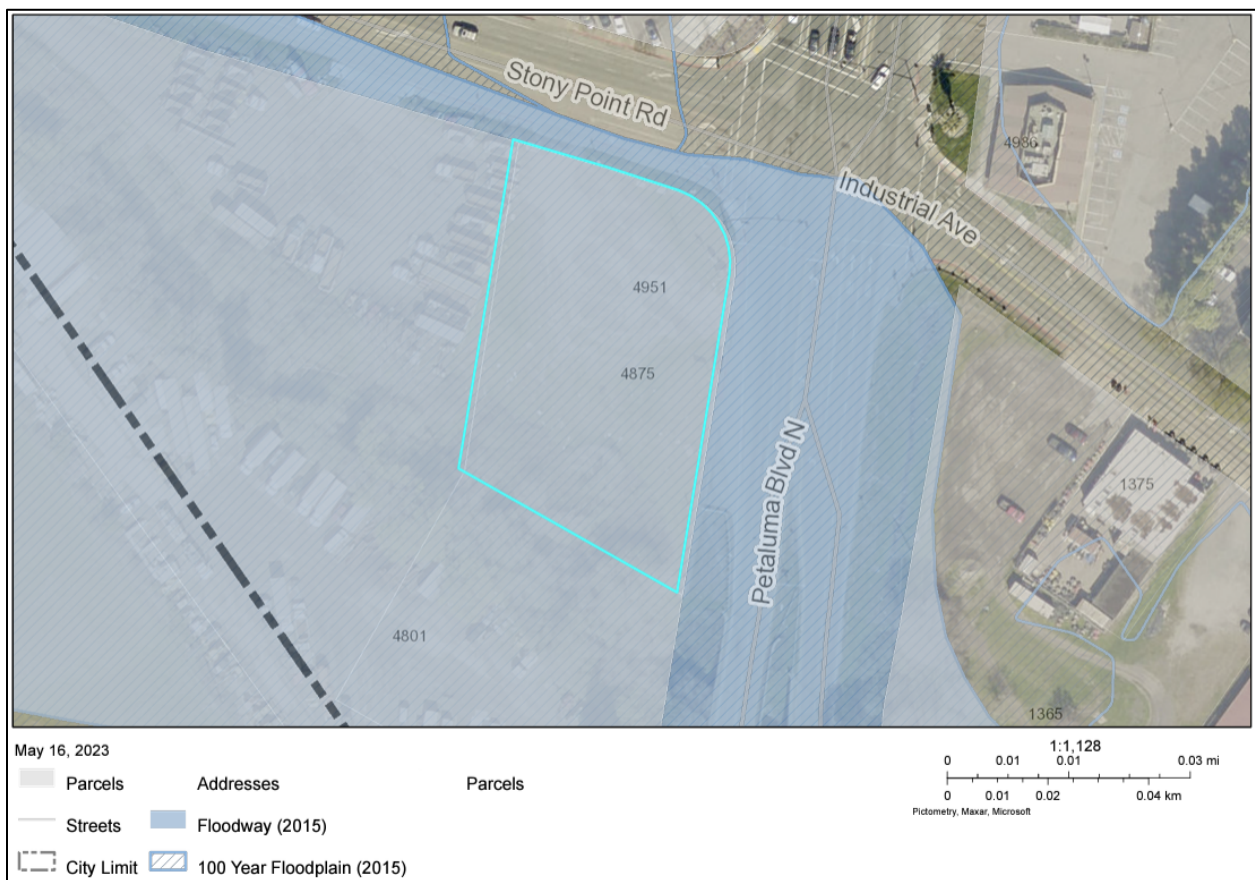
² Planning Division provides customer service to the public through its Counter Services role, which is staffed by dedicated Counter Planners. This role includes responding to a variety of questions ranging from inquiries about site-specific land development opportunities to requests for address changes, home occupation permits, and so forth. Based upon multiple inquiries received, Counter Services concludes that the project site was listed for sale in early 2022. The project site is memorable in that it is zoned Floodway, which is perhaps the most restrictive zoning district in the Implementing Zoning Ordinance, and Counter Planners advised each inquiry that the property is located entirely in the Floodway zoning district and that provisions of the Implementing Zoning Ordinance significantly, if not entirely, limit the development and use of properties within the Floodway zoning district.

with an approved use permit, as outlined in [IZO §6.050\(C\)](#); therefore, the land use cannot be approved (**Attachment E**).

Project Description

The project proposes developing and operating a community marketplace on an undeveloped lot at 4875 Petaluma Blvd. North. The project site is designated **Floodway** in the 2025 General Plan Land Use Map (General Plan, Figure 1-1) and is zoned *Floodway* in the IZO Zoning Map (Figure 2). The proposed community marketplace would host mobile food vendors, artisans, artists, food growers and producers, local beer and wine producers, musicians, and such – all of a mobile or transient nature – on a daily basis. Participating vendors would generally be offered to operate seven days a week from 6 A.M. to 12 A.M., which may vary by business needs.

Figure 2: City of Petaluma Zoning Map



(Source: City GIS, May 16, 2023)

The proposed site plan depicts parking areas, a customer seating area, mobile vendor areas, vehicle drive aisles, and portable restrooms/wash stations (Figure 3). The site plan document indicates that because there are no permanent structures being installed on the property, the site can be reconfigured as needed. Temporary bollards would be used to direct traffic flow, identify parking, and provide pedestrian parkways.

Property Line = 216.12'

Driveway Entrance

Property Line = 207.92'

Peabody Blvd N

Stony Point Rd

Property Line = 144.02'

10' Restricted Access (Riverbank Protection)

Flow of Traffic

Parking Area

40'

20'

20'

Mobile Food Vendors

Customer Seating Area

Miscellaneous Vendors

Portable Restroom / Warm Station

Miscellaneous Vendors

This is a detailed survey map showing two parcels, Parcel A and Parcel 2, with their boundaries, setbacks, and easements. The map includes the following details:

- Parcel A (see Note C):** A shaded orange area. Its boundaries are:
 - Top: $S\ 47^{\circ}05'23''\ E\ 40.30'$
 - Right: $S\ 60^{\circ}10'41''\ E\ 164.62'$
 - Bottom: $S\ 29^{\circ}47'47''\ W\ 106.2'$
 - Left: $S\ 09^{\circ}53'26''\ W\ 216.12'$
- Parcel 2:** An unshaded area below Parcel A. Its boundaries are:
 - Top: $S\ 51^{\circ}30'06''\ E\ 161.25'$
 - Right: $S\ 29^{\circ}47'47''\ W\ 106.2'$
 - Bottom: $S\ 09^{\circ}53'26''\ W\ 158.11'$
 - Left: $S\ 47^{\circ}05'23''\ E\ 40.30'$
- Setbacks:**
 - A red arrow indicates a **Minimum 100 ft setback from top of bank** for Parcel A.
 - Other setbacks shown include $100.0'$ and $100.0'$ from the top of bank.
- Easements and Roads:**
 - Stony Point Road:** Public ROW 86' wide.
 - Petaluma Boulevard North:** 50.00' wide.
 - South Bound Bridge:** 148.11' wide.
 - North Bound Bridge:** 148.11' wide.
 - Graphic Scale:** 0 to 30 feet.
- Other Features:**
 - Lot Line Adjustment PARCEL 2:** Indicated by a dashed line.
 - Utility Pole (typical):** Located near the bottom left.
 - Boundary:** Indicated by a dashed line.
 - Parcel A (see Note C):** Labeled in the bottom right.
 - Parcel 2:** Labeled in the bottom center.

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terrace exists on the upstream segment of the Denman Reach and pursuant to General Plan Policy 8-P-28 and 8-P-30, a 200-foot setback from the Petaluma River centerline is required of any additional development upstream of the Corps weir to accommodate a flood terrace system alongside the River in order to accommodate a 100-year storm event. Staff created an exhibit showing the approximate 100' setback from top of riverbank on the subject property, as the site does not have a flood terrace (Figure 4).

The MUP application also included vicinity and site existing conditions photos depicting an undeveloped site with dirt and gravel surface, property lines and dimensions data, and a completed Environmental Information Questionnaire, which is required application information.

DISCUSSION

Planning Review

Given the scope of the proposed land use entitlements, the City retains broad discretion in reviewing the project. The project is subject to the following standards of review:

- City of Petaluma General Plan 2025
- Implementing Zoning Ordinance, as applicable.

The purpose of the Discussion section is to provide an analysis of the proposed project's consistency with goals and policies contained in adopted plans that include the project site and compliance with applicable regulations in the Implementing Zoning Ordinance.

Planning Review Process for PLUP-2022-0027

Conditional Use Permit (CUP) review focuses on the proposed intended use of the property and the project's compatibility with existing or proposed development. This type of discretionary Planning entitlement is for a land use not allowed by right in a particular zone because the use could substantially impact the surrounding area. When a discretionary application such as a CUP is submitted, Planning routes the application material to all interested City divisions that may have regulatory authority during the planning entitlement process or the construction and use of the property. Following direction from the appellant, staff provided the MUP application to Building Division, Public Works and Utilities, Fire Department, and Planning's California Environmental Quality Act (CEQA) team. Application materials were also routed to the Flood Plain Administrator to consider the proposed encroachment into the floodway.

General Plan Consistency

All proposed development projects must be found to be consistent with the General Plan. For projects proposing uses permitted by right, the land use is understood to be consistent with the General Plan; however, for allowed uses requiring discretionary approval, consistency must be established. While consistency with General Plan does not require that a proposed project complies with all relevant goals, policies, and programs, "A project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear". (*Endangered Habitats League, INC v. County of Orange* (2005) 131 Cal.App.4th 777). The examples included below are applicable to proposed or existing Floodway development projects:

- The General Plan definition of the **Floodway** land use designation includes “No new development is allowed.”
- Goal 1-G-5 seeks to develop land uses in proximity to the River to ensure restoration of the natural River corridor, provide for adequate storm flow capacities, and enable public access and stewardship.
 - 1-P-42 requires that development on lands affected by the PRC designation shall be subject to a discretionary review process beyond that required by CEQA.
 - 1-P-46 requires that new development shall acknowledge, preserve, protect, and enhance the ecological and biological health and diversity of the River.
- Program 4-P-1(H) states that “Transfer development rights (TDRs) shall not be applied to lands within the Floodway as there is no development potential within the Floodway.”
- Program 4-P-1(K) “Prohibit placement of impervious surfaces in the Floodway (i.e. Parking lots, roadways, etc.) with the exception of pathways and emergency access improvements.”
- 8-Goal-8 Surface Water Management policies, including:
 - Policy 8-P-28, designating the area upstream of the Corps weir and below the confluence of Willow Brook Creek with the Petaluma River, within the floodplain and adjacent to the Petaluma River as the Petaluma River Corridor (PRC) and directing that the PRC shall be a set aside for the design and construction of a flood terrace system to allow the River to accommodate a 100-year storm event.
 - Policy 8-P-30, directs that, upstream of the Corps weir, within a 200’ setback from centerline of the Petaluma River, no additional development shall be permitted on lands within that 400’ wide corridor, given natural and physical constraints and includes a series of modeling and technical requirements and improvements.
 - Policy 8-P-32 directs continued implementation of mandatory zero-net fill upstream, and when appropriate zero-net runoff.

A primary role of zoning districts is to implement the General Plan land use classifications' broad objectives, goals, and policies through the associated zoning district land use regulations and development standards. A project that cannot be found to be allowed in a zoning district could be considered inconsistent with the General Plan land use designation that the zoning district seeks to implement. Planning's determination is that The Floodway LLC proposed development project is inconsistent with goals, policies, or programs contained in the 2025 Petaluma General Plan; therefore, neither the project's proposed land use nor the site development required to support the proposed land use can be approved.

IZO Compliance

IZO land use regulations are adopted pursuant to the City Council's finding that they implement the General Plan. Within the City limits, “the Petaluma River Basin Flood Plain and Floodway Areas are defined as those areas of Special Flood Hazard identified by the Federal Insurance Administration through a scientific and engineering report entitled “Flood Insurance Study for the City of Petaluma”, dated August 1979, with accompanying Flood Boundary and Floodway Map;

and accompanying Flood Insurance Rate Maps. Any official revisions or updates thereto are hereby adopted by reference and declared to be a part of the Implementing Zoning Ordinance in general and Chapter 6 – Floodway and Flood Plain Districts, specifically." (IZO [§6.020](#))

Land located within Areas of Special Flood Hazard is either classified as floodway and zoned *Floodway* or located outside the floodway and zoned *Flood Plain-Combining District*. Policies that allow development within the *Flood Plain-Combining District* should not be confused with more restrictive policies that regulate *Floodway* zones, in which the proposed project resides. Land use regulations applicable to the proposed development project are primarily located in IZO Chapter 6. [Section 6.050 Floodway District \(FW\)](#) establishes Permitted uses and Conditional uses that are allowed subject to Conditional Use Permit approval. The review authority is the Zoning Administrator/Director or designee. [Section 6.070](#) regulates physical development in all Areas of Special Flood Hazard within the City. Chapter 6 regulations applicable to the development of land located in Areas of Special Flood Hazard may more specifically regulate certain aspects of development, including land use, but they do not replace other land use and development regulations such as minimum parking requirements, driveway and circulation requirements, or performance standards, except where specified. They also do not modify Building or Fire Code regulations.

Chapter 6 Floodway and Flood Plain Districts establishes land use regulations for properties situated in floodways and plain lands to minimize property damage from flood waters, safeguard public health, safety, and general welfare, and protect human life and health. Developing in a floodway can pose several dangers and risks. Some areas of key concerns associated with developing in flood-prone areas include:

1. Increased flood risk: Floodways are areas designed to carry the highest volume of floodwater during a major storm event. Building in a floodway can disrupt the natural flow of water, leading to increased flood risk for the developed area and surrounding regions. Structures built in floodways may impede water flow, leading to higher floodwater levels and potential damage to the developed area and neighboring properties.
2. Structural damage: Flooding can cause significant damage to structures. The force of moving water during a flood can erode foundations, weaken walls, and compromise the overall structural integrity of buildings. Even minor flooding can result in long-term damage and expensive repairs.
3. Safety risks: Developing in a floodway can expose residents and property owners to significant safety risks. During a flood event, there is an increased likelihood of swift water currents, which can be dangerous for people trying to evacuate or rescue others. Floodwaters can also carry debris, toxins, and other hazardous materials that pose health risks.
4. Increased insurance costs: Insurance companies typically charge higher premiums for properties located in flood-prone areas, including floodways. The increased risk of flooding and potential damage translates to higher insurance costs, which can significantly impact property owners' finances.
5. Environmental impact: Developing in floodways can have adverse effects on the environment. Floodplains and floodways often serve as critical habitats for wildlife, and

construction activities can disrupt or destroy these habitats. Altering an area's natural drainage patterns and hydrology can also lead to long-term environmental degradation.

6. Regulatory and legal issues: In many jurisdictions, strict regulations and building codes govern development in flood-prone areas. Violating these regulations can result in legal consequences and potential fines. Obtaining permits and complying with the necessary requirements for building in a floodway can be complex and time-consuming.

The City's ability to create a floodway zone and establish regulations to restrict structures within the floodway which endanger lives or restrict the floodways' capacity is explicitly granted in the Cobey-Alquist Flood Plain Management Act (Water Code Sections 8400-8415). Zoning ordinances which regulate the floodways and only allow non-intensive uses such as incidental agriculture and parks and recreation have been broadly upheld by the courts. (See, e.g., *Helix Land Co. v. City of San Diego* (1978) 82 Cal.3d 932, 945; *Zisk v. City of Roseville* (1976) 56 Cal.3d 41, 49; and *Turner v. County of Del Norte* (1972) 24 Cal.3d 311, 315)

Land Uses Analysis

When reviewing proposed development for compliance with the IZO, staff consider both the proposed land use and physical development needed to support the proposed land use. The applicable regulations used to make the determination for this proposed land use and development are principally found in Chapter 3 (Development and Land Use Approval Requirements), Chapter 6 (Floodway and Flood Plain Districts), and Chapter 24 (Administrative Procedures). Staff first analyzed the MUP application for compliance with IZO §6.050(C) Conditional Uses, Floodway District, and §24.060 Conditional Use Permits.

Section 6.050(C) Conditional Uses, Floodway District

Pursuant to IZO [§6.050\(C\)](#), uses allowed subject to Conditional Use Permit approval are limited to low-impact river-related or recreational uses, public infrastructure, or river maintenance uses including:

1. Open air public and private recreational facilities such as parks, golf courses, and athletic fields.
2. Private and public docking, mooring, and boat launching facilities, providing such facilities shall be designed and constructed so as not to restrict the carrying capacity of the designated floodway.
3. Above-ground public utility and private service facilities such as water and sanitation pipelines, telecommunication facilities in accordance with Chapter 14.44 of the Petaluma Municipal Code, roads, bridges, and similar facilities, providing such facilities shall be designed and constructed so as not to restrict the carrying capacity of the floodway.
4. Improvements in stream channel alignment, cross-section, and capacity, including modification of river bank and flood protection levels, other than periodic dredging of material from the navigable portions of the Petaluma River for maintenance purposes, when said material is removed from the floodway area.

Staff was unable to find that the proposed community marketplace use is similar to any of the uses listed above that may be allowed subject to Conditional Use Permit approval. Furthermore, §6.050(C) does not give the Zoning Administrator/Director or its designee the discretion to

consider uses of the same general character as those conditionally allowed as it does in §6.050(B)(4) for Permitted uses.

IZO §24.060(E) describes the standards for review of a CUP to ensure the proper integration of uses and appropriate land uses within a specific area. An affirmative finding for all criteria is required for approval of CUPs and includes the following:

- Adequate siting of buildings and uses.
- Adequate traffic circulation and parking.
- Compatibility of the proposed building(s) and use with its environment.
- Duration of proposed building(s) and use is compatible with adjoining uses
- Is the use a matter of public convenience and necessity (finding for Alcoholic Beverage Establishments when required by ABC³)
- Conformance with the applicable requirements of the IZO and applicable policies and programs of the City's General Plan.

Assuming the proposed community marketplace use was a listed conditional use in §6.050(C), staff would still be unable to approve the project as it could not make the required findings to approve the MUP pursuant to IZO §24.060(E) in that:

1. The undeveloped project site is not adequate to accommodate the proposed use in that the site is not improved with parking, vehicle circulation, or pedestrian pathways, restrooms, or electricity or running water, all of which would be required for the development.
2. Outdoor activities are not adequately screened in that the site is undeveloped, and the project proposes that all operational activities would be visible from adjacent public rights-of-way.
3. The intensity of proposed activities is not compatible with adjoining floodway uses in that the project proposes retail use of the site on a daily basis.
4. The proposed project is not compatible with the environment of the floodway, and adequate vehicle and pedestrian circulation is not present and cannot be provided in accordance with floodway zoning and General Plan Policies.
5. The proposed project does not conform to the City's General Plan as analyzed in ***General Plan Consistency***, this section.

Section 6.050(B) Permitted Uses, Floodway District

In an effort to provide the appellant with a viable land use alternative that would not require a Conditional Use Permit, staff reviewed the proposed development project for compliance with §6.050(B) Permitted Uses, Floodway District. Pursuant to §6.050(B), uses permitted by right for the property are limited to the following:

1. Open space agricultural uses not requiring a fence or closed building, such as cropland, orchards, and livestock feeding and grazing.

³ Alcoholic Beverage Control Board of the State of California (ABC)

2. Circuses, carnivals, and other similar transient amusement enterprises provided a zoning permit has been obtained from the Community Development Department.
3. Modification of Native or Riparian Vegetation. Where modification or removal of native or riparian vegetation is required, such modification or removal may be permitted after obtaining a development permit consisting of written approval from the Director, provided that such proposed modifications in the Flood Plain have been found to be consistent with the General Plan.
4. Any other open type of use as determined by the Zoning Administrator (Director of Planning) to be of the same general character as the above-permitted uses.

The appellant's project description (**Attachment B**) makes the case that the proposed project is similar to "Circuses, carnivals, and other similar transient amusement enterprises" and offers several advantages over the stated use: (1) no large amusement rides would be erected, so vendors can easily remove items in the case of a flood event; (2) all vendors would be local, whereas circus operations are not; and (3) local vendors have a vested interest in supporting the community. The appellant requests that "to avoid any unnecessary delays, I respectfully request that this application be escalated to the Zoning Administrator (Director of Planning) as allowed by §6.050 part B4." The City does not disagree with the appellant's statements regarding the benefits of a locally-owned and operated activity. However, staff could not find that the proposed land use is similar to a transient amusement enterprise or any other open type of use of the same general character as the above-permitted uses for these reasons: (1) the proposed use is not transient in nature; (2) the primary operational activity is retail and not amusement; and (3) site development would be required to support the proposed use.

1. **The proposed use is not transient in nature.** The appellant proposes to use the property on a daily basis from 6 AM to 12 AM, noting that this may vary based on business needs. Neither the IZO nor Planning considers the ongoing daily use of the property by the same business operator to be temporary or transient, regardless of whether or not vendors leave the project site each day. The IZO does account for temporary land uses in [§7.070 Short-Term Activities](#), which include outdoor sales of Christmas trees, pumpkins, or other produce, goods, or merchandise; outdoor swap meets or flea markets; and carnivals, circuses, rodeos, fairs, festivals, tent sales, open-air theaters, exhibits, games of skill, rides, booths, concession stands and other temporary entertainment events open to the public which are held out-of-doors. It allows these temporary activities at the same location for up to 60 days per year, subject to Zoning Permit approval. As IZO §6.050(B)(2), permits circuses, carnivals, and other entertainment uses that obtain a zoning permit, for the proposed community market use to be found a similar use, it would also be required to obtain a zoning permit and only operate 60 calendar days a year. Since the proposed use is on a daily basis, it goes well beyond the 60 days maximum required for a Zoning Permit.
2. **The primary operational activity is retail and not amusement.** The project description references vendors who would use the site as "mobile food vendors, artisans, artists, food growers and producers, local beer and wine producers, musicians, and such." The IZO doesn't define a "community market" land use. When a project proposes a land use that isn't clearly defined by a zoning code, Planning's practice is to look at the operational characteristics and activities proposed and then relate them to code-defined land uses that are most similar. These vendors would primarily engage in retail sales, with entertainment

as an accessory use. The proposed operational activity is most similar to the outdoor sales, outdoor swap meets or flea markets, tent sales, and concession stands activities that are considered by the IZO as short-term activities. Accordingly, the proposed community market is more aligned with retail as opposed to an entertainment use like circuses and carnivals.

3. **Site development would be required to support the proposed use.** No City policy explicitly establishes minimum site development requirements to support land use; however, there are current applicable Planning, Building, and Public Works regulations that, when applied, would result in man-made changes to unimproved real estate. Examples of project sites where outdoor land use activities are supported by minimal site development include Brewsters Beer Garden at 229 Water Street and The Block Petaluma at 20 Gray Street. These restaurant land uses include food service activity provided by occasional mobile food trucks in outdoor areas where site development supports regular daily activity. Planning informed the appellant that “Planning review did not consider an outstanding policy question regarding what site improvements (such as driveway and parking space surfacing and weight rating, access points, bathroom provision, and ADA provision) are required for on-going use of a site, where fixed structures are not intended, but where man-made changes to real estate and a new use of the real property are proposed.” The proposed land use would require site development, and new development is not allowed in the Floodway; therefore, the proposed development project was denied.

As described in Planning Division’s letter to the applicant dated February 28, 2023 (**Attachment E**), staff were unable to find that the proposed land use is either permitted or allowed with a MUP by current Floodway and Flood Plain land use regulations. Specifically, Planning was unable to find that the proposed use is similar to at least one of several Permitted uses identified in IZO §6.050.B in that the proposed use is not an open space agricultural use or a circus, carnival, or other transient amusement enterprise for which a short-term Zoning Permit has been obtained from the Community Development Department. Likewise, Planning was unable to find that the proposed use was similar to open-air public and private recreational facilities such as parks, golf courses, and athletic fields or any other use identified in IZO §6.050.C that could be allowed subject to the approval of a conditional use permit.

Planning staff also considered the proposed development project under IZO [§3.030](#) Allowable Land Uses and Planning Permit Requirements. This section appears to provide for review of allowable land uses not listed in Chapter 4 – Zone Districts and Allowable Land Uses and Chapter 6 – Floodway and Flood Plain Districts. However, staff note that [§3.030.C](#) – Use not listed only references Chapter 4 allowable land uses. It concluded that this section is not applicable to Chapter 6 and, even if an interpretation would direct consideration of Chapter 6 for this development project’s review, findings could not be made to approve the proposed project.

Planning staff also considered the proposed development project under IZO [§24.080](#) – Floodway Variances, which may be used to grant relief from the requirements of Chapter 6 in order to permit construction in a manner otherwise prohibited by Chapter 6. This section was recently amended to require Planning Commission approval for all floodway variances. However, staff determined that use of this discretionary entitlement is precluded by General Plan policies prohibiting new development in the Floodway.

Staff advised the appellant that the project may be considered a short-term activity for which a Zoning Permit could be approved; however, Planning has not received a Zoning Permit application proposing an alternative project.

Required Site Development Analysis

The MUP application did not include details regarding site development that would be required to support the intended use. The appellant asserts that no development is required or proposed. During Planning review, City staff considered the proposed development project as a commercial land use project and provided the following feedback:

- Building Division identified that site improvements for public use facilities or places of public accommodation would be required, such as ADA facilities and access.
- Similarly, Public Works and Utilities noted that no fill materials or impervious surfaces are allowed and questioned how a firm surface could be provided for the use to prevent tracking of soil off the site into the public right of way.
- Planning notes that the project does not propose outdoor lighting, which would be required given the proposed hours of operation, and the IZO requires that parking areas, aisles, and access drives shall be constructed and maintained to provide a durable, dustless surface and shall be graded and drained to dispose of surface water without damage to private or public properties, streets, or alleys ([§11.070](#)).

In a letter dated February 15, 2023, the Flood Plain Administrator communicated that she could not support the project or issue a Development Permit because the proposed use is inconsistent with permitted or conditional uses allowed in the Floodway. In this letter, the Administrator notes that an encroachment exception provided in [§6.050 Floodway District \(FW\)](#) does not apply to a land use that is not specified as a permitted or conditionally allowed land use.

Summary of Planning Review Findings

After completing Planning review, it was determined that (1) the proposed development project is not consistent with the General Plan in that the **Floodway** land use designation and other policies or programs seek to prohibit new development in the Floodway, and (2) the proposed “community marketplace” use is not a use conditionally allowed in the Floodway zoning district, is not a permitted use in the Floodway zoning district, and is not similar to other uses permitted in the Floodway zoning district. Either reason could be grounds for denial of the proposed project. Furthermore, City staff determined that minimal site development would be required to support the proposed land use, and the Flood Plain Administrator determined that an encroachment allowing development in the Floodway would not be applicable to this project because the proposed land use is neither permitted nor conditionally allowed. The decision letter issued by Planning also contained three attachments with additional and clarifying information for the appellant.

- Attachment A – Flood Plain Administrator Letter dated February 15, 2023: Provided a determination from the Flood Plain Administrator that a Development Permit would not be issued for the project as proposed.
- Attachment B – Points of Clarification: Addressed the applicant/appellant's confusion surrounding the C1 notation on the City's GIS zoning map

- Attachment C – Further Information: Was provided to raise awareness regarding potential issues and information gaps in the Minor CUP application submittal.

On March 6, 2023, pursuant to a request by Planning, staff met with the appellant and reviewed the land use denial letter. Staff discussed exploring alternative options for temporary use of the site outside of typical flooding periods that may not trigger code requirements for permanent bathroom facilities, hard-surfaced parking areas, etc., and that would not classify as development, which is prohibited in Floodway zoning districts regardless of land use approval. Staff offered to schedule meetings with the Building Division, the City Engineer, and other City representatives to explore how any land use requiring supportive development could be designed.

As requested by the appellant, Planning staff scheduled a virtual meeting with Deputy Chief Building Official Charles Lucas and City Engineer Jeff Stutsman for March 9th to discuss the site development needed to support a community market with food trucks, tables, and restrooms. The appellant did not show. Planning staff scheduled an alternate virtual meeting with City Engineer Jeff Stutsman and the appellant for March 13th following the missed meeting on March 9th. Again, the appellant did not show.

Appeal

On March 13, 2023, the City Clerk's office received a timely appeal of Planning's Manager's decision to deny approval of Minor CUP (PLUP-2022-0027), filed in accordance with IZO §24.090 (**Attachment F**). The following analysis outlines each of the grounds for appeal with corresponding staff responses. Related grounds for appeal have been grouped together for clarity. The stated grounds for appeal include:

- Review process
- C1 and FW zoning designations
- Staff's interpretation of the IZO
- Required development
- Existing conditions of river
- FEMA Flood Maps

Appellant Appeal Point #1: "The Planning Department (PD) initially denied our application on November 15, 2022, without cashing our application fee check or allowing for a proper review of our application by all concerned city departments. In that denial letter, the PD promised to deny our application if we opted to move forward with it." (**Attachment F**)

Staff Response to #1: Planning staff did not initially establish a cost recovery account due to concerns about the proposed development in the Floodway and wanting to be conscientious of the cost of review to the appellant. Instead, it commenced a review of the application as a customer service to the appellant at no cost. This initial review considered the proposed land use and the physical development needed to support it. Based upon the staff's initial review of the application, the proposed land use was categorized as *General Retail* because it involves selling many lines of merchandise. Staff determined that *General Retail* use is not consistent with the Permitted or Conditional Uses as allowed in IZO §6.050(B)&(C). Staff did not "promise to deny" the

application if the MUP review proceeded; however, the letter is conclusive that staff did not feel that the MUP request could be approved (**Attachment C**). When the appellant's response was received on November 28, 2022, that a thorough analysis was desired, staff established a cost recovery account and began a full Planning review.

Appellant Appeal Point #2: “We moved forward with our application, and the PD finally sent us a formal denial of our application on February 28, 2023, exactly as promised in their November 15 letter. The second denial letter is primarily a repeat of their initial denial letter and does not include any response to or consideration for our rebuttal letter dated November 27, 2022. Note that we submitted our CUP application on October 24, so it took four months to receive a formal denial.” (**Attachment F**)

Staff Response to #2: Following receipt of the appellant's request to proceed with review of the MUP application on November 28, 2022, submitted application material was routed for review to the following departments and staff.

- Fire: Jessica Power, Fire Marshal
- Building Division: Charles Lucas, Deputy Chief Building Official
- Public Works: Jeff Stutsman, City Engineer
- Public Works: Gina Benedetti Petnic, Floodplain Administrator/Assistant Director of Public Works and Utilities
- Public Works: Pamela Tuft, Special Projects Consultant (former Planning Director/Floodplain Administrator)
- CEQA Review: Krystle Rizzi, Senior Planner

Through Citywide referrals to applicable departments and divisions, Planning is able to provide a comprehensive summary of issues identified by other City staff; this is routine for all applications. Additionally, Planning staff asked the Floodplain Administrator and Ms. Tuft to consider if a Development Permit for such a project, as required by IZO [§6.070 \(B\)](#) could be issued. Their determination that a Development Permit could not be approved and the proposed encroachment in the Floodway would not be permitted was included in the denial letter as “Attachment A– Floodplain Administrator Letter dated February 15, 2023”.

Staff also shared an initial list of information and studies needed to accommodate further evaluation and processing of a MUP request should the land use be found to be Permitted or allowed subject to Conditional Use Permit approval. Planning staff added “Attachment C – Further Information” to the denial letter to benefit the appellant, which was intended to raise awareness regarding potential issues and information gaps in the submittal. Jeff Stutsman, City Engineer, generally requested more details concerning vehicle flow, parking spaces, and how solid surfaces for vehicles and pedestrians are proposed on a parcel where no fill material is allowed. Likewise, Charles Lucas, Deputy Chief Building Official, noted that site improvements for public use facilities or places of public accommodation require building and grading permits.

Appellant Appeal Point #3: “The PD initially argued that we don’t understand the C1 designation and how it applies to our lot. In the most recent denial letter, they fail to address the objections we

made in our rebuttal letter dated November 27 and are now instead claiming that the C1 designation was a “mistake” and that they will work to remove it from the public maps. We have confirmed that “Attachment B – Points of Clarification” included in their denial letter was drafted by Tiffany Robbe. We purchased the property in good faith that the existing zoning ordinances would be upheld, not arbitrarily adjusted, after we purchased and cleaned up the lot.” (**Attachment F**)

Appellant Appeal Point #4: “Rather than discuss the C1 designation and our feedback on it, Ms. Robbe’s stated intention is to simply remove the C1 designation from the public maps to eliminate any further discussion. Again, we purchased the property in good faith that the existing zoning ordinances would be upheld, not adjusted after we purchased and cleaned up the lot. Note that I met with both Larissa Alchin in the PD and Gina Benedetti-Petnic in Public Works before purchasing the lot. We looked at the maps and zoning laws together and, based on their feedback, I was and remain confident that our proposed use of the lot is consistent with the spirit of the current zoning laws.” (**Attachment F**)

Staff Response to #3 & 4: Planning staff included “Attachment B – Points of Clarification” in the denial letter to explain that the *C1* (*Commercial 1*) notation on the City’s GIS zoning map at the intersection corner of Stony Point Rd. and Petaluma Blvd N. is an artifact of an older mapping layer. Before the 2016 FEMA mapping revision, the *Floodway* zoning designation covered most of the subject parcel, but an area of $\pm 3,500$ Square Feet at the parcel’s intersection corner was zoned *C1* (Figure 5). When City GIS data were updated to reflect 2016 changes to FEMA’s Flood Insurance Rate Maps (FEMA FIRM), the *Floodway* zoning district was constructed as an opaque layer overlaid atop zoning data (Figure 6).

Figure 5: City GIS data mapped prior to 2016 FEMA FIRM official revision

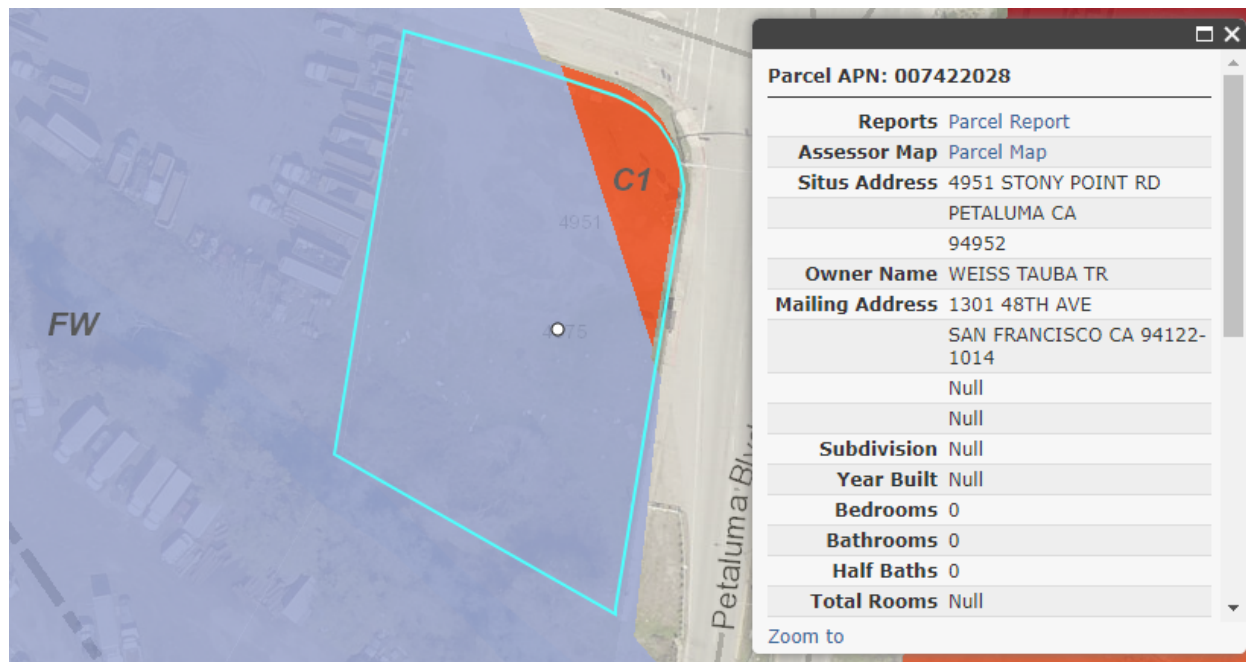
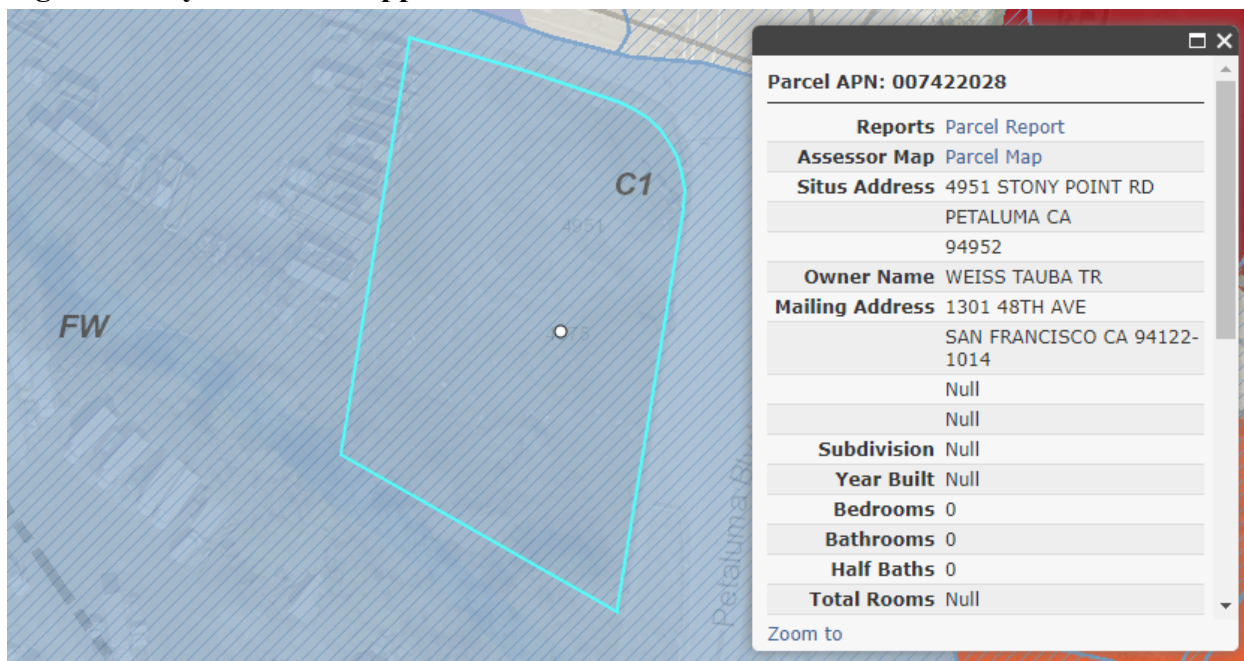


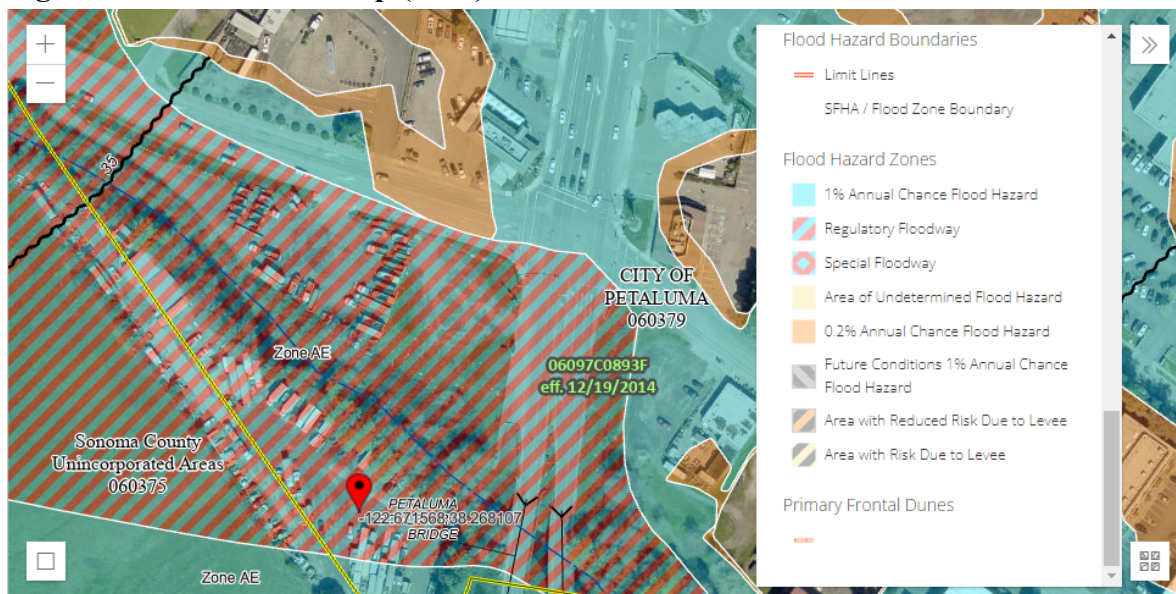
Figure 6: City GIS data mapped after 2016 FEMA FIRM official revision



Unlike the *Flood Plain Combining District* (FP-C), the *Floodway* (FW) zoning district is not an overlay district; therefore, no portion of land can be zoned both *Floodway* and *C1*. IZO §6.050 states, “All areas within the boundaries of the “Areas of Special Flood Hazard” and identified as “Floodway” areas are zoned Floodway”. IZO §6.020 states that “The Petaluma River Basin Flood Plain and Floodway Areas are defined as those areas of Special Flood Hazard identified by the Federal Insurance Administration through a scientific and engineering report entitled “Flood Insurance Study for the City of Petaluma”, dated August 1979, with accompanying Flood Boundary and Floodway Map; and accompanying Flood Insurance Rate Maps.

FEMA last updated its Petaluma flood maps in 2016. IZO §6.020 provides that “***Any official revisions or updates thereto are hereby adopted by reference and declared to be a part of this Ordinance***” (*emphasis added*). The subject property is located entirely within the FEMA-designated “Regulatory Floodway” (see Figure 7), which FEMA defines as “...the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Communities must regulate development in these floodways to ensure that there are no increases in upstream flood elevations.” The zoning designation has not changed since the 2016 FEMA map update which preceded appellant’s purchase of the property.

Figure 7: FEMA Flood Map (2016)



Additionally, the City’s public-facing zoning and land use maps contain the following disclaimer to address such mapping inconsistencies. Before viewing the maps online, all visitors must agree to the disclaimer.

Although every reasonable effort has been made to assure the accuracy of this data, the City of Petaluma makes no warranty, representation or guaranty as to the content, sequence, accuracy, timeliness or completeness of any of the data provided herein and explicitly disclaims any representations and warranties, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. The City of Petaluma assumes no liability for any errors, omissions, or inaccuracies in the information provided regardless of how caused and assumes no liability for any decisions made or actions taken or not taken by the user of the data in reliance upon any information or data furnished hereunder. Because the GIS data provided is not warranted to be up-to-date, the user should check with the City staff for updated information.

Accordingly, the zoning for this property has not been recently amended. Regardless, the appellant is not protected against a change in zoning because the appellant has not obtained “vested rights” as she has not obtained a building permit and performed substantial work and costs in reliance on the building permit. (*Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785).

Appellant Appeal Point #5: “The PD has failed to consider the spirit of the law in the existing zoning ordinances and is instead focusing on antiquated terminology. For example, the PD is focused on the fact that circuses and carnivals are specifically allowed on our lot, but a community marketplace is not because the words “community marketplace” don’t exist in the current zoning ordinances. They are also incorrectly defining the word “transient” to mean 60 days of operation per year, when the clear intent of that word in the zoning ordinance means “impermanent”. The simple fact that those arbitrary 60 days of use could be conducted during flood season proves that the word “transient” is directly tied to carnivals and circuses, which generally don’t stay in one

place too long. Again, the word “transient” clearly means “impermanent” in the spirit of the law.” (Attachment F)

Appellant Appeal Point #8: “The PD has failed to consider the allowed approval of “any other type of use as determined by the Zoning Administrator (Director of Planning) to be of the same general character as the above-permitted uses” as defined in §6.05 B4 of the existing zoning ordinances. This section was clearly included in the original zoning laws to account for the changes in business language over time and to prevent denials based simply on antiquated language. We believe that had our application been reviewed by staff that was more open-minded and objective, they would have taken advantage of §6.05 B4 rather than trying so hard to make an issue where one doesn’t exist.” (Attachment F)

Staff Response #5 & #8: Circuses and carnivals are not specifically allowed on the subject property; approval of a discretionary Zoning Permit and Development Permit are required before such an event commences operation and typically contain conditions limiting operation. Furthermore, Planning has no record of a circus or carnival receiving a Zoning Permit to operate on a temporary basis on the subject property. Typically, circuses, carnivals, and farmers’ markets are proposed outside the floodway, temporarily with approval of a Zoning Permit, and on developed property with existing infrastructure such as parking lots, the fairground, or parks. That is not the case with this proposed use.

Staff considered IZO §6.050(B)(4), which identifies “Any other open type of use as determined by the Zoning Administrator (Director of Planning) to be of the same general character as the above-permitted uses.” as an optional additional permitted use within the floodway. However, the “other open type use” would still be required to obtain a Development Permit (refer to **Required Site Development Analysis** section). If the use was found to be similar to a circus, carnival, or other similar transient amusement enterprises, it’s also required to obtain a Zoning Permit which, pursuant to IZO §7.070(F), the duration of a Zoning Permit shall “not exceed 60 days in any one calendar year.” The appellant only applied for a Conditional Use Permit, not a Zoning Permit or Development Permit; therefore, the “other open type use” option does not apply. Moreover, as discussed in the paragraph below, the only permitted use that is of the same general character as the proposed use would be the circus, carnival, or other transient entertainment use, which would require a Zoning Permit to find that the use falls within the circus and carnival transient use, and this community market proposed use would only be allowed for 60 days within the calendar year.

Instead, the project proposes allowing numerous non-fixed vendors on the property as a “community marketplace,” which is a unique use not listed in the IZO. According to statutory construction of zoning law, “where a particular use of land is not expressly enumerated in a city’s municipal code as constituting a *permissible* use, it follows that such use is *impermissible*.” (*City of Corona v. Naulls* (2008) 166 Cal.App. 4th 418, 413). Accordingly, as the IZO does not have a use designation for the community marketplace, it is not an allowable use. Appellants may contend that the proposed use can be classified as general retail, grocery, or restaurant uses. However, none of these uses are permissible uses in the floodway. (IZO §6.050). When enacting the IZO and specifically the allowable uses in the City’s floodway zones, City Council could have included “grocery” or “retail” uses but did not. This is probably because, as explained in greater depth below, the use is inappropriate in the floodway and would exacerbate the dangers to the public by developing the floodway. Therefore, regardless of if the proposed use is unique or an already existing use in the City’s IZO, the proposed use is not a permissible use on the property.

The appellant's belief that the proposed use falls within the permissible use of IZO §6.050(B)(2) "circuses, carnivals, and other similar transient amusement enterprises provided a zoning permit has been obtained from the Community Development Department" is incorrect. First, circuses and carnivals are events that occur infrequently and for a limited time. This use proposes to allow a community marketplace year-round except when there is potential flooding. Accordingly, the duration and intensity of the proposed use are drastically different than circuses or carnivals. Additionally, the language of IZO §6.050(B)(2) requires the permissible use to be a "circus, carnival, or other similar transient amusement enterprises", which the proposed use is not. The main purpose of the proposed use is for retail and not amusement enterprises akin to a circus or carnival. As the proposed use is neither transient nor its main purpose for amusement and entertainment, similar to a circus or carnival, it is not a permissible use under IZO §6.050(B)(2) and is therefore not a permissible use in the floodway.

The appellant contends that while the proposed use is not specifically defined within IZO §6.050(B)(2), the proposed use is similar and comparable to uses within IZO §6.050(B)(2) and, therefore, should be allowed. Staff could not make the findings required to establish the proposed use as a "similar and comparable use."

As previously described, [§3.030](#) Allowable Land Uses and Planning Permit Requirements appears to provide for review of allowable land uses not listed in Chapter 4 – Zone Districts and Allowable Land Uses and Chapter 6 – Floodway and Flood Plain Districts. Staff noted that [§3.030.C](#) – Use not listed only references Chapter 4 allowable land uses and concluded that this section is not applicable to Chapter 6. Even if an interpretation would direct consideration of Chapter 6 for this development project's review, findings could not be made to approve the proposed project. Below are staff responses to the required findings contained in §3.030.D:

1. The characteristics of, and activities associated with the use are similar to one or more of the listed uses, and will not involve a greater intensity than the uses listed in the zone;

Staff response: As explained in the preceding paragraph, the main purpose of the use is for retail and not entertainment purposes. Additionally, the proposed use is of greater intensity than a circus or carnival, as those events occur infrequently and for a limited duration. While this proposed use is for year-round except if there is a proposed flood. Accordingly, there will be more people coming onto the property, which, as discussed below, exacerbates the dangers of a flood.

2. The use is consistent with the purposes of the applicable zone;

Staff response: The purpose of the floodway zone is defined in IZO §6.010 and includes "minimizing property damage from flood waters and safeguarding public health, safety, and general welfare; protect human life and health..."

3. The use is consistent with the General Plan, and any applicable specific plan;

Staff response: Planning review concluded that the proposed development project is not consistent with applicable goals, policies, or programs the 2025 Petaluma General.

4. The use will be compatible with the other uses allowed in the zone; and

Staff response: Besides the transient circus and carnival use, the other permissible uses include "open space agricultural uses not requiring a fence or closed building such as cropland, orchards, and livestock feeding and grazing" (IZO §6.050(B)(1), "Modification

of Native or Riparian Vegetation” (IZO §6.50(B)(3) and “Periodic dredging of silt material”. Allowing other uses not requiring fencing or closed buildings reflects the IZO’s intent to prohibit structures in the Floodway.

5. The use is not listed as allowed in another zone.

Staff response: “Community market” is not an enumerated use allowed in the IZO. However, the use would likely be deemed “general retail” which is permitted throughout the City but not in the floodway. Assuming, that that the use was “general retail” while this finding can be made, finding 1 through 4 cannot.

As the Director cannot make all the required findings for a similar and comparable use, per IZO §3.030(D), the proposed use cannot be allowed in the Floodway as the use is not similar or comparable to a transient circus.

Accordingly, staff do not believe the proposed use is a listed use in the IZO and therefore is not an allowable use in Petaluma let alone the floodway. If the proposed use did fall within a listed use like “grocery” or “retail”, none of these uses are permissible in the floodway. For these reasons, staff properly denied the application.

The Floodway and Flood Plain Districts chapter of the IZO uses the word “transient” once, and that is in IZO §6.050(B)(2), where it states that circuses, carnivals, and other similar transient amusement enterprises may be permissible uses on lands designated as Floodway, provided that a Zoning Permit (and a Development Permit per §6.070(B) are first obtained. The term “transient” in this context is clearly associated to uses that pass-through town for a short time such as a carnival and not in reference to movable structures or vehicles that intend to operate on a daily basis.

Appellant Appeal Point #6: “We met with Andrew Tipple, Tiffany Robbe, and Larissa Alchin of the Planning Department on Monday, March 6, 2023 to discuss their most recent denial letter. In that meeting, we were surprised to learn that the word “permanent” is now a new word that is causing confusion. They insist that because we requested a CUP, as opposed to a one-time temporary use permit that a traveling circus or carnival might request, that our business is automatically deemed “permanent,” and therefore development must be required. We clearly intend to be a “permanent” business in the sense that we are not a traveling circus or fly-by-night operation, and plan to own and operate our business on that lot for many years to come. We are not, however, “permanent” in any sense that would require development, as we are a purely mobile operation. This new focus on the word “permanent” seems to be in response to our argument that the spirit of the law clearly allows for impermanent businesses, not just those deemed transient. In other words, we can be impermanent without the need for arbitrary time of use restrictions on the lot. There is absolutely no development required on the lot for the mobile business we intend to operate there. The constantly changing reasons for their denial are arbitrary and incorrect.” (Attachment F)

Staff Response to #6: For purposes of review of this project, we use the definition of development in Chapter 6, which generally defines development as “any man-made change to improved or unimproved real estate,” and the definition in Chapter 28, which generally defines Development Project as “any project which would establish any new or changed use of any real property.” Approval of a MUP would establish a new use of real property, that runs with the land and could be transferred or used by another owner or tenant.

As noted in the *Required Site Development Analysis* section and in the denial letter, Public Works, Building Division, and Fire require a minimum amount of development to a site proposed to be frequented by the public for safety purposes. Planning, Public Works, and Building attempted to meet with the appellant to provide general standards for parking areas, drive aisles, pedestrian walkways, ADA requirements, and restroom facilities. Because the proposed use within the floodway is unique, staff assessed site development requirements as if the use was proposed on any other parcel within the City and outside the Floodway. In this context, a proposed food truck establishment similar to “The Block” would be required to provide, at a minimum, permanent restrooms, solid parking surfaces, and ADA-compliant access. These types of structures are prohibited in the City’s Floodway due to the potential dangers they present.

IZO [§6.050.A](#) Encroachments in Floodway explains that “Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, no encroachments within Floodway lands are permitted; including fill, new construction, intensification of existing use, change to more intensive use, substantial improvements, and other development, except as specified herein as permitted or conditional land uses, and provided that a certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.”

The applicant also notes in appeal point 7 below that Cycle West Honda Suzuki, at 1375 Industrial Ave, has a building and a large gravel driveway with no paved driveways or walkways. While true, the property is located within C1 zoning with a portion of the property within the 100-Year Floodplain therefore, gravel (fill) could be brought on site, resulting in zero net fill, to provide a dust free solid surface that prevents tracking of soil off the site. Floodway zoning does not allow any fill materials on the site.

Similarly, the Fire Code also considers any temporary structures (tents, structures or trucks) located on a property for over 180 days as permanent. (CFC 3103.1 General. Tents and membrane structures used for temporary periods shall comply with this section and Section 3106. Other temporary structures erected for a period of 180 days or less shall comply with the California Building Code.)

In closing, the appellant’s assertion that no development is needed to operate a community marketplace on a vacant parcel is incorrect and clearly not the prevailing development standard for commercial land uses in Petaluma.

Appellant Appeal Point #7: “In the same meeting on March 6, we were also surprised to learn that the PD does not consider what any surrounding lots are doing or consider the current condition of the river or flooding or the efforts we’ve made to improve safety by dramatically cleaning up that lot. In other words, their decision is not the least bit subjective. In their argument that we are a “permanent” business, they claim we will likely need a paved driveway and pedestrian path and that because we are in a floodway, we can’t meet that requirement. However, the business across the street, Cycle West Honda Suzuki at 1375 Industrial Ave, has a building and a large gravel driveway (no paved driveways or walkways). Any similar comparisons that we tried to bring up were dismissed as irrelevant. But if our lot is the only one in the area deemed to not be able to conduct business safely, then the Planning Department’s negative decision seems to be nothing

more than arbitrary. Per our meeting, Tiffany Robbe stated that she will never approve any business use on that lot and that we were stupid to have purchased it.” (**Attachment F**)

Appellant Appeal Point #9: “We purchased the property knowing full well that it was located in a floodway, hence our business name: The Floodway Community Marketplace. We are not trying to change that designation as we have presented a business use that is perfectly suited to the current floodway designation. The city’s real concern should be with the water that flowed off our lot in the most recent flooding and settled in the parking lots and doorways of the restaurants and gas stations nearby. The city opted to remove those properties from the floodway designation and has the duty to prevent flood water from reaching them. Proper maintenance of the river would eliminate or lessen damage to those businesses, and that responsibility lies with the city. It is clear from the current filthy condition of that river that no sort of maintenance has occurred in years or likely decades. The existing debris in the river presents the greatest threat to surrounding businesses and the primary cause of any flooding, and not some unforeseen future debris. It’s odd that the city would obsess about the possibility of future debris while ignoring the fallen trees, pallets, large truck tires, shopping carts, and tons of garbage that has been sitting in that section of the river for years or decades. We did recently request a history of any maintenance on that portion of the river but the PD and Public Works have failed to respond with that data.” (**Attachment F**)

Appellant Appeal Point #10: “The PD insists that FEMA maps are created solely by FEMA, but they are actually created in coordination with local governments, which is clearly stated on the city’s own website. Tiff [sic] I must also note that in the most recent flooding at that intersection, the two restaurants across the street and the two gas stations east of us on Petaluma Blvd N flooded, even though they are not designated as being in the floodway zone. The idea that our lot – a mobile business with no permanent structures - is the only one in the area that cannot be used to conduct business safely is arbitrary and incorrect.” (**Attachment F**)

Staff Response to #7, #9, and #10: The properties located at 4995 Petaluma Blvd N (Pete’s Henny Penny), 4986 Petaluma Blvd N (Denny’s), 4990 Petaluma Blvd N (North Petaluma Gas Outlet), 4999 Petaluma Blvd N (Chevron), and 1375 Industrial Ave (Cycle West Honda Suzuki) are located outside the *Floodway* zoning district but within the *Flood Plain* Combining District. Development is allowed in the *Flood Plain* subject to regulations contained in [§6.070](#) General Provisions.

The proposed project site is located in an area of Special Flood Hazard identified by the Federal Insurance Administration through a scientific and engineering report accompanying Flood Insurance Rate Maps. Pursuant to IZO §6.050, all areas within the boundaries of the “Areas of Special Flood Hazard” and identified as “Floodway” areas are zoned Floodway. As described in §6.050(A), Floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential. It is also referred to as a regulatory floodway, which is defined as “The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot” ([§6.030.FF](#)).

Appellant Appeal Point #11: “The PD insists that our mobile community marketplace poses a hazard because floods are dangerous and include debris, but failed to consider that the lot is safer than it has been in decades because of our efforts in cleaning it up. We have removed a large volume of debris from the lot, including trees that fell onto our lot from the river (city owned property), garbage, hypodermic needles, used tampons, human feces, and more. If the risk of debris

was a genuine concern, the city would appreciate our efforts and properly maintain the river to avoid future flooding. I must also note that – in addition to removing the prior debris that could have been washed away in the most recent flooding - the poorly maintained river washed up a whole new set of garbage that must now be collected and discarded. The argument that we as individual property owners can or should control the state of the river and the amount of debris allowed to collect in the river is invalid, as that responsibility belongs to the city.”

Staff Response to #11: Property owners are responsible for maintaining their property and the City supports all efforts by the appellant to ensure the property is kept clean and well cared for. (See, Petaluma Municipal Code Section 1.10.075 requiring property owners to maintain vegetation, trash, and debris).

Public Works staff works in concert with the Police department and the community (through Friends of the Petaluma River) throughout the year to clear refuse and debris around the river

Public Comment

A Notice of Public Hearing on the appeal was published in the *Argus-Courier*, and notices were sent to residents and property owners within 1,000 feet of the subject property. On-site posting of the scheduled public hearing was also installed at the project site on May 13, 2023. The project file has also been made available for review during normal business hours at the City of Petaluma Community Development Department, Planning Division, located at 11 English Street in Petaluma. Staff received no public comments prior to the publication of this staff report.

CASE STUDIES

No case studies are associated with this staff report.

ENVIRONMENTAL REVIEW

The proposed project was excluded from California Environmental Quality Act (CEQA) review in accordance with Section 21080(b)(5) of CEQA Guidelines, which states that CEQA analysis is not needed for projects for which a public agency is recommending denial. (If, under some alternative scenario, the project were to be considered for approval in the future, additional CEQA review would be required, including site-specific analysis on potential impacts associated with reduced flood flow capacity and potential hazards from floating debris.).

CITYWIDE GOALS & PRIORITIES

FEMA Community Rating System (CRS)

The City of Petaluma has historically been impacted by flooding from sources such as general riverine and flash flooding from winter storms. The history of these events is well documented within the City’s adopted Local Hazard Mitigation Plan (LHMP). Images below were taken of the site during flooding events. The City works on multiple fronts to prevent and mitigate the physical and financial impacts of potential flooding for the community. One example is its participation in FEMA’s Community Rating System (CRS).

The CRS is a voluntary incentive program that recognizes and encourages community floodplain management practices that exceed the minimum requirements of the National Flood Insurance Program (NFIP). The National Flood Insurance Program (NFIP) is managed by the Federal

Emergency Management Agency (FEMA). NFIP provides insurance to help reduce the socio-economic impact of flooding and is available to anyone living in an area known as the Special Flood Hazard Area (SFHA) as defined by the FEMA's FIRMs (maps). Petaluma is one of 23,000 participating communities around the nation. The City diligently maintains a Class 6 rating in the CRS (Community Rating System) so that property owners of property within the Special Flood Hazard Areas, including the City, receive a 20% discount on insurance policy premiums.

In CRS communities, flood insurance premium rates are discounted to reflect the reduced flood risk resulting from the community's efforts that address the three goals of the program:

- Reduce and avoid flood damage to insurable property
- Strengthen and support the insurance aspects of the National Flood Insurance Program
- Foster comprehensive floodplain management

The CRS system is based on a 10-point system, so the more points a jurisdiction maintains, the lower the Classification number you achieve. Every point reduction below 10 (those communities and counties that join but do absolutely the minimum to retain their participation) results in a 5% reduction in flood insurance policy costs. As a result of the City's Class 6 rating, property owners and tenants, including the City, who own and insure property within the Special Flood Hazard Area (SFHA) receive that 20% discount. Those who are not located within the SFHA but maintain flood insurance receive a 10% discount on their flood insurance policies. It amounts to hundreds of thousands of dollars saved by residents and the City. The potential financial impact of losing those discounts is only one reason why the city diligently pursues compliance with the FEMA standards as well as the City's higher regulatory standards, for which we receive credit under Activity 412 of the CRS Manual.

According to Flood Plain Administrator Benedetti-Petnic and Public Works Special Projects Consultant Pamela Tuft, who formerly served as Planning Director and Flood Plain Administrator, approval of a MUP for the proposed project within the regulatory floodway could jeopardize the City's CRS Class 6 rating, which would result in a cost increase for all NFIP ratepayers.



Image 1: Taken on December 31, 2005 after the first storm of that week and before the second that followed the first week of January 2006 from sidewalk in front of the Chevron Station at the Highway 101 southbound offramp looking south toward Petaluma Boulevard North at Stony Point Road. The proposed Floodway project site is located just beyond the intersection past the Henny Penny sign on the right side of the picture. (Source: Pam Tuft, 2023)



Image 2: Taken the day after the January 9, 2023 storm. The worst of the out-of-bank flooding was subsiding, but the River corridor still flooded at or above capacity. The photo shows the intersection of Petaluma Boulevard North and Stony Point Road, looking at the twin bridges crossing the River. The proposed project site is the right side of the picture, with the flood flows from Stony Point crossing the site to return to the River. Concrete barriers placed at the property line perpendicular to Stony Point indicate what happens when obstructions are placed in the Floodway – water is backed up behind the barriers. (Source: Pam Tuft, 2023)



Image 3: The third in another aerial taken on January 10, 2023 showing what happens to flood flows directly downstream of the intersection of Rainsville Road and Stony Point Road. The River is out of bank and flooding outward from both banks. On the right the flooded pasture fronts on Bailey Avenue and the entire right-of-way of Stony Point Road is underwater, widening out onto the adjacent private property. Gravel placed as fill and compacted into parking lots has been placed on both sides of the River constricting its flow. The result is the widening and deepening of the water flowing from upstream created at the confluence of WillowBrook Creek coming under Stony Point and Highway 101 from the northeast with the Liberty/Marin/Wilson Creeks that flow around and across the KOA property. (Source: Pam Tuft, 2023)

RECOMMENDATION

In making the decision to deny approval of the requested MUP, staff determined that (1) the proposed development project is not consistent with the General Plan in that the **Floodway** land use designation and other policies or programs seek to prohibit new development in the Floodway; (2) the proposed “community marketplace” use is not a use conditionally allowed in the *Floodway* zoning district, is not a permitted use in the *Floodway* zoning district, and is not similar to other uses permitted in the *Floodway* zoning district. Pursuant to IZO §24.090.G, the review authority may consider any issue involving the matter that is the subject of the appeal and take one of the following actions:

1. Affirm, affirm in part, or reverse the action, determination, or decision that is the subject of the appeal;
2. Disapprove the land use permit approved by the previous review authority, even though the appellant only requested a modification or elimination of one or more conditions of approval; and
3. Adopt additional conditions of approval that may address issues or concerns other than the subject of the appeal.

Should the Commission decide to approve the appeal, thereby reversing the administrative decision to deny the Minor Use Permit, it is important for the Planning Commission to understand the potential ramifications on Floodway development citywide, the City’s CRS rating, and community health and safety concerns, which would be in violation of FEMA guidance and existing General Plan policies.

Any decision by the Planning Commission is appealable to the City Council.

ATTACHMENTS

- Attachment A: Draft Resolution Denying Appeal
- Attachment B: Project information received October 24, 2022
- Attachment C: Planning preliminary determination letter dated November 15, 2022
- Attachment D: Appellant response to determination letter dated November 27, 2022, and received November 28, 2022
- Attachment E: Planning denial letter dated February 28, 2023
- Attachment F: Appeal letter dated March 13, 2023

RESOLUTION 2023-10

CITY OF PETALUMA PLANNING COMMISSION

**DENYING THE APPEAL FILED BY HEATHER KRATT AND UPHOLDING A PLANNING
ADMINISTRATIVE DECISION TO DENY MINOR USE PERMIT FOR THE VACANT
SUBJECT PARCEL ZONED FLOODWAY (FW)
LOCATED AT 4875 PETALUMA BOULEVARD NORTH
APN: 007-422-028
FILE NO. PLAP-2023-0001 (PLUP-2022-0027)**

WHEREAS, on October 24, 2022, Heather Kratt (H&H Real Estate LLC), submitted an application for a Minor Use Permit (File No. PLUP-2022-0027) proposing development of a vacant parcel located at 4875 Petaluma Blvd North as a year-round community marketplace operating from 6 AM until 12 AM; and

WHEREAS, the parcel is located at 4875 Petaluma Blvd. North and is designated Floodway by the 2025 Petaluma General Plan Land Use Map and is zoned Floodway District (FW) by the City of Petaluma Implementing Zoning Ordinance Zoning Map; and

WHEREAS, on November 15, 2022, following an initial preliminary review of the proposed development project, Planning staff summarized concerns about land use compliance of the proposed development project with applicable Floodway District regulations in a letter to the appellant; and

WHEREAS, Planning concluded that the proposed community marketplace on the parcel at 4875 Petaluma Blvd N and within the boundaries of the Floodway is not a land use that the City's Implementing Zoning Ordinance (IZO) allows upon obtaining Minor Use Permit approval; and

WHEREAS, Planning staff informed the appellant that if directed to proceed with the full review, it would be denied in accordance with IZO §6.050, in that the proposed use is not conditionally allowed in the Floodway District; and

WHEREAS, on November 27, 2022, the appellant directed staff to proceed with the review of the Minor Use Permit application; and

WHEREAS, on February 28, 2023, staff concluded review and informed the applicant via letter that application for a Minor Use Permit was denied; and

WHEREAS, on March 13, 2023, the appellant filed a timely appeal of the decision with the City Clerk pursuant to IZO §24.090; and

WHEREAS, on May 13, 2023, the appellant installed two signs on-site to inform the public of this meeting with the Planning Commission and pursuant to IZO Section 24.100.B, each sign was at least 24 square feet in area and placed in a position most visible to the public along the Stony Point Road and Petaluma Boulevard North frontages; and

WHEREAS, on or before May 12, 2023, public notice of the May 23, 2023, Planning Commission hearing was published in the Petaluma Argus-Courier and mailed to residents and occupants within 1,000 feet of the site; and

WHEREAS, on May 23, 2023, the Planning Commission held a duly noticed public hearing to consider the appeal and all evidence, written and oral, submitted at the hearing; and

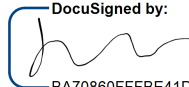
NOW, THEREFORE, BE IT RESOLVED by the Petaluma Planning Commission the following:

1. On May 23, 2023, the Planning Commission considered all evidence presented before and at the duly notice public hearing regarding this matter, and on the basis of the staff report, testimony, and other evidence, denies the appeal of Heather Kratt filed with the City Clerck on March 13, 2023, and upholds the administrative decision to deny Minor Use Permit approval for the proposed development project at 4875 Petaluma Boulevard North, File No. PLUP-2022-0027.
2. The proposed project was excluded from California Environmental Quality Act (CEQA) review in accordance with CEQA Guidelines Section 21080(b)(5), which states that CEQA analysis is not needed for projects for which a public agency is recommending denial.

ADOPTED this 23rd day of May 2023, by the following vote:

Commission Member	Aye	No	Absent	Recuse
Councilmember Cader Thompson	X			
Chair Bauer	X			
Vice Chair Hooper	X			
McErlane	X			
Potter			X	
Racusen	X			
Whisman	X			

DocuSigned by:



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Heidi Bauer, Chair

ATTEST:

APPROVED AS TO FORM:

DocuSigned by:



E46B369C8EDF404...

Andrew Trippel, Planning Manager

DocuSigned by:



25B8C556ED25412...

Dylan Brady, Assistant City Attorney

Project Statement

Project: 4875 Petaluma Blvd N

Property Owner:

H&H Real Estate LLC
Heather Kratt
heather.kratt@gmail.com
208-920-1373

Project Statement:

The property located at 4875 Petaluma Blvd N (parcel no. 007-422-028) sits at the northern gateway to downtown Petaluma. The property has no prior permit history, meaning it has never been used for any legal purpose that would provide an attractive, welcoming, or community-focused first impression to those entering downtown Petaluma from the northern gateway. Instead, the parcel was used to host at least a dozen unpermitted signs for businesses located elsewhere, housed abandoned vehicles and illegal parking, became a dumping ground for vast amounts of trash, and was cluttered with debris, most of which was fallen trees from the river. It was essentially an abandoned lot that was exploited for its location and lack of oversight and, hence, a blight at the northern gateway to downtown Petaluma.

The property has since been substantially cleaned up. All unpermitted signs, abandoned vehicles, trash, and debris have been removed. In the many months it took to return the lot to a clean slate, it is clear the community supports our efforts from the constant honks, waves, and thanks we receive from passersby.

I, Heather Kratt, the property owner and applicant both own the land as H&H Real Estate LLC and intend to operate a separate business called The Floodway LLC on this parcel.

The Floodway will be a community marketplace that will support the area's small business owners, including mobile food vendors, artisans, artists, food growers and producers, local beer and wine producers, musicians, and any other local vendors that highlight what Petaluma truly has to offer. Everything will be mobile or transient in nature, meaning every vendor can be easily moved or removed from the lot in the event of a flood situation. The Floodway will greatly improve the appearance of the northern

gateway to downtown Petaluma while highlighting local vendors and generating much needed tax revenue.

The Floodway will manage and maintain the lot, including renting space to the aforementioned vendor types. The Floodway will obtain all necessary permits for its role, and each participating vendor will be required to provide proof of its own permits – e.g., sales permit, business license, health permit – as required by law for its own business circumstances. No unpermitted or illegal vending will be allowed on the property. We are also not requesting any development or permanent structures with this application.

All participating vendors will be welcome to operate during the established operating hours of The Floodway, which may vary by business needs, but would generally be 6AM to 12AM (midnight).

The intended use of this parcel as a community marketplace meets the same general characteristics of existing permitted uses in a floodway, according to the Petaluma Zoning Code for floodways, section 6.050, parts B2 and B4. For ease of reference, the entirety of section 6.050 is included below:

6.050 Floodway District (FW)

All areas within the boundaries of the “Areas of Special Flood Hazard” and identified as “Floodway” areas are zoned Floodway.

A. *Encroachments in Floodway.* Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, no encroachments within Floodway lands are permitted; including fill, new construction, intensification of existing use, change to more intensive use, substantial improvements, and other development, except as specified herein as permitted or conditional land uses, and provided that a certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

B. *Permitted Uses, Floodway Districts.* The following uses are permitted upon obtaining a Development Permit per Section 6.070(B) without a Use Permit where modification or removal of native vegetation, including trees, is not required:

1. Open space agricultural uses not requiring a fence or closed building such as cropland, orchards, and livestock feeding and grazing.

2. Circuses, carnivals, and other similar transient amusement enterprises provided a zoning permit has been obtained from the Community Development Department.

3. *Modification of Native or Riparian Vegetation.* Where modification or removal of

native or riparian vegetation is required, such modification or removal may be permitted after obtaining a development permit consisting of written approval from the Director, provided that such proposed modifications in the Flood Plain have been found to be consistent with the General Plan.

4. Any other open type of use as determined by the Zoning Administrator (Director of Planning) to be of the same general character as the above permitted uses.

5. Periodic dredging of silt material from the navigable portions of the Petaluma River for maintenance purposes, when said silt material is removed from the floodway area.

C. *Conditional Uses, Floodway District.* The following uses may be permitted after approval of a conditional use permit by the City of Petaluma:

1. Open air public and private recreational facilities such as parks, golf courses, and athletic fields.
2. Private and public docking, mooring, and boat launching facilities, providing such facilities shall be designed and constructed so as not to restrict the carrying capacity of the designated floodway.
3. Above-ground public utility and private service facilities such as water and sanitation pipe lines, telecommunication facilities in accordance with Chapter 14.44 of the Petaluma Municipal Code, roads, bridges, and similar facilities, providing such facilities shall be designed and constructed so as not to restrict the carrying capacity of the floodway.
4. Improvements in stream channel alignment, cross section, and capacity including modification of river bank and flood protection levels, other than periodic dredging of material from the navigable portions of the Petaluma River for maintenance purposes, when said material is removed from the floodway area.

Source: <https://petaluma.municipal.codes/ZoningOrds/6.050>

The proposed Floodway community marketplace is similar in nature to a “circus, carnival, or other similar transient amusement enterprises”, as permitted in section B2, with the following major advantages:

- No large amusement rides will be erected on the lot, meaning all vendors can more easily move in the event of a flood situation. It takes a large crew and many hours to dismantle a rollercoaster or other amusement ride, but mere minutes to fold up a tent or drive a food truck or trailer off the lot.
- All vendors will be local to the area and will highlight the food, art, and talent that we have right here at home. While some circuses and carnivals have permanent locations, most travel the country, and do not sell or support local food products or offer anything that could be considered unique to our area.

- All vendors of The Floodway will have ties to the community, so have a vested interest in the ongoing betterment of our community. Vendors who are renting a space for a short time before heading to another state have no need or motivation to consider the long-term improvements of our community.

To avoid any unnecessary delays, I respectfully request that this application be escalated to the Zoning Administrator (Director of Planning), as allowed by section 6.050 part B4.

I am absolutely confident that the proposed use of this property as a community marketplace meets the same general characteristics of existing permitted uses as defined in section 6.050 part B2, so would appreciate the city's recognition and support of the great work I have and will continue to perform in order to finally put this property to use as an attractive, well-managed, community-focused, tax revenue generating business that the northern gateway to downtown Petaluma deserves. Thank you.



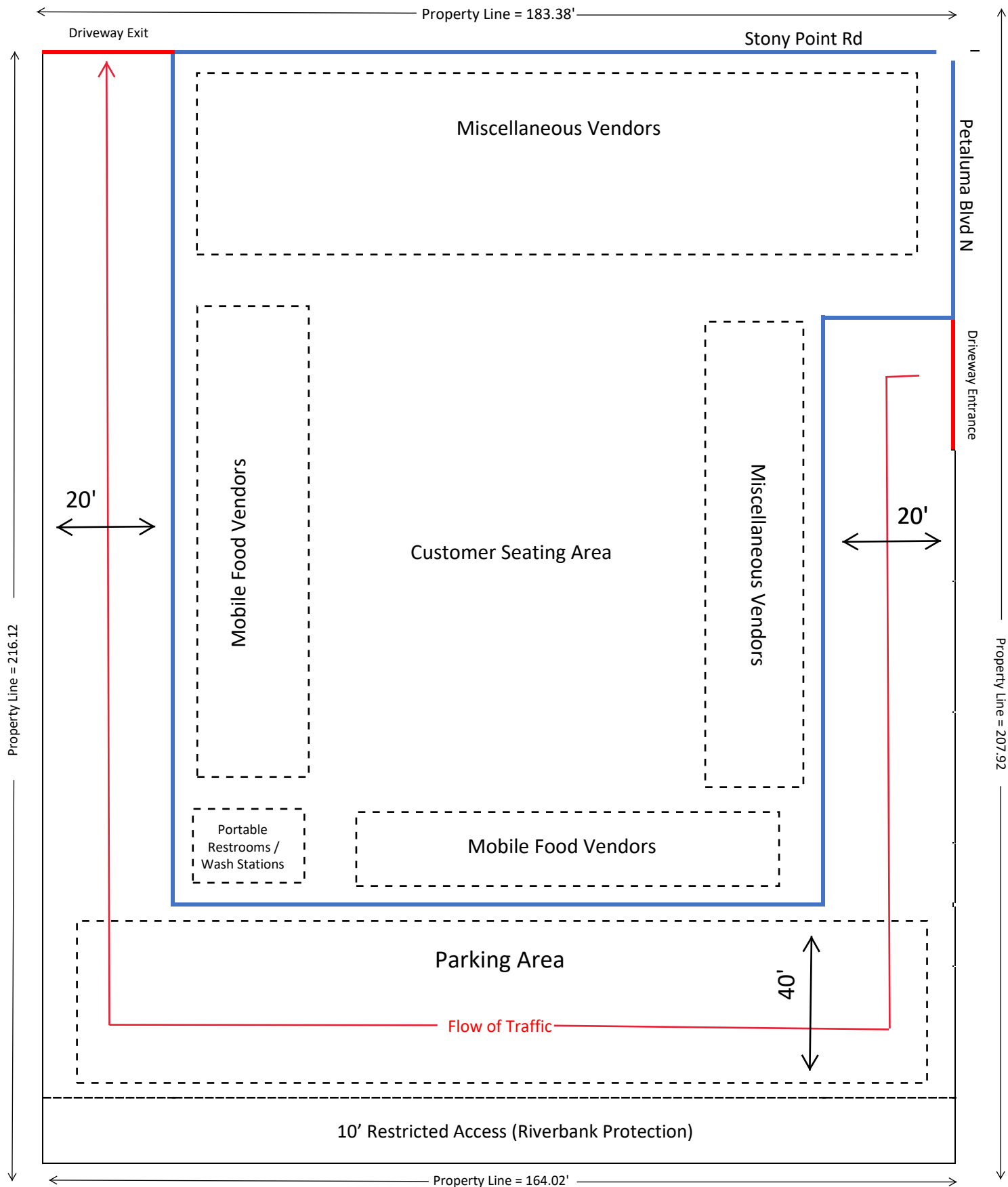
Heather Kratt, Property Owner

10/23/22

Date

Tentative Site Layout

Note: Because there are no permanent structures being installed on the property, the site layout can be easily reconfigured as needed. Temporary bollards will be used to direct traffic flow, identify parking, and provide pedestrian walkways.



Vicinity and Aerial Context Map

Subject Property:

THE FLOODWAY

4875 Petaluma Blvd N

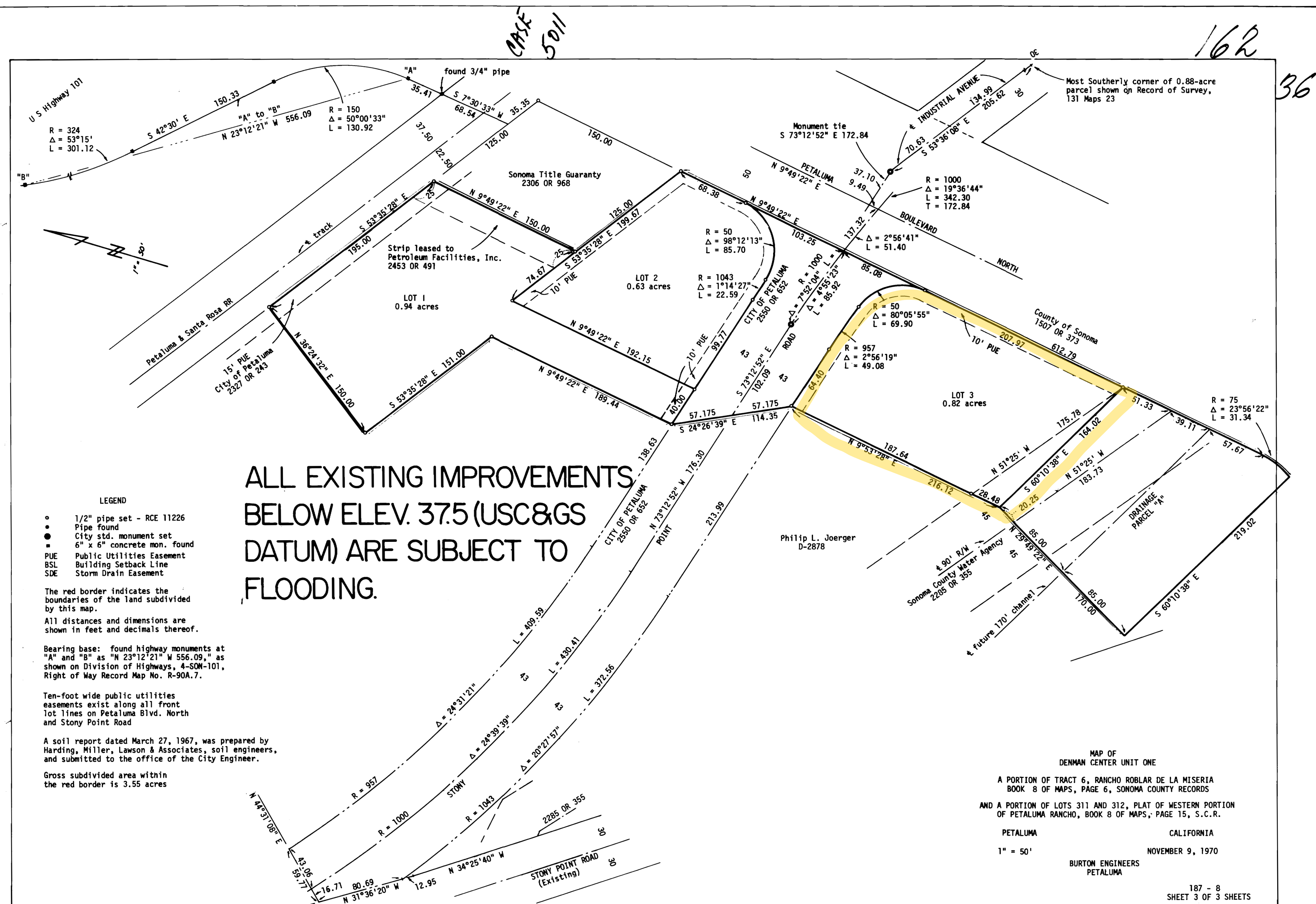


Map Source: Source: <https://www.google.com/maps/place/4875+Petaluma+Blvd+N,+Petaluma,+CA+94952/@38.2689555,-122.6711956,18z/data=!4m5!3m4!1s0x8085b4fdd05c4a75:0xe24108d074346fb4!8m2!3d38.2685807!4d-122.6707664>

Property Lines and Dimensions

The property lines and dimensions for 4875 Petaluma Blvd N are shown on the included city recorded map (Map of Denmar Center Unit, 187-8, sheet 3 of 3).

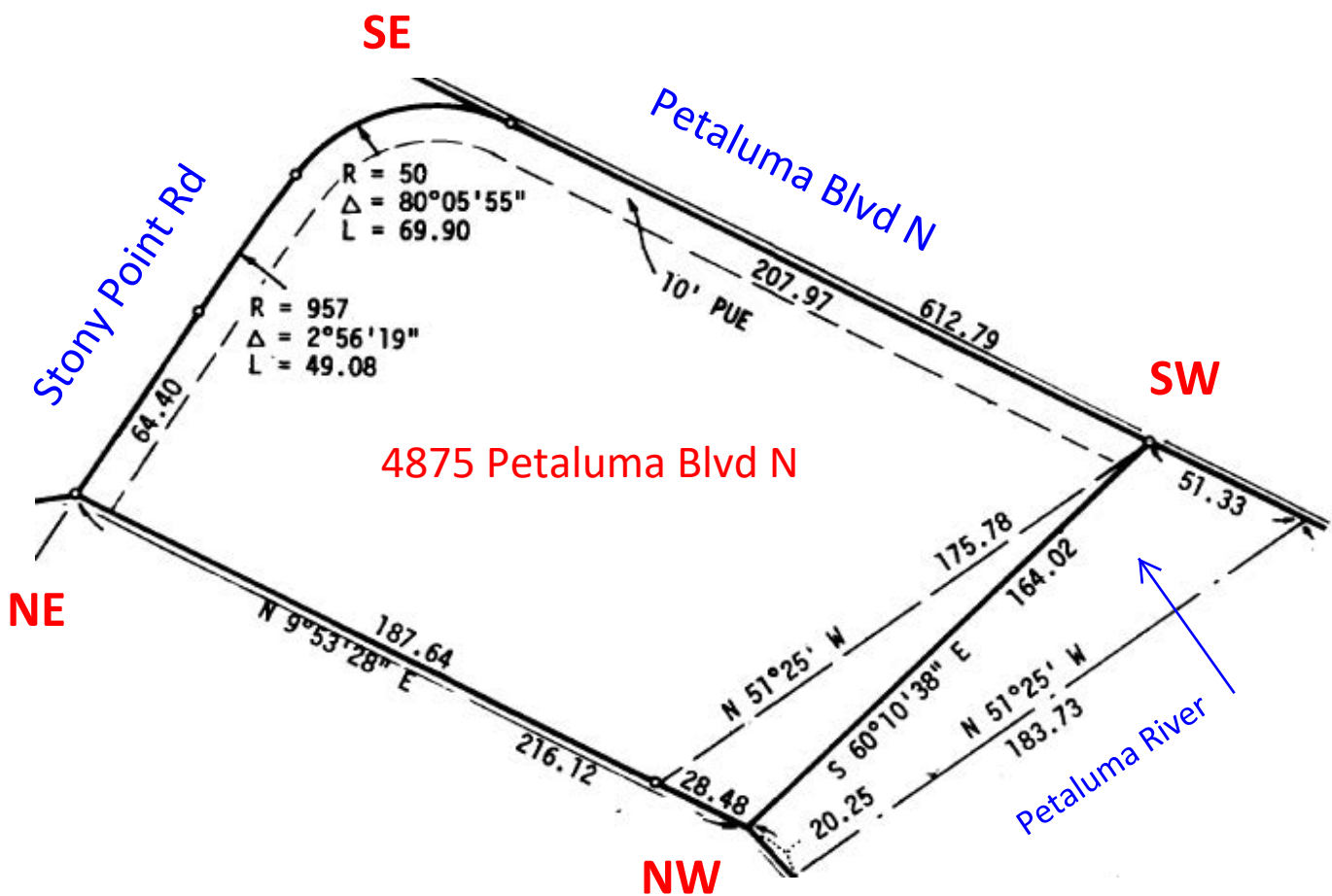
A 10-foot easement runs along the Petaluma Blvd N and Stony Point Rd sides of the property, as indicated on the map. The easement on the Stony Point Rd property line is being used for PG&E electrical and gas lines.



Site Photos

Included are photos of the current condition of the lot located at 4875 Petaluma Blvd N.

For ease of reference, the map below identifies major streets, the proximity of the Petaluma River, and the ordinal direction of each corner of the property line.





Above photo taken from NE corner of lot, looking toward SW corner of lot.



Above photo taken from midpoint of NE to SE side of lot, looking toward NW corner of lot.



Above photo taken from SW corner of lot, looking toward NE corner of lot.



Above photo taken from SW corner of lot, looking toward NE corner of lot.



Above photo taken from SW corner of lot, looking toward SE corner of lot.



Above photo taken from SW corner of lot, looking toward NW corner of lot.



Above photo taken from midpoint of NW to SW side of lot, looking toward SE corner of lot.



Above photo taken from NW corner of lot, looking toward NE corner of lot.



CITY OF PETALUMA

POST OFFICE BOX 61
PETALUMA, CA 94953-0061

Teresa Barrett
Mayor

Brian Barnacle
D'Lynda Fischer
Mike Healy
Dave King
Kevin McDonnell
Dennis Pocekay
Councilmembers

November 15, 2022

Heather Kratt
H&H Estate
PO Box 750354
Petaluma, CA 94954

RE: The Floodway, proposed Conditional Use Permit
APN: 007-422-028
File No. PLUP-2022-0027

Dear Ms. Kratt:

Planning staff have received your Minor Conditional Use Permit application (City Application No. PLUP-2022-0027) and required cost recovery deposit for a proposed project at 4951 Stony Point Road (APN: 007-422-028, referred to in your application as 4875 Petaluma Blvd North) in Petaluma. The Project Statement and Tentative Site Layout describe using the site as a “community marketplace” to host mobile food vendors, artisans, artists, food growers and producers, local beer and wine producers, musicians, and such – all of a mobile or transient nature – on a daily basis. They also indicate that any structures utilized would be temporary and removable in a flood situation. Before billing the project’s cost recovery fund to cover the staff time to route the project for Citywide review and continued Planning review your proposed Conditional Use Permit for the “community marketplace”, staff wanted to communicate our concern about the CUP request for a community marketplace at this location for the reasons described below.

When reviewing a project for compliance with the Implementing Zoning Ordinance (IZO), staff considers both the proposed land use and the physical development needed to support the proposed use. Based upon staff’s initial review of your application, we would categorize the proposed land use as *General Retail* in that it involves the selling of many lines of merchandise. *General Retail* uses are typically open to the public and operate 5-7 days per week for 8-10 hours per day, similar to your proposal. Most *General Retail* uses occupy commercial structures on sites developed with parking, driveways, pedestrian access facilities and access to utilities provided. You clearly indicate that your project does not propose permanent construction or site development.

As your Project Statement notes, the parcel is located entirely within a *Floodway* District (FW) and is zoned *Floodway*. Implementing Zoning Ordinance (IZO) [Section 6.050\(A\)](#) states that since the regulatory *Floodway* is “an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, no encroachments within Floodway lands are permitted; including fill, new construction, intensification of existing use, change to more intensive use, substantial improvements, and other development.”

**Community Development
Department**
11 English Street
Petaluma, CA 94952

Phone (707) 778-4301
Fax (707) 778-4498

Building Division
Phone (707) 778-4301
Fax (707) 778-4498
E-Mail:
cdd@cityofpetaluma.org

To Schedule Inspections
Phone (707) 778-4479

Planning Division
Phone (707) 778-4470
Fax (707) 778-4498
E-Mail:
petalumaplanning@cityofpetaluma.org



Floodway zoning does recognize that some uses may be appropriate. As outlined in IZO Section 6.050(B) uses are limited to activities such as open space and agricultural uses not requiring a fence or closed building, circuses, carnivals, and other similar transient amusement enterprises provided a zoning permit has been obtained from the Community Development Department, and any other open type of use as determined by the Zoning Administrator (Director of Planning) to be of the same general character as these permitted uses. Planning staff note that:

- The *General Retail* use that you are proposing is not consistent with agricultural activities or transient amusement enterprises;
- While one may consider the proposed community marketplace concept to be an “open type of use,” a reoccurring daily operation would not be considered transient, and the zoning permit required for transient uses cannot be obtained for longer than 60 days per year; and
- Operation of a General Retail use of the scope and intensity that you propose would require site development in the form of parking, driveways, pedestrian walkways, and installed utilities in order for it to support essential public safety, health, and welfare needs.

Additionally, land uses that may be allowed within the *Floodway* through approval of a Conditional Use, as allowed by IZO [Section 6.050.\(C\) 1-4](#), are limited to:

1. Open air public and private recreational facilities such as parks, golf courses, and athletic fields,
2. Private and public docking, mooring, and boat launching facilities,
3. Above-ground public utility and private service facilities such as water and sanitation pipelines, roads, bridges, and similar facilities, and
4. Improvements in stream channel alignment, cross section, and capacity including modification of riverbank and flood protection.

The proposed community marketplace does not appear to fit within the uses allowed for consideration through the Use Permit process.

In summary, the proposed community marketplace on the parcel at 4951 Stony Point and within the boundaries of the *Floodway* is not a land use that the City’s Implementing Zoning Ordinance allows as a permitted use or upon obtaining a Zoning Permit or a Conditional Use Permit. Based on this staff is not able to support the Conditional Use Permit as requested.

You may wish to consider the short-term Zoning Permit vehicle (IZO [Section 7.070](#)) as a possible means of proposing a community marketplace at the site, but of a lesser extent; including not more than 60 days in the year and outside of the defined rainy season. Should you pursue the short-term Zoning Permit approach, full review would then occur by the various City Departments. As early notes, Planning would anticipate that proposed hours of operation would need to be minimized, parking provision and drive aisle accessibility would need to be detailed and code compliant, and aesthetics would need to be detailed and considered.

If you would like to move forward with your application, by directing deposit of the initial deposit on the staff time and materials to process the application, City staff will need to deny the administrative application. That denial could then be appealed to the Planning Commission for

their consideration as to whether a community marketplace within the *Floodway* is (1) permissible within the constraints of the IZO and, if so, then (2) a desired use within the *Floodway*.

I expect that this information is a great disappointment. We hope that you will take this information as constructive and in the spirit of minimizing your application deposit costs. We have not charged the project's cost recovery fund for the preparation of this correspondence, but we must do so if the application proceeds.

If you have any questions regarding this letter, please contact me at trobbe@cityofpetaluma.org or at (707) 778-4318.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tiffany S. Robbe".

Tiffany Robbe
Deputy Planning Manager

Copy: Andrew Trippel, Planning Manager
Heather Hines, Interim Community Development Director

November 27, 2022

Re: The Floodway Community Marketplace – 4875 Petaluma Blvd N – PLUP-2022-0027

To Whom It May Concern:

I'm surprised by the Planning Department's quick dismissal of our application. I believe I presented a very clear and compelling application fully deserving of proper consideration. It appears that our application was not escalated as requested, but instead summarily dismissed without conducting a proper review, sharing it with other city departments, asking us any clarifying questions about our project, or even cashing our check.

I firmly believe there will never be a better proposed use for that lot. It meets the existing allowed uses, requires no development, and will be an attractive business at the northern gateway to downtown Petaluma. It's a win-win. I'd think the city would be grateful that two skilled business owners purchased the lot, cleaned it up, and intend to generate much needed tax revenue for the city.

Your arguments against our business seem to focus on keywords picked from our application rather than their intent in the zoning laws. Those keywords or alleged concerns include: floodway, retail, and transient.

We are fully aware that our lot is in a floodway, hence the tongue in cheek name we gave to our community marketplace. Deputy Planning Manager, Tiffany Robbe, has suggested that a floodway is "hazardous" and therefore we shouldn't operate a business there. If and when there is another flood, it won't have any great impact on our business because we are mobile. We will have advance notice of any impending flood and will quickly vacate the lot. The fact that it's a floodway is irrelevant to the operation of our business.

It seems that the real risk in a flood is to the surrounding properties that have permanent structures and are just across the street from our lot. I was told that the last time it flooded (about 15 years ago), the city had to pay damages to those businesses because the river had not been properly maintained. We are not trying to remove the floodway designation from our lot and there will be no assets present for a flood to damage.

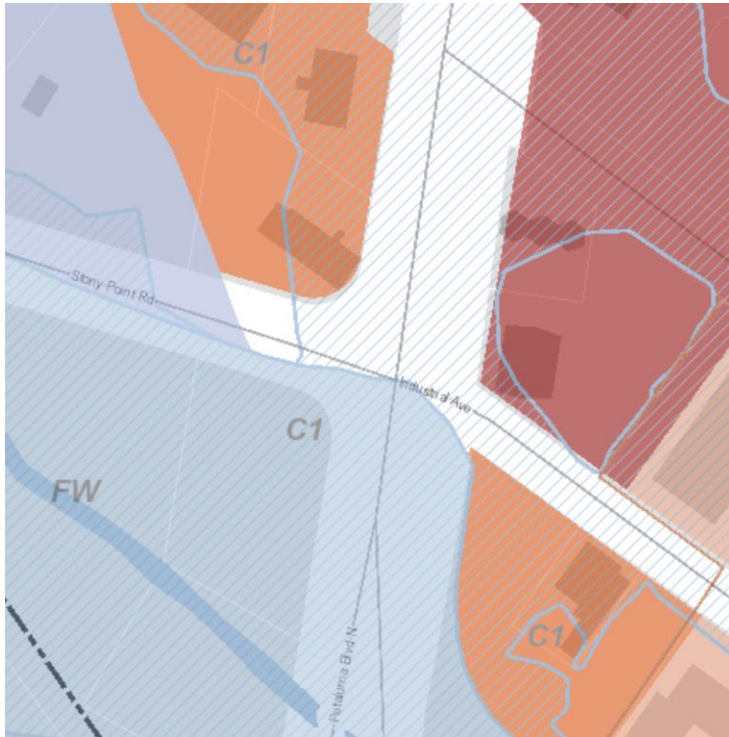
It's curious that the floodway map shows the floodway taking a sharp right turn at Petaluma Blvd N. If our lot floods, the lots across the street will also flood, so I'd be interested in knowing how the designations for the surrounding properties were arrived at. The floodway designation seems arbitrary.



Source: [FEMA Flood Map Service Center](#) | [Search By Address](#)

Ms. Robbe suggests that retail is not allowed on our lot, but everything I've read conflicts with that conclusion. The zoning law specifically identifies circuses and carnivals as an allowed use, and those are retail businesses. Our community marketplace is similar in nature to a circus or carnival except we won't have dangerous amusement rides. Our lot is surrounded by other retail businesses. It is also zoned C1, which states "the C1 zone is applied to existing smaller-scale shopping centers with off-street parking, or clusters of street-front stores that serve the surrounding neighborhood." That clearly describes our intended use of the lot, as we will be a cluster of vendors with off-street parking serving the surrounding neighborhood.

We've spent a lot of time and money purchasing and cleaning up this lot. We purchased the lot in good faith because it is zoned for commercial business.



Source: [Zoning Map - City of Petaluma](#)

Finally, Ms. Robbe seems concerned with the use of the word "transient" in the zoning law. It's clear that the intent of the word "transient" in the zoning code means the business can be moved in the event of a flood, as opposed to building a permanent structure on the lot. In this context, the word transient means impermanent. Every vendor on our lot will be mobile, so all can be quickly and easily moved in the event of an imminent flood or any other natural disaster. Also, I see no reason why we would be restricted from using our lot year-round when there are neighboring lots that also have the floodway designation yet operate year-round.

Please escalate and process our application, as was requested back on October 23. When sharing our application with the other city departments, please include Ms. Robbe's dismissal letter and my response to it. Thank you.

Regards,

Heather Kratt



CITY OF PETALUMA

POST OFFICE BOX 61
PETALUMA, CA 94953-0061

Kevin McDonnell
Mayor

Brian Barnacle
Janice Cader-Thompson, *Dist. 1*
Mike Healy
Karen Nau, *Dist. 3*
Dennis Pocekay
John Shribbs, *Dist. 2*
Councilmembers

**Community Development
Department**
11 English Street
Petaluma, CA 94952

Phone (707) 778-4301
Fax (707) 778-4498

Building Division
Phone (707) 778-4301
Fax (707) 778-4498
E-Mail:
building@cityofpetaluma.org

To Schedule Inspections
Phone (707) 778-4479

Planning Division
Phone (707) 778-4470
Fax (707) 778-4498
E-Mail:
petalumaplanning@
cityofpetaluma.org



February 28, 2023

Heather Kratt
H&H Estate
PO Box 750354
Petaluma, CA 94954

RE: The Floodway – Request for Conditional Use Permit

APN: 007-422-028

File No. PLUP-2022-0027

Dear Ms. Kratt:

The purpose of this letter is to inform you that the Planning Manager has determined that the Minor Conditional Use Permit (CUP) application (City Application No. PLUP-2022-0027) for the proposed project at 4875 Petaluma Blvd North (previously addressed as 4951 Stony Point Road) (APN: 007-422-028), submitted December 1, 2022, cannot be approved. Additionally, and as previously stated in Planning Staff's advisory letter dated November 15, 2022 (Attachment D), the proposed community marketplace use on the parcel located at 4875 Petaluma Blvd. North and within the boundaries of the Floodway is not a land use that the City's Implementing Zoning Ordinance (IZO) allows as a Permitted use.

The applicable regulations used to make this determination are principally found in Chapter 6 (Floodway & Flood Plain Districts) and Chapter 24 (Administrative Procedures) of the City's IZO. For purposes of review of this project, we use the definition of development in Chapter 6, which generally defines Development as "any man-made change to improved or unimproved real estate," and the definition in Chapter 28, which generally defines Development Project as "any project which would establish any new or changed use of any real property."

Permitted Uses, Floodway District

As outlined in [IZO Section 6.050\(B\)](#), permitted uses are limited to the following:

1. Open space agricultural uses not requiring a fence or closed building such as cropland, orchards, and livestock feeding and grazing.
2. Circuses, carnivals, and other similar transient amusement enterprises provided a zoning permit has been obtained from the Community Development Department.
3. Modification of Native or Riparian Vegetation. Where modification or removal of native or riparian vegetation is required, such modification or removal may be permitted after obtaining a development permit consisting of written approval from the Director, provided that such proposed modifications in the Flood Plain have been found to be consistent with the General Plan.
4. Any other open type of use as determined by the Zoning Administrator (Director of Planning) to be of the same general character as the above permitted uses.

5. Periodic dredging of silt material from the navigable portions of the Petaluma River for maintenance purposes, when said silt material is removed from the floodway area.

Permitted uses are first required to obtain a Development Permit pursuant to [IZO Section 6.070\(B\)](#)¹. Circuses, carnivals, and other similar transient amusement enterprises, as well as any other open type use determined by the Zoning Administrator/Planning Manager^{2,3} to be of that same general character, must also obtain a Zoning Permit for short-term activities as outlined in [IZO Section 7.070](#). Zoning Permits are issued by the Director for a period not to exceed 60 consecutive days in any one calendar year.

Conditional Uses, Floodway District

Conditional Uses within the Floodway, as outlined in [IZO Section 6.050\(C\)](#), are limited to those that follow:

1. Open air public and private recreational facilities such as parks, golf courses, and athletic fields.
2. Private and public docking, mooring, and boat launching facilities, providing such facilities shall be designed and constructed so as not to restrict the carrying capacity of the designated floodway.
3. Above-ground public utility and private service facilities such as water and sanitation pipe lines, telecommunication facilities in accordance with Chapter 14.44 of the Petaluma Municipal Code, roads, bridges, and similar facilities, providing such facilities shall be designed and constructed so as not to restrict the carrying capacity of the floodway.
4. Improvements in stream channel alignment, cross section, and capacity including modification of river bank and flood protection levels, other than periodic dredging of material from the navigable portions of the Petaluma River for maintenance purposes, when said material is removed from the floodway area.

The Planning Manager is unable to find that the proposed use is one of the listed Permitted uses numbered 1, 2, 3, or 5 above. Considering Permitted use number 4, the Planning Manager is likewise unable to find the project as proposed to be an open type use of the same general character as permitted use 1, 3, or 5 and was unable to find it the same as those described at permitted use 2, which are transient uses and which require a Zoning Permit limiting duration to 60 days in a calendar year, in that the proposed use is year-round and cannot be considered a transient use. Furthermore, the Planning Manager is unable to find that the proposed community marketplace use is similar to any of the uses listed above that may be allowed subject to Conditional Use Permit approval. In conclusion, as the proposed project is not a land use that the City's Implementing Zoning Ordinance allows in a Floodway as a Permitted use or upon obtaining Conditional Use Permit approval, the proposed project, including the Conditional Use Permit application, is denied.

The proposed project was excluded from California Environmental Quality Act (CEQA) review in accordance with Section 21080(b)(5) of CEQA Guidelines, which states that CEQA analysis is not needed for projects for which a public agency is recommending denial. (If, under some alternative scenario, the project were to be considered for approval in the future, additional CEQA review would be required.)

This decision by the Planning Manager may be appealed to the Planning Commission for their consideration as to whether a community marketplace within the Floodway is permissible within the constraints of the IZO. Should the Planning Commission find that the proposed use is one listed at [IZO Section 6.050\(C\)](#) as possible via the Conditional Use Permit process, they could remand the proposed entitlement back to staff for full review and processing, with specific direction that the subsequent CUP

¹ It has been the Department's practice to designate the Floodplain Administrator role, pursuant to IZO 6.070.C, to the Public Works & Utility Department City Engineer or Assistant Director. This role is currently designated to Gina Benedetti-Petnic, Assistant Director of PW&U.

² The administrative administrator of the Zoning Ordinance is the Community Development Director, pursuant to IZO 1.030.

³ The Community Development Director has designated the role of Zoning Administrator to the Planning Manager, under the authority of IZO Sections 24.020 and 1.030.

decision occur either at the Planning Commission or staff level. A Planning Commission decision may be appealed to the City Council.

Any appeal request must be made in writing within fourteen (14) calendar days of the date of this denial letter and shall be filed with the City Clerk. If no appeal is filed within that time, the staff decision shall be final. An appeal shall be addressed to the Planning Commission in writing and shall state specifically the grounds for the appeal and the relief sought by the appellant. The appeal fee as specified by Resolution 2010-206 N.C.S., as adopted by the City Council shall accompany the appeal.

If you have any questions regarding this letter, please contact me at atrippel@cityofpetaluma.org or at (707) 778-4367.

Sincerely,

A handwritten signature in blue ink, appearing to read "Trippel", is positioned above the printed name.

Andrew Trippel
Planning Manager

Copy: Larissa Alchin, Associate Planner
Tiffany Robbe, Deputy Planning Manager
Brian Oh, Community Development Director

Attachment A– Flood Plan Administrator Letter dated February 15, 2023

Attachment B - Points of Clarification

Attachment C - Further Information

Attachment D - Planning Staff's letter dated November 15, 2022



CITY OF PETALUMA

POST OFFICE BOX 61
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Kevin McDonnell
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February 15, 2023

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John Shribbs, Dist. 2
Councilmembers

Andrew Trippel
Planning Manager
City of Petaluma Planning Department
PO Box 61
Petaluma, CA 94953-0061

RE: The Floodway, proposed Conditional Use Permit

APN: 007-422-028

File No. PLUP-2022-0027

Dear Andrew:

Public Works & Utilities

City Engineer
11 English Street
Petaluma, CA 94952
Phone (707) 778-4303

Environmental Services
Ellis Creek Water
Recycling Facility
3890 Cypress Drive
Petaluma, CA 94954
Phone (707) 776-3777
Fax (707) 656-4067

Facilities, Parks &
Streets Maintenance
840 Hopper St.
Petaluma, CA 94952
Phone (707) 778-4303
Fax (707) 206-6065

Transit Division
555 N. McDowell Blvd.
Petaluma, CA 94954
Phone (707) 778-4421

Utilities & Field Operations
202 N. McDowell Blvd.
Petaluma, CA 94954
Phone (707) 778-4546
Fax (707) 206-6034

E-Mail:
publicworks@
cityofpetaluma.org

Public Works Department has carefully reviewed the Minor Conditional Use Permit (CUP) application submitted by Ms. Heather Kratt on behalf of H&H Real Estate LLC for the proposed project at 4875 Petaluma Blvd. North referenced in the subject line. In consideration of the applicable Floodway & Flood Plain Districts regulations found in Chapter 6 of the Implementing Zoning Ordinance (IZO), and the submitted materials from the applicant, I would not be able to support this project located within the Floodway Zone, nor would I be able to issue a Development Permit from the Floodplain Administrator as is required by IZO 6.070 (B) .

From the preliminary information provided to date from the applicant, and consistent with the Planning Director's finding (see Planning Denial Letter) that this proposed use is not consistent with permitted or conditional uses, I cannot approve this proposed encroachment in the Floodway pursuant to IZO Section 6.050 (A), [IZO Section 6.050](#). See below.

6.050 Floodway District (FW).



All areas within the boundaries of the "Areas of Special Flood Hazard" and identified as "Floodway" areas are [zoned](#) Floodway.

A. *Encroachments in Floodway.* Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, no encroachments within Floodway lands are permitted; including fill, new construction, intensification of existing use, change to more intensive use, substantial improvements, and other development, except as specified herein as permitted or conditional land uses, and provided that a certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

Exception does not apply.

The exhibit below, excerpted from the FEMA Firm Maps, shows the subject property fully within the Floodway Zone.

Project Site Map in Floodway Zone



Sincerely,

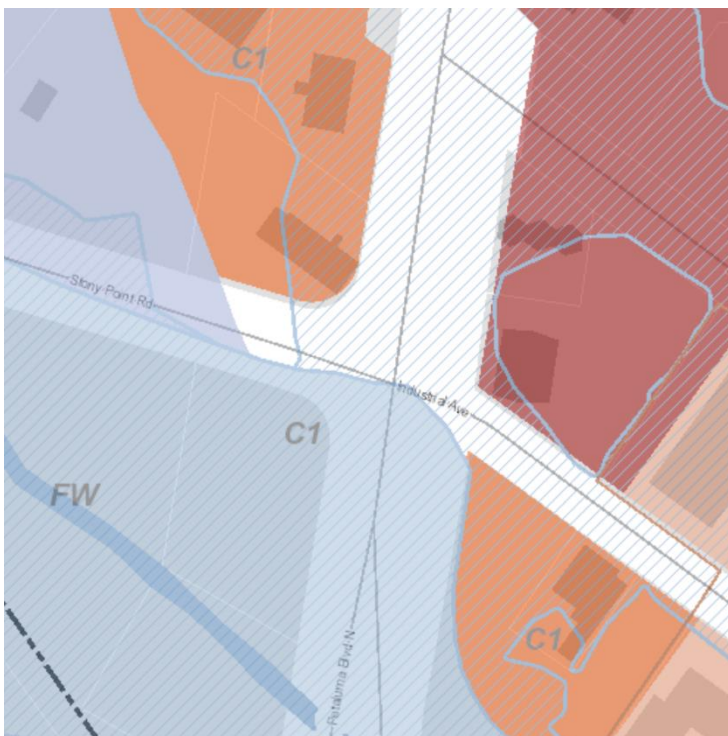
Gina Benedetti-Petnic, CE,
Assistant Director of Public Works and Utilities
Floodplain Administrator

Copy: Tiffany Robbe, Deputy Planning Manager
Larissa Alchin, Associate Planner
Brian Oh, Community Development Director
Christopher Bolt, Director of Public Works and Utilities
Pamela Tuft, Special Projects Consultant

Points of Clarification

Designation of the Floodway and Floodplain are made by the Federal Emergency Management Agency (FEMA), who identifies flood hazards and risks based on a scientific and engineering process and incorporates this data into their flood maps, known as Flood Insurance Rate Maps (FIRMs). These flood maps support the Federal Insurance and Mitigation Administration Flood Insurance Program and serve as the basis for community floodplain management by guiding the development of local and regional mitigation actions to reduce flood risk and build more resilient communities. FEMA last updated its Petaluma flood maps in 2016. Implementing Zoning Ordinance Section 6.020 provides that any Federal updates to the Floodway Map are adopted by reference and become part of the zoning ordinance.

The subject parcel is zoned Floodway; it does not also have a C1 (Commercial 1) zoning designation. The property is entirely within the regulatory Floodway. Floodway is the established zoning district, not an overlay district as is the case of the Floodplain. Regarding the image inserted in the Rebuttal Letter, the C1 notation at the intersection corner is an artifact of an older mapping layer. Before the 2016 FEMA mapping revision, the Floodway zoning designation covered the majority of the subject parcel but did not cover the intersection corner. When the maps were updated to reflect the official Federal updates to the Floodway Map pursuant to IZO 6.020, the former C1 artifact was not noticed and, therefore, not removed by hand. We are working to have this artifact removed from the digital zoning map.



Source: Zoning Map - City of Petaluma, 2023

Ms. Robbe seems concerned with the use of the word “transient” in the zoning law. It’s clear that the intent of the word “transient” in the zoning code means the business can be moved in the event of a flood, as opposed to building a permanent structure on the lot. In this context, the word transient means impermanent. Every vendor on our lot will be mobile, so all can be quickly and easily moved in the event of an imminent flood or any other natural disaster. Also, I see no reason why we would be restricted from using our lot year-round when there are neighboring lots that also have the floodway designation yet operate year-round.

The Floodway and Flood Plain Districts chapter of the IZO uses the word transient once, and that is at IZO Section 6.050(B)2 where it states that circuses, carnivals, and other similar transient amusement enterprises may be permissible uses on lands designated as Floodway, provided that a Zoning Permit (and

a Development Permit per Section 6.070(B) including certification demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge) is first obtained. As outlined in IZO Section 7.070, a Zoning Permit is required to allow Short-Term Activities including outdoor sales such as pumpkins, other produce, goods, or merchandise as well as circuses, for a period of not to exceed 60 days in a calendar year. In this context of the City of Petaluma IZO and the Floodway, the word “transient” specifically regards a use of not more than 60 days in a calendar year.

Further Information

As staff has completed the first round of review, we wanted to share an initial list of information and studies noted would be needed to accommodate further evaluation and processing of a CUP request should the land use be found to be Permitted or allowed subject to Conditional Use Permit approval. The following is provided for the benefit of the applicant and is intended to raise your awareness regarding potential issues and information gaps.

Please know that Planning review did not consider an outstanding policy question regarding what site improvements (such as driveway and parking space surfacing and weight rating, access points, bathroom provision, and ADA provision) are required for on-going use of a site, where fixed structures are not intended, but where man-made changes to real estate and a new use of the real property are proposed.

Planning Division

1. **Plan Set.** The project tentative site plan (layout) must be drawn to scale by a profession and show accurate lot size and configuration. Please include the following information in your resubmitted site plan (see also Public Works comments below). Provide site plan(s) with the following features:
 - a. Property lines, dimensions, and all easements. Please note there is a 90' wide easement to the Sonoma County Water Agency partially located on the property.
 - b. Delineate center line and top of bank of Petaluma River. Show 50' setback measurement from top of bank and 200' setback measurement from centerline of river. As required by Petaluma General Plan Policy 4-G-1, Program D, a 50' setback from the top of bank, is required with no development in that setback except for greenway enhancement improvements. Staff is unclear what the 10' restricted access (riverbank protection) area shown on submitted plans is in reference to. General Plan policies including 8-P-28 and 30 designate the Petaluma River Corridor (PRC) as a 200' setback from the centerline of the Petaluma River, as a set aside for a flood terrace system and direct no additional development in this area.
 - c. Proposed automobile, bicycle and ADA parking spaces, drive aisles, loading areas, curbing, and car-stops. Include dimensions and locations. Please refer to the SPAR Information Handout Appendix A for more information. The parking area seems to show parking and drive aisles in the same location, please separately delineate each area.
 - d. Proposed landscape areas and pedestrian paths.
 - e. Proposed retail area, including square footage of area and proposed food cart/truck.
 - f. Proposed seating area with number of tables and chairs, including any shade structures.
 - g. Proposed, trash enclosures and screening; including locations, finishes and dimensions.
2. **Project Description.** Provide complete and detailed project description including operational scope, such as number and specification of vendors and hours of operations to clarify intensity of use proposal, number of parking spaces requires, etc.
3. **Certification of No Increase in Flood Levels.** IZO Section 6.050 requires that certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
4. **Development Permit Required.** Required by IZO Section 6.060.B and outlined at IZO 6.070.B, E, F, and G and including Certification of Zero Net Fill.

5. **CEQA.** As with other aspects of the project's review, additional studies and information are anticipated to be needed as the scope of the proposal is fully understood.
6. **Flood Plan Evacuation.** The CUP Rebuttal Letter dated November 27, 2022, asserts that a flooding event would have little impact on the proposed project and that advance notice of flooding would allow time to quickly vacate the property.
 - a. Please provide an emergency plan describing how all proposed temporary facilities including but not limited to sanitary facilities, mobile vendors, parking bollards, seating areas, tents, umbrellas, and all other items located on the property will be removed prior to a flooding event.
7. **Compliance with General Plan 2025.** All of the property has a Land Use Designation of Floodway. See applicable General Plan policies, including:
 - a. 1-Goal-5, the Petaluma River policies
 - b. Policy 4-P-1, Program D, of the Natural Environment element of the GP 2025 calls for a 50' setback from the top of bank, with no development in that setback except for greenway enhancement improvements. Program K under that same Policy, prohibits placement of impervious surfaces in the Floodway.
 - c. 8-Goal-8, the Surface Water Management policies, including:
 - i. Policy 8-P-28, designating the area upstream of the Corps weir and below the confluence of Willow Brook Creek with the Petaluma River, within the floodplain and adjacent to the Petaluma River as the Petaluma River Corridor (PRC) and directing that the PRC shall be set aside for the design and construction of a flood terrace system to allow the River to accommodate a 100-year storm event.
 - ii. Policy 8-P-30, directs that, upstream of the Corps weir, within a 200' setback from centerline of the Petaluma River, no additional development shall be permitted on lands within that 400' wide corridor, given natural and physical constraints and includes a series of modeling and technical requirements and improvements.
 - iii. Policy 8-P-32 directs continued implementation of mandatory zero-net fill upstream, and when appropriate zero-net runoff.
8. **Compliance with River Access and Enhancement Plan.** All of the property is within the City's River Access and Enhancement Plan which includes policies relative to development, landscaping, design, etc.

Public Works

Jeff Stutsman, City Engineer, at JStutsman@cityofpetaluma.org or 707-776-3673.

Per Chapter 6 of the "Floodway and Flood Plain District" of the Petaluma Zoning Code, the floodway is an extremely hazardous area due to the velocity of flood waters, and no new encroachments within the floodway lands are permitted, which includes fill, new construction, intensification of existing use and change to more intensive use. The only permitted land use is open space agriculture, circus, carnivals, and other similar transient amusement enterprises. These are considered short-term, low-intensity uses. No permanent structures are allowed in the floodway.

9. Provide more detail site plan and project description on what is being proposed?
 - a. How do vehicles enter and exit the property?
 - b. How is parking delineated?

- c. No additional fill material is allowed on the site or any impervious surfaces allowed; how do you provide a firm surface for proposed use and prevent tracking of soil off the site?
- d. Are the facilities proposed set up and taken down daily or left up year around and what type of facilities are being proposed?
- e. Do you plan on operating year-round and what plans would be in place for a large storm event? Items such as canopy, garbage facilities, and restroom can become buoyant and float down the river causing larger issues.

Building Division

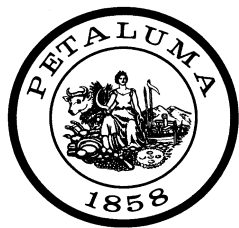
Charles Lucas, Deputy Chief Building Official - CLucas@cityofpetaluma.org or by phone at 707-778-4595

- 10. Site improvements for public use facilities or places of public accommodation require building and/or grading permits. Permit applications shall demonstrate compliance with current California Building Standards Code in CCR Title 24 as adopted by the City of Petaluma.
- 11. The construction documents submitted with the application for permit shall be accompanied by a site plan showing to scale the size and location of new construction and existing structures on the site, distances from lot lines, the established street grades and the proposed finished grades and, as applicable, flood hazard areas, floodways, and design flood elevations; and it shall be drawn in accordance with an accurate boundary line survey.
- 12. CBC 1612.1 is applicable within flood hazard areas. All new construction of buildings, structures and portions of buildings and structures, shall be designed and constructed to resist the effects of flood hazards and flood loads. For buildings that are located in more than one flood hazard area, the provisions associated with the most restrictive flood hazard area shall apply. The applicant shall demonstrate compliance for all improvements proposed on construction documents submitted for permit.
- 13. Effective June 16, 2021, new buildings are required to have all electric construction as defined in Petaluma Municipal Code 17.36 and permanent supply of electricity as the source of energy for all space heating, water heating (including pools and spas), cooking appliances, and clothes drying appliances, and has no natural gas or propane plumbing installed in the building.
- 14. Proposed project will require building permit application and construction plan approval in compliance with current California Building Standards Code in CCR Title 24 as adopted by the City of Petaluma. The Building Division reviews applications and plans in accordance with these and the City municipal code. The applicant will need to demonstrate compliance with the construction documents.
 - a. Full plan submittal is required as applicable to project scope. Architectural, civil, structural, mechanical, electrical, and plumbing systems are to be prepared by state licensed design professionals. See City file preparations standards: Electronic File Preparation Standards - Petaluma (cityofpetaluma.org).
 - b. Building permit construction documents are to include occupancy classifications, design occupant load, general building area and height limitations, type of construction, and fire sprinkler provisions data for each building, structure or improvement on the subject parcel. Each separate building should have a separate permit for construction.

Fire Prevention Division

Jessica Walton, Contract Plans Examiner- JWalton@cityofpetaluma.org

- 15. Any individual tent over 700 sq. ft and tents put together over 400 sq. ft. requires a permit from the Fire Department.



CITY OF PETALUMA

POST OFFICE BOX 61
PETALUMA, CA 94953-0061

Teresa Barrett
Mayor

Brian Barnacle
D'Lynda Fischer
Mike Healy
Dave King
Kevin McDonnell
Dennis Pocekay
Councilmembers

November 15, 2022

Heather Kratt
H&H Estate
PO Box 750354
Petaluma, CA 94954

RE: The Floodway, proposed Conditional Use Permit

APN: 007-422-028

File No. PLUP-2022-0027

Dear Ms. Kratt:

Planning staff have received your Minor Conditional Use Permit application (City Application No. PLUP-2022-0027) and required cost recovery deposit for a proposed project at 4951 Stony Point Road (APN: 007-422-028, referred to in your application as 4875 Petaluma Blvd North) in Petaluma. The Project Statement and Tentative Site Layout describe using the site as a “community marketplace” to host mobile food vendors, artisans, artists, food growers and producers, local beer and wine producers, musicians, and such – all of a mobile or transient nature – on a daily basis. They also indicate that any structures utilized would be temporary and removable in a flood situation. Before billing the project’s cost recovery fund to cover the staff time to route the project for Citywide review and continued Planning review your proposed Conditional Use Permit for the “community marketplace”, staff wanted to communicate our concern about the CUP request for a community marketplace at this location for the reasons described below.

When reviewing a project for compliance with the Implementing Zoning Ordinance (IZO), staff considers both the proposed land use and the physical development needed to support the proposed use. Based upon staff’s initial review of your application, we would categorize the proposed land use as *General Retail* in that it involves the selling of many lines of merchandise. *General Retail* uses are typically open to the public and operate 5-7 days per week for 8-10 hours per day, similar to your proposal. Most *General Retail* uses occupy commercial structures on sites developed with parking, driveways, pedestrian access facilities and access to utilities provided. You clearly indicate that your project does not propose permanent construction or site development.

As your Project Statement notes, the parcel is located entirely within a *Floodway* District (FW) and is zoned *Floodway*. Implementing Zoning Ordinance (IZO) [Section 6.050\(A\)](#) states that since the regulatory *Floodway* is “an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, no encroachments within Floodway lands are permitted; including fill, new construction, intensification of existing use, change to more intensive use, substantial improvements, and other development.”

**Community Development
Department**
11 English Street
Petaluma, CA 94952

Phone (707) 778-4301
Fax (707) 778-4498

Building Division
Phone (707) 778-4301
Fax (707) 778-4498
E-Mail:
cdd@cityofpetaluma.org

To Schedule Inspections
Phone (707) 778-4479

Planning Division
Phone (707) 778-4470
Fax (707) 778-4498
E-Mail:
petalumaplanning@cityofpetaluma.org



Floodway zoning does recognize that some uses may be appropriate. As outlined in IZO Section 6.050(B) uses are limited to activities such as open space and agricultural uses not requiring a fence or closed building, circuses, carnivals, and other similar transient amusement enterprises provided a zoning permit has been obtained from the Community Development Department, and any other open type of use as determined by the Zoning Administrator (Director of Planning) to be of the same general character as these permitted uses. Planning staff note that:

- The *General Retail* use that you are proposing is not consistent with agricultural activities or transient amusement enterprises;
- While one may consider the proposed community marketplace concept to be an “open type of use,” a reoccurring daily operation would not be considered transient, and the zoning permit required for transient uses cannot be obtained for longer than 60 days per year; and
- Operation of a General Retail use of the scope and intensity that you propose would require site development in the form of parking, driveways, pedestrian walkways, and installed utilities in order for it to support essential public safety, health, and welfare needs.

Additionally, land uses that may be allowed within the *Floodway* through approval of a Conditional Use, as allowed by IZO [Section 6.050.\(C\) 1-4](#), are limited to:

1. Open air public and private recreational facilities such as parks, golf courses, and athletic fields,
2. Private and public docking, mooring, and boat launching facilities,
3. Above-ground public utility and private service facilities such as water and sanitation pipelines, roads, bridges, and similar facilities, and
4. Improvements in stream channel alignment, cross section, and capacity including modification of riverbank and flood protection.

The proposed community marketplace does not appear to fit within the uses allowed for consideration through the Use Permit process.

In summary, the proposed community marketplace on the parcel at 4951 Stony Point and within the boundaries of the *Floodway* is not a land use that the City’s Implementing Zoning Ordinance allows as a permitted use or upon obtaining a Zoning Permit or a Conditional Use Permit. Based on this staff is not able to support the Conditional Use Permit as requested.

You may wish to consider the short-term Zoning Permit vehicle (IZO [Section 7.070](#)) as a possible means of proposing a community marketplace at the site, but of a lesser extent; including not more than 60 days in the year and outside of the defined rainy season. Should you pursue the short-term Zoning Permit approach, full review would then occur by the various City Departments. As early notes, Planning would anticipate that proposed hours of operation would need to be minimized, parking provision and drive aisle accessibility would need to be detailed and code compliant, and aesthetics would need to be detailed and considered.

If you would like to move forward with your application, by directing deposit of the initial deposit on the staff time and materials to process the application, City staff will need to deny the administrative application. That denial could then be appealed to the Planning Commission for

their consideration as to whether a community marketplace within the *Floodway* is (1) permissible within the constraints of the IZO and, if so, then (2) a desired use within the *Floodway*.

I expect that this information is a great disappointment. We hope that you will take this information as constructive and in the spirit of minimizing your application deposit costs. We have not charged the project's cost recovery fund for the preparation of this correspondence, but we must do so if the application proceeds.

If you have any questions regarding this letter, please contact me at trobbe@cityofpetaluma.org or at (707) 778-4318.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tiffany S. Robbe".

Tiffany Robbe
Deputy Planning Manager

Copy: Andrew Trippel, Planning Manager
Heather Hines, Interim Community Development Director

March 13, 2023

City of Petaluma Planning Commission
11 English St
Petaluma, CA 94952

Re: Appeal of Planning Department's denial of PLUP-2022-0027

To Whom It May Concern:

We are appealing the Planning Department's denial of our conditional use permit (PLUP-2022-0027) to operate a mobile community marketplace at 4875 Petaluma Blvd N (APN 007-422-028) based on the following objections:

1. The Planning Department (PD) initially denied our application on November 15, 2022 without cashing our application fee check or allowing for a proper review of our application by all concerned city departments. In that denial letter, the PD promised to deny our application if we opted to move forward with it.
2. We moved forward with our application, and the PD finally sent us a formal denial of our application on February 28, 2023, exactly as promised in their November 15 letter. The second denial letter is primarily a repeat of their initial denial letter and does not include any response to or consideration for our rebuttal letter dated November 27, 2022. Note that we submitted our CUP application on October 24, so it took four months to receive a formal denial.
3. The PD initially argued that we don't understand the C1 designation and how it applies to our lot. In the most recent denial letter, they fail to address the objections we made in our rebuttal letter dated November 27 and are now instead claiming that the C1 designation was a "mistake" and that they will work to remove it from the public maps. We have confirmed that "Attachment B – Points of Clarification" included in their denial letter was drafted by Tiffany Robbe. We purchased the property in good faith that the existing zoning ordinances would be upheld, not arbitrarily adjusted after we purchased and cleaned up the lot.
4. Rather than discuss the C1 designation and our feedback on it, Ms. Robbe's stated intention is to simply remove the C1 designation from the public maps to eliminate any further discussion. Again, we purchased the property in good faith that the existing zoning ordinances would be upheld, not adjusted after we purchased and cleaned up the lot. Note that I met with both Larissa Alchin in the PD and Gina Benedetti-Petnic in Public Works before purchasing the lot. We looked at the maps and zoning laws together and, based on their feedback, I was and remain confident that our proposed use of the lot is consistent with the spirit of the current zoning laws.
5. The PD has failed to consider the spirit of the law in the existing zoning ordinances and is instead focusing on antiquated terminology. For example, the PD is focused on the fact that circuses and carnivals are specifically allowed on our lot, but a community marketplace is not because the words "community marketplace" don't exist in the current zoning ordinances. They are also incorrectly defining the word "transient" to mean 60 days of operation per year, when the clear intent of that word in the zoning ordinance means "impermanent". The simple fact that those arbitrary 60 days of use could be conducted during flood season proves that the word

“transient” is directly tied to carnivals and circuses, which generally don’t stay in one place too long. Again, the word “transient” clearly means “impermanent” in the spirit of the law.

6. We met with Andrew Tipple, Tiffany Robbe, and Larissa Alchin of the Planning Department on Monday, March 6, 2023 to discuss their most recent denial letter. In that meeting, we were surprised to learn that the word “permanent” is now a new word that is causing confusion. They insist that because we requested a CUP, as opposed to a one-time temporary use permit that a traveling circus or carnival might request, that our business is automatically deemed “permanent” and therefore development must be required. We clearly intend to be a “permanent” business in the sense that we are not a traveling circus or fly-by-night operation, and plan to own and operate our business on that lot for many years to come. We are not, however, “permanent” in any sense that would require development, as we are a purely mobile operation. This new focus on the word “permanent” seems to be in response to our argument that the spirit of the law clearly allows for impermanent businesses, not just those deemed transient. In other words, we can be impermanent without the need for arbitrary time of use restrictions on the lot. There is absolutely no development required on the lot for the mobile business we intend to operate there. The constantly changing reasons for their denial are arbitrary and incorrect.
7. In the same meeting on March 6, we were also surprised to learn that the PD does not consider what any surrounding lots are doing or consider the current condition of the river or flooding or the efforts we’ve made to improve safety by dramatically cleaning up that lot. In other words, their decision is not the least bit subjective. In their argument that we are a “permanent” business, they claim we will likely need a paved driveway and pedestrian path and that because we are in a floodway, we can’t meet that requirement. However, the business across the street, Cycle West Honda Suzuki at 1375 Industrial Ave, has a building and a large gravel driveway (no paved driveways or walkways). Any similar comparisons that we tried to bring up were dismissed as irrelevant. But if our lot is the only one in the area deemed to not be able to conduct business safely, then the Planning Department’s negative decision seems to be nothing more than arbitrary. Per our meeting, Tiffany Robbe stated that she will never approve any business use on that lot and that we were stupid to have purchased it.
8. The PD has failed to consider the allowed approval of “any other type of use as determined by the Zoning Administrator (Director of Planning) to be of the same general character as the above permitted uses” as defined in section 6.05 B4 of the existing zoning ordinances. This section was clearly included in the original zoning laws to account for the changes in business language over time and to prevent denials based simply on antiquated language. We believe that had our application been reviewed by staff that was more open minded and objective, they would have taken advantage of section 6.05 B4 rather than trying so hard to make an issue where one doesn’t exist.
9. We purchased the property knowing full well that it was located in a floodway, hence our business name: The Floodway Community Marketplace. We are not trying to change that designation as we have presented a business use that is perfectly suited to the current floodway designation. The city’s real concern should be with the water that flowed off our lot in the most recent flooding and settled in the parking lots and doorways of the restaurants and gas stations nearby. The city opted to remove those properties from the floodway designation and has the duty to prevent flood water from reaching them. Proper maintenance of the river would eliminate or lessen damage to those businesses, and that responsibility lies with the city. It is clear from the current filthy condition of that river that no sort of maintenance has occurred in years or likely decades. The existing debris in the river presents the greatest threat to

surrounding businesses and the primary cause of any flooding, and not some unforeseen future debris. It's odd that the city would obsess about the possibility of future debris while ignoring the fallen trees, pallets, large truck tires, shopping carts, and tons of garbage that has been sitting in that section of the river for years or decades. We did recently request a history of any maintenance on that portion of the river but the PD and Public Works have failed to respond with that data.

10. The PD insists that FEMA maps are created solely by FEMA, but they are actually created in coordination with local governments, which is clearly stated on the city's own website. Tiff I must also note that in the most recent flooding at that intersection, the two restaurants across the street and the two gas stations east of us on Petaluma Blvd N flooded, even though they are not designated as being in the floodway zone. The idea that our lot – a mobile business with no permanent structures - is the only one in the area that cannot be used to conduct business safely is arbitrary and incorrect.
11. The PD insists that our mobile community marketplace poses a hazard because floods are dangerous and include debris, but failed to consider that the lot is safer than it has been in decades because of our efforts in cleaning it up. We have removed a large volume of debris from the lot, including trees that fell onto our lot from the river (city owned property), garbage, hypodermic needles, used tampons, human feces, and more. If the risk of debris was a genuine concern, the city would appreciate our efforts and properly maintain the river to avoid future flooding. I must also note that – in addition to removing the prior debris that could have been washed away in the most recent flooding - the poorly maintained river washed up a whole new set of garbage that must now be collected and discarded. The argument that we as individual property owners can or should control the state of the river and the amount of debris allowed to collect in the river is invalid, as that responsibility belongs to the city.

We are requesting that the Planning Commission overturn the Planning Department's denial of our conditional use permit to operate a mobile community marketplace at the northern gateway to downtown Petaluma.

Responses from the Planning Department to date have been inconsistent and arbitrary. We would appreciate an objective review of our application and support from the city on this project.

Again, we purchased our lot in good faith that the existing zoning ordinances would be upheld and that our efforts to beautify the area and create an attractive, tax-generating, job-creating business would be given the proper consideration that it deserves.

Thank you for your time.

Regards,

Heather Kratt
H&H Real Estate LLC
PO Box 750354
Petaluma, CA 94952
heather.kratt@gmail.com
208-920-1373

Cover Sheet for Minor Conditional Use Permit Application

Project: 4875 Petaluma Blvd N

Date of Submission: October 23, 2022

Property Owner and Project Contact: Heather Kratt
H&H Real Estate LLC
PO Box 750354
Petaluma, CA 94999
heather.kratt@gmail.com
208-920-1373

Table of Contents:

Document No. and Title:

1. Conditional Use Permit Application Checklist
2. General Application Form
3. Cost Recovery Form
4. Project Statement
5. Tentative Site Layout
6. Vicinity and Aerial Context Map
7. Property Lines and Dimensions
8. Site Photos
9. Environmental Information Questionnaire



CONDITIONAL USE PERMIT APPLICATION CHECKLIST & INFORMATION HANDOUT

**Deposit for Minor and Major CUP:
See Fee Schedule.**

(The final fee is dependent on each project application. Please read and sign the Cost Recovery Form.)

I am applying for a:

- ☒ **Minor** Conditional Use Permit
☐ **Major** Conditional Use Permit

Please check with a planner if unsure about any aspect of the application process.

Submission Checklist (include this checklist with all required materials and submit online at the City of Petaluma Permits & Planning Application Hub)

- ☒ Complete the **General Application Form**, available on the City's website at <https://cityofpetaluma.org/documents/planning-general-app/> or in-person at the City's Planning Division.
- ☒ Submit all applicable **application fees**. Please see the City's Fee Schedule for current year available on the City's website at <https://cityofpetaluma.org/documents/planning-fee-schedule/> or in-person at the City's Planning Division.
- ☒ Read and sign the **Cost Recovery Form**, available on the City's website at <https://cityofpetaluma.org/documents/cost-recovery-form/> or in-person at the City's Planning Division.
- ☒ Submit deposit for minor or major Conditional Use Permit.
- ☐ **Requirements for all plans:**
- N/A* ☐ Submit **one digital copy in PDF format**.
- ☐ Legend on the first sheet identifying each sheet in the plan set.
- ☐ Title for each sheet, scale, north arrow and date.
- ☐ Name and phone number of person preparing plans.

- ☒ **Site and Floor Plans:**
- ☒ Vicinity Map indicating the site and surrounding streets. Scale 1" = 200'.
 - ☒ Aerial Context Map showing existing and proposed uses in the surrounding area.
 - ☒ Property lines and dimensions, all easements, distances between buildings and property lines.
 - N/A* ☐ Outlines of structures, including walls, doors, and windows, at a scale determined by staff.
 - ☒ Automobile, bicycle, and disabled parking spaces, drive aisles, loading areas, curbing, car-stops, electric vehicle charging spaces, etc. Include dimensions, locations and direction of traffic flow.
 - ☒ Landscape areas and pedestrian paths.
 - N/A* ☐ Note the square footage of existing and/or proposed buildings.
 - N/A* ☐ Floor plan(s) that identify the interior use(s) of all building(s). Include the total square footage of any areas proposed for different uses (i.e. retail, customer service, storage, office, manufacturing, etc.).

City of Petaluma Planning Division

11 English Street, Petaluma, CA 94952

Staffing Hours: 8am - 5pm, Monday through Thursday

Open Counter Hours: 10am - 2pm, Monday through Thursday

Closed every Friday

T: (707) 778-4470

For faster responses, please e-mail us at:

petalumaplanning@cityofpetaluma.org

For more information, please visit:

<https://cityofpetaluma.org/departments/planning/>



Project Description or Written Statement.

- Provide a detailed description of the proposed use (e.g., days/hours of operation, number of employees, work shift duration(s) (if applicable), products or services provided, anticipated customers and the nature of their visit, whether alcohol is provided or served, etc.) When describing the use, identify the location of activities (e.g., indoor vs. outdoors).



Complete the **Environmental Information Questionnaire**, available on the City's website at <https://cityofpetaluma.org/documents/environmental-impact-questionnaire/> or in-person at the City's Planning Division. The Planning Division will notify you as part of the completeness check if additional information, such as traffic reports, noise studies or visual impact studies, may be required to complete the environmental review process.



Submit **Photos of the site** from a variety of angles, showing existing conditions, including buildings and vegetation.



N/A

If you are applying for a **Wireless Telecommunications Facility**, additional information is available via the City website at <https://cityofpetaluma.org/planning-wireless-telecommunication/> or in-person at the City's Planning Division. **Note:** Applications for any wireless facility are by appointment only. Any application received without an appointment, whether delivered in-person, by mail, online or through any other means, will not be considered duly filed.

City of Petaluma Planning Division

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GENERAL APPLICATION FORM

This form, together with corresponding application forms for specific permits, will become the permit document. There is no fee for this form.

Type of Application

- ☒ Conditional Use Permit: Minor / Major
☐ Fence
☐ Home Occupation Permit
☐ Preliminary Review by Staff
☐ SPAR: Minor / Major
☐ Tentative Map: ≤ 4 / ≥ 5 lots
☐ Zoning Amendment: Minor Revision
☐ ☐ Short Term Vacation Rental (STVR)
☐ Tree Removal
☐ Other:

For City Use Only

Permit No: _____
Project Name: _____
Date Permit filed: _____
Date Permit issued: _____
Received by: _____
Approved by (if applicable): _____

Property Information

Address/Location: 4875 Petaluma Blvd N
Assessor's Parcel No.: 007-422-028
Property Size: 0.82 acres

Land Use Information *(ask if unsure)*

Existing Use of Property: Vacant w/utilities
General Plan Designation: Floodway
Zoning Designation: C1
Historic Designation: N/A

Contact Information

Owner: Heather Kratt
Firm (opt.): H&H Real Estate LLC
Phone: 208-920-1373
Email: heather.kratt@gmail.com
Address: PO Box 750354
Petaluma, CA 94999

Agent: _____
Firm (opt.): _____
Phone: _____
Email: _____
Address: _____

Authorization of Agent, Declaration of Accuracy, and Agreement for Inspection

(not required for Home Occupation Permit applications)

I, Heather Kratt, am the ☒ owner / ☐ agent of the property for which the development or change is proposed. The above information and attached documents are true and accurate to the best of my knowledge. I have read and agree with all of the above.

[Signature]
Signature of Property Owner or Agent

10/23/2022

Date

I, the owner, hereby ☒ do / ☐ do not authorize the agent to act on my behalf for this project, be notified of all application proceedings, and agree to allow employees or authorized agents of the City of Petaluma to enter upon the subject property, as necessary, to inspect the premises and process this application.

[Signature]
Signature of Property Owner

10/23/2022

Date

Last updated: June 15, 2021

City of Petaluma Planning Division

11 English Street, Petaluma, CA 94952

Hours: 8 am – 5 pm

Mondays through Thursdays. Closed Fridays

T: (707) 778-4470

For faster responses, please e-mail us at:

petalumalanning@cityofpetaluma.org

URL: <https://cityofpetaluma.org/departments/planning/>



COST RECOVERY FORM

This form will be processed as part of development applications. This form is not required for flat fee applications. No fee is required for this form.

Purpose: This form is for the agreement of payment of full cost recovery fees for application processing and inspection services.

The Applicant/Authorized Agent is required to sign this document. In the event that the Property Owner is the Applicant, the Property Owner is required to sign this document.

I / We, Heather Kratt (H&H Real Estate LLC) (Property Owner name), or authorized agent agree to pay to the City of Petaluma all reimbursable costs, both direct and indirect, including State-mandated costs, associated with review and processing of the accompanying application for land use approval(s) with respect to the subject property or project located at:

4875 Petaluma Blvd N (Location, Address, or Assessor's Parcel Numbers),

even if the application is withdrawn and/or not approved.

Brief Project Description:

Minor CUP application to use property as a community marketplace, a use that
meets the the same general characteristics of existing permitted uses as defined by the
Petaluma Zoning Code for floodways, section 6.050, parts B2 and B4.

Reimbursable Costs and Deposits

Reimbursable costs include, but are not limited to, all items within the scope of the City's adopted Cost Recovery Program, (Resolution No. 2004-028 N.C.S.) as well as the cost of retaining professional and technical consultant services and any services necessary to perform functions related to review and processing of the applications and monitoring of the work.

Property owner and agent understand that one or more deposits will be required to be paid by property owner and/or agent to cover the costs noted above at such time(s) and of such amounts as requested by the Planning Manager or designee.

City's Responsibility

The City agrees to review and process the application in a timely manner in accordance with this agreement and all applicable laws, regulations, ordinances, standards and policies. This agreement applies to all subsequent applications related to the project.

Charges and Outstanding Payments

The applicant understands and agrees that nonpayment of processing and inspection fees pursuant to the City's Cost Recovery Program may, at the sole and exclusive discretion of the Planning Manager, result in temporary or permanent cessation of processing of the application or inspection of the work and, after notice, may result in the denial of the application and/or order to cease work.

Prior to completion of processing of any phase of the project, any and all outstanding amounts due pursuant to this agreement shall be paid. The Planning Division will withhold issuance of further plan checks, entitlements, permits, certificates of occupancy, etc. until all required fees have been paid in full.

The applicant agree that questions regarding specific charges for processing, monitoring, inspection and related services that may be questionable, lack sufficient documentation and/or may be incorrect must be brought to the City's attention no later than 30 days following receipt of invoice and corresponding documentation.

Invoices are due and payable within ten (10) days. A penalty will be charged on delinquent accounts at the rate of 1% per month or 12% per annum. Applicant agrees that delinquent amounts shall constitute a lien on the subject property and expressly consents to recordation of a notice of lien and/or copy of this Agreement against the subject property with respect to any amounts which are delinquent.

Failure to comply with the aforementioned procedure within the specific time indicated may, if research of billing information is requested, result in additional charges for clerical time spent and will be billed at our cost recovery rate.

Legal matters

In any legal action arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including costs and attorneys fees.

As part of this application, the applicant agrees to defend, indemnify, release and hold harmless the City, its agents, offices, attorneys, employees, boards and commissions from any claim, action or proceeding brought against any of the foregoing individuals or entities, the purpose of which is to attack, set aside, void or annul the approval of this application or adoption of the environmental document which accompanies it. This indemnification shall include, but not be limited to, damages, costs, expenses, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and/or the indemnitees, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the indemnitees.

Nothing in this agreement shall prohibit the City from participating in the defense of any claim, action or proceeding. In the event that the applicant is required to defend the indemnitees in connection with any said claim, action or proceeding, the City shall retain the right to (i) approve the counsel to so defend the indemnitees, (ii) approve all significant decisions concerning the matter in which the defense is conducted, and (iii) approve any and all settlements, which approvals shall not be unreasonably withheld by the City.

The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with the applicant in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own defend any claim, action or proceeding where the applicant has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City.

The Applicant also agrees to so indemnify the indemnitees for all costs incurred in additional investigation or study, or for supplementing, redrafting, revision or amending any document (e.g., the EIR, Specific Plan Amendment, Specific Plan, General Plan Amendment, Rezone, etc.) if such is made necessary by the claim, action or proceeding and if the Applicant desires approvals from the City which are conditioned on the approval of said documents.

Acknowledgements required:

The undersigned **Property Owner/Applicant or Authorized Agent** hereby represents that he/she either:

- ☒ Personally owns the subject property; or,
☐ Is an entity authorized to install and maintain facilities for provision of utility, telecommunications, video, voice or data transmission service in the public street right of way; or,
☐ Is a duly authorized agent of the property owner with full authority to execute this Agreement on behalf of property owner.

Applicant agrees to be jointly and severally liable with property owner for payment of all fees referenced above, applicant agrees to notify City in writing prior to any change in ownership and to submit a written assumption of the obligations under this agreement signed by the new owner or his/her authorized agent.

Would you like to receive invoices electronically instead of in the mail?

- ☒ Electronically ☐ In the mail

If the deposit is not exhausted, we will issue a refund to:

- ☒ Property Owner ☐ Authorized Agent

I / We have read and agree to all of the above.



Signature of Property Owner or Authorized Agent

10/23/2022

Date

Project Statement

Project: 4875 Petaluma Blvd N

Property Owner:

H&H Real Estate LLC
Heather Kratt
heather.kratt@gmail.com
208-920-1373

Project Statement:

The property located at 4875 Petaluma Blvd N (parcel no. 007-422-028) sits at the northern gateway to downtown Petaluma. The property has no prior permit history, meaning it has never been used for any legal purpose that would provide an attractive, welcoming, or community-focused first impression to those entering downtown Petaluma from the northern gateway. Instead, the parcel was used to host at least a dozen unpermitted signs for businesses located elsewhere, housed abandoned vehicles and illegal parking, became a dumping ground for vast amounts of trash, and was cluttered with debris, most of which was fallen trees from the river. It was essentially an abandoned lot that was exploited for its location and lack of oversight and, hence, a blight at the northern gateway to downtown Petaluma.

The property has since been substantially cleaned up. All unpermitted signs, abandoned vehicles, trash, and debris have been removed. In the many months it took to return the lot to a clean slate, it is clear the community supports our efforts from the constant honks, waves, and thanks we receive from passersby.

I, Heather Kratt, the property owner and applicant both own the land as H&H Real Estate LLC and intend to operate a separate business called The Floodway LLC on this parcel.

The Floodway will be a community marketplace that will support the area's small business owners, including mobile food vendors, artisans, artists, food growers and producers, local beer and wine producers, musicians, and any other local vendors that highlight what Petaluma truly has to offer. Everything will be mobile or transient in nature, meaning every vendor can be easily moved or removed from the lot in the event of a flood situation. The Floodway will greatly improve the appearance of the northern

gateway to downtown Petaluma while highlighting local vendors and generating much needed tax revenue.

The Floodway will manage and maintain the lot, including renting space to the aforementioned vendor types. The Floodway will obtain all necessary permits for its role, and each participating vendor will be required to provide proof of its own permits – e.g., sales permit, business license, health permit – as required by law for its own business circumstances. No unpermitted or illegal vending will be allowed on the property. We are also not requesting any development or permanent structures with this application.

All participating vendors will be welcome to operate during the established operating hours of The Floodway, which may vary by business needs, but would generally be 6AM to 12AM (midnight).

The intended use of this parcel as a community marketplace meets the same general characteristics of existing permitted uses in a floodway, according to the Petaluma Zoning Code for floodways, section 6.050, parts B2 and B4. For ease of reference, the entirety of section 6.050 is included below:

6.050 Floodway District (FW)

All areas within the boundaries of the “Areas of Special Flood Hazard” and identified as “Floodway” areas are zoned Floodway.

A. *Encroachments in Floodway.* Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, no encroachments within Floodway lands are permitted; including fill, new construction, intensification of existing use, change to more intensive use, substantial improvements, and other development, except as specified herein as permitted or conditional land uses, and provided that a certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

B. *Permitted Uses, Floodway Districts.* The following uses are permitted upon obtaining a Development Permit per Section 6.070(B) without a Use Permit where modification or removal of native vegetation, including trees, is not required:

1. Open space agricultural uses not requiring a fence or closed building such as cropland, orchards, and livestock feeding and grazing.

2. Circuses, carnivals, and other similar transient amusement enterprises provided a zoning permit has been obtained from the Community Development Department.

3. *Modification of Native or Riparian Vegetation.* Where modification or removal of

native or riparian vegetation is required, such modification or removal may be permitted after obtaining a development permit consisting of written approval from the Director, provided that such proposed modifications in the Flood Plain have been found to be consistent with the General Plan.

4. Any other open type of use as determined by the Zoning Administrator (Director of Planning) to be of the same general character as the above permitted uses.

5. Periodic dredging of silt material from the navigable portions of the Petaluma River for maintenance purposes, when said silt material is removed from the floodway area.

C. *Conditional Uses, Floodway District.* The following uses may be permitted after approval of a conditional use permit by the City of Petaluma:

1. Open air public and private recreational facilities such as parks, golf courses, and athletic fields.
2. Private and public docking, mooring, and boat launching facilities, providing such facilities shall be designed and constructed so as not to restrict the carrying capacity of the designated floodway.
3. Above-ground public utility and private service facilities such as water and sanitation pipe lines, telecommunication facilities in accordance with Chapter 14.44 of the Petaluma Municipal Code, roads, bridges, and similar facilities, providing such facilities shall be designed and constructed so as not to restrict the carrying capacity of the floodway.
4. Improvements in stream channel alignment, cross section, and capacity including modification of river bank and flood protection levels, other than periodic dredging of material from the navigable portions of the Petaluma River for maintenance purposes, when said material is removed from the floodway area.

Source: <https://petaluma.municipal.codes/ZoningOrds/6.050>

The proposed Floodway community marketplace is similar in nature to a “circus, carnival, or other similar transient amusement enterprises”, as permitted in section B2, with the following major advantages:

- No large amusement rides will be erected on the lot, meaning all vendors can more easily move in the event of a flood situation. It takes a large crew and many hours to dismantle a rollercoaster or other amusement ride, but mere minutes to fold up a tent or drive a food truck or trailer off the lot.
- All vendors will be local to the area and will highlight the food, art, and talent that we have right here at home. While some circuses and carnivals have permanent locations, most travel the country, and do not sell or support local food products or offer anything that could be considered unique to our area.

- All vendors of The Floodway will have ties to the community, so have a vested interest in the ongoing betterment of our community. Vendors who are renting a space for a short time before heading to another state have no need or motivation to consider the long-term improvements of our community.

To avoid any unnecessary delays, I respectfully request that this application be escalated to the Zoning Administrator (Director of Planning), as allowed by section 6.050 part B4.

I am absolutely confident that the proposed use of this property as a community marketplace meets the same general characteristics of existing permitted uses as defined in section 6.050 part B2, so would appreciate the city's recognition and support of the great work I have and will continue to perform in order to finally put this property to use as an attractive, well-managed, community-focused, tax revenue generating business that the northern gateway to downtown Petaluma deserves. Thank you.



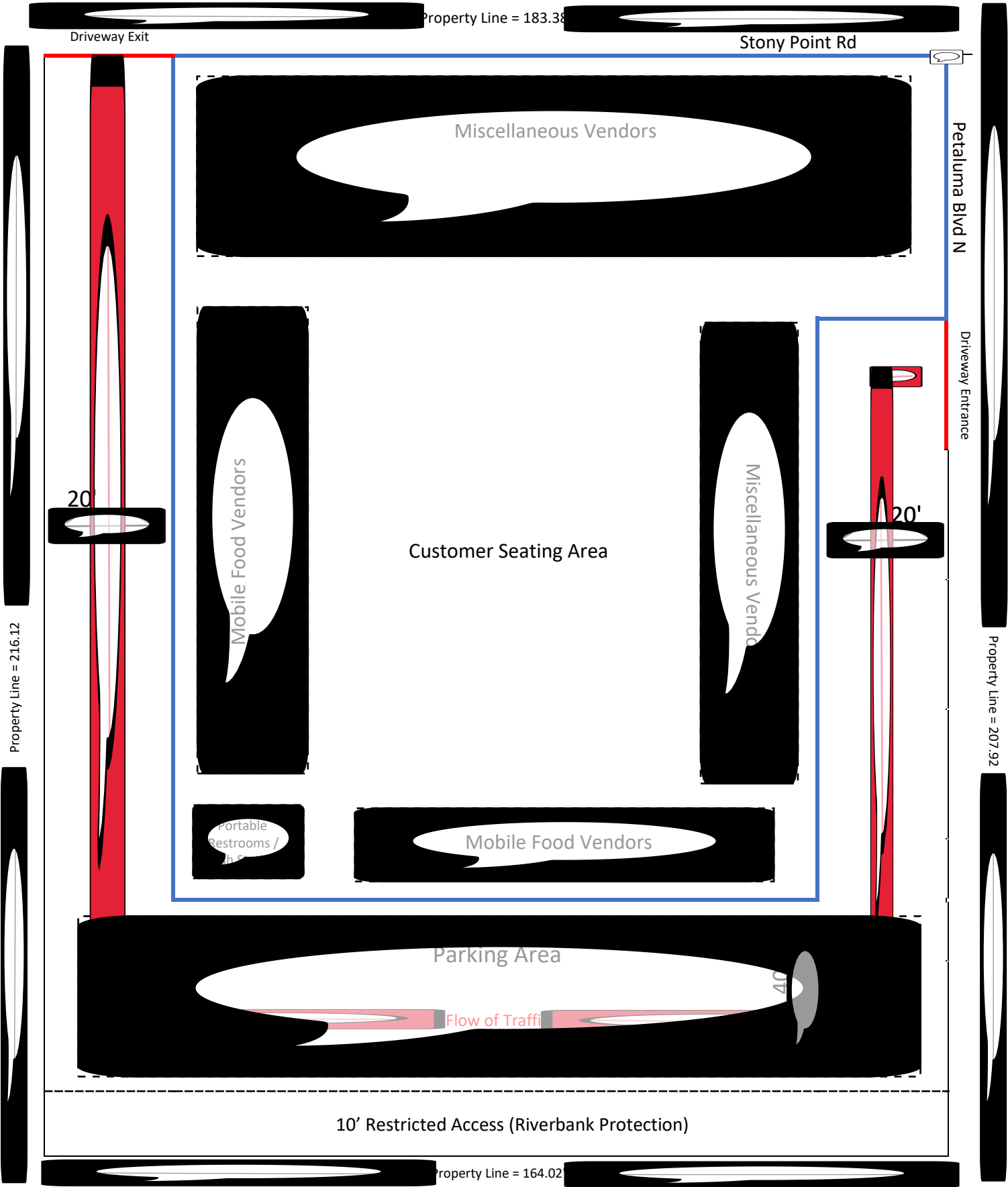
Heather Kratt, Property Owner

10/23/22

Date

Tentative Site Layout

Note: Because there are no permanent structures being installed on the property, the site layout can be easily reconfigured as needed. Temporary bollards will be used to direct traffic flow, identify parking, and provide pedestrian walkways.

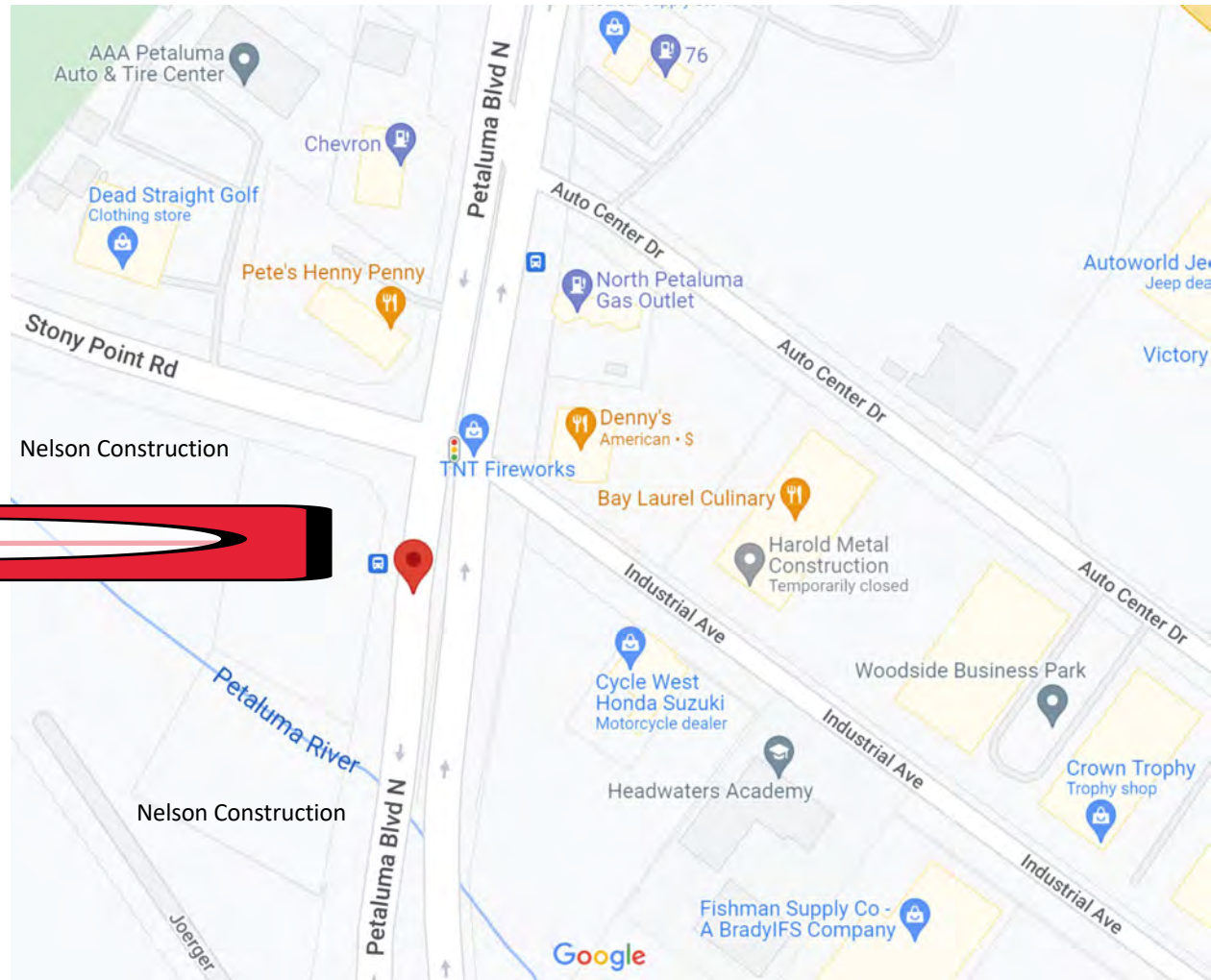


Vicinity and Aerial Context Map

Subject Property:

THE FLOODWAY

4875 Petaluma Blvd N



Map Source: <https://www.google.com/maps/place/4875+Petaluma+Blvd+N,+Petaluma,+CA+94952/@38.2689555,-122.6711956,18z/data=!4m5!3m4!1s0x8085b4fdd05c4a75:0xe24108d074346fb4!8m2!3d38.2685807!4d-122.6707664>

Property Lines and Dimensions

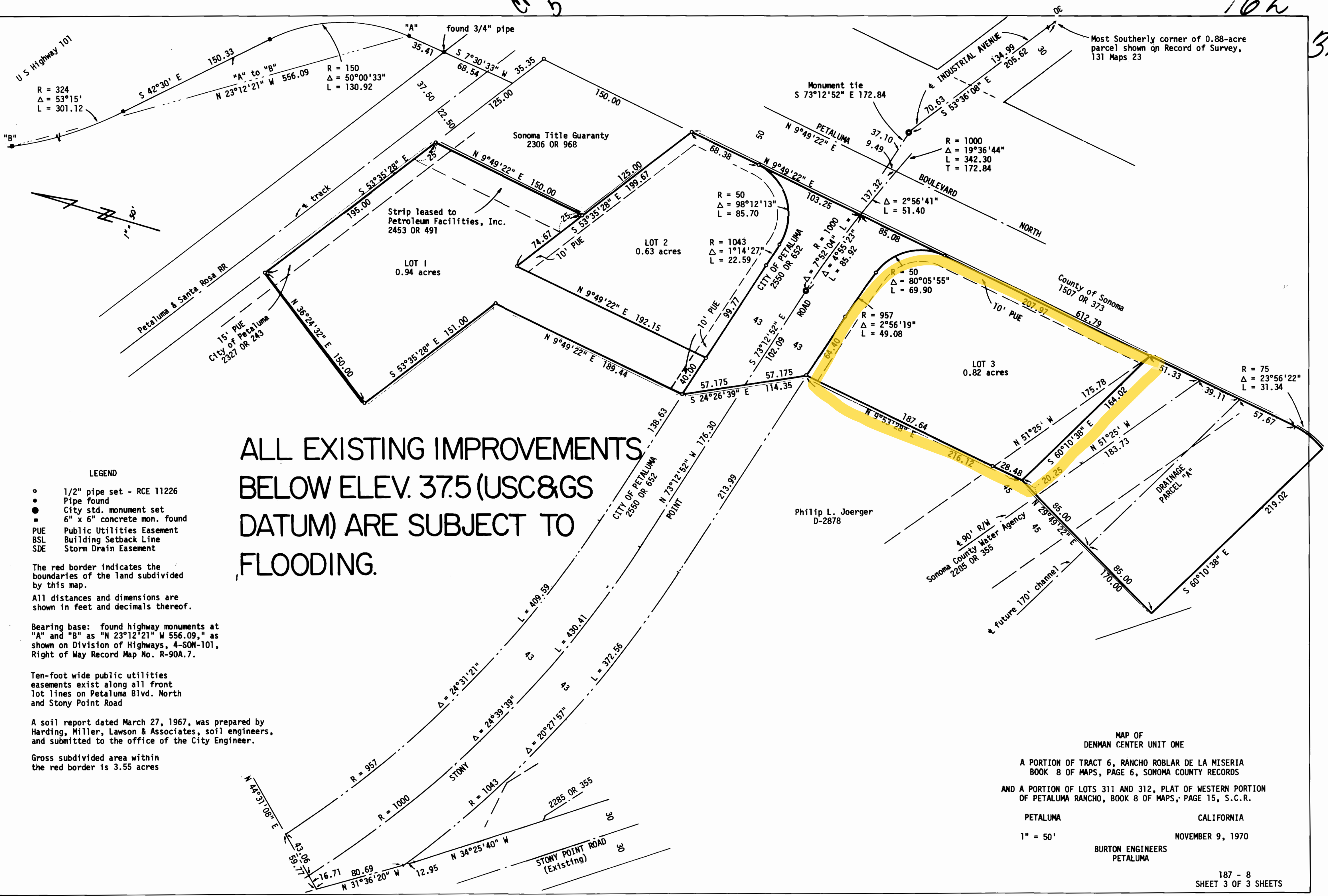
The property lines and dimensions for 4875 Petaluma Blvd N are shown on the included city recorded map (Map of Denmar Center Unit, 187-8, sheet 3 of 3).

A 10-foot easement runs along the Petaluma Blvd N and Stony Point Rd sides of the property, as indicated on the map. The easement on the Stony Point Rd property line is being used for PG&E electrical and gas lines.

CASE 5011

162

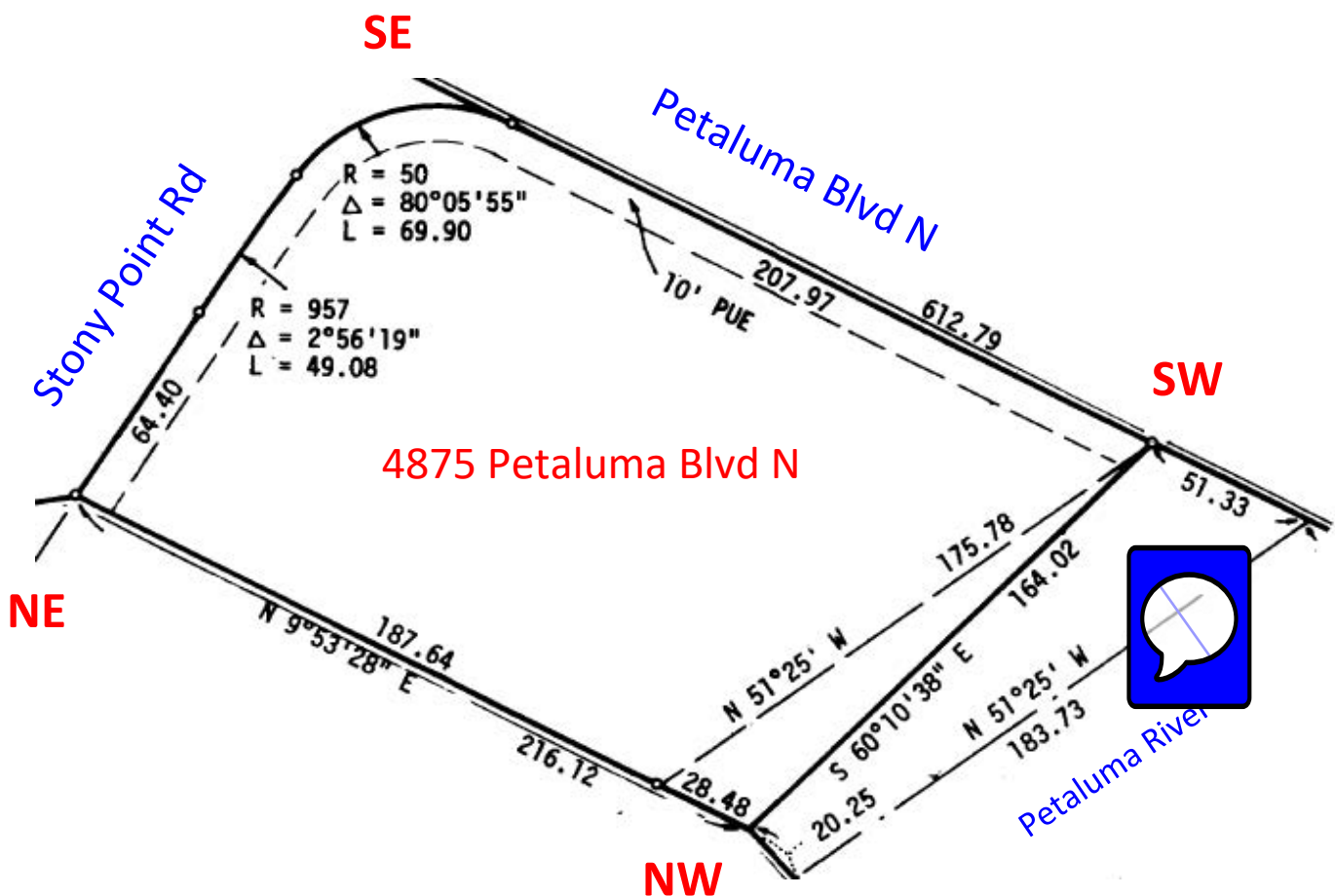
36



Site Photos

Included are photos of the current condition of the lot located at 4875 Petaluma Blvd N.

For ease of reference, the map below identifies major streets, the proximity of the Petaluma River, and the ordinal direction of each corner of the property line.





Above photo taken from NE corner of lot, looking toward SW corner of lot.



Above photo taken from midpoint of NE to SE side of lot, looking toward NW corner of lot.



Above photo taken from SW corner of lot, looking toward NE corner of lot.



Above photo taken from SW corner of lot, looking toward NE corner of lot.



Above photo taken from SW corner of lot, looking toward SE corner of lot.



Above photo taken from SW corner of lot, looking toward NW corner of lot.



Above photo taken from midpoint of NW to SW side of lot, looking toward SE corner of lot.



Above photo taken from NW corner of lot, looking toward NE corner of lot.



ENVIRONMENTAL IMPACT QUESTIONNAIRE

This form is processed as part of a development application. There is no fee for this form.

To be completed by project applicant. Information provided on this form will be used to help analyze potential environmental effects of your project.

Project Name: 4875 Petaluma Blvd N **Date filed:** 10/23/2022

A. General Information

** Please check with a planner for any items you are unsure about.*

1. List and describe any related permits and/or public agency approvals required for this project, including those required by City, Regional, State, or Federal agencies (i.e., U.S. Army Corps of Engineers, California Department of Fish & Game, etc.):

Minor Conditional Use Permit

2. Is this site listed on the State Hazardous Waste and Substances Sites List?

☐ Yes ☒ No

3. Previous approvals or submittals related to this project, including any Preliminary Review:

Project Name: _____

File Number: _____ Date of previous approval/review: _____

Project Name: _____

File Number: _____ Date of previous approval/review: _____

4. If the project involves a Variance, Conditional Use Permit, Rezoning, or General Plan Amendment application, clearly state the characteristics of the project which trigger the need for such an application:

The city's Planning Department requires a CPU because this property is zoned as Floodway (C1).

B. Project Description

1. Proposed use of the site (provide a detailed description or attach a project narrative):

See included Project Statement.

2. Site size (in acres): 0.82 (in square feet): 35,719

3. Square footage of proposed construction: 0

4. Number of floors of construction: 0 Building height: 0

5. Amount of off-street parking provided: 40 spaces - can be adjusted as needed (vacant lot)

6. Proposed construction schedule. Include phases if development is incremental:

N/A - no construction or permanent structures are being
requested with this application

7. **For proposed Residential use:**

Number of units: _____

If single family – total square footage: _____

If multi-family – unit sizes: _____

Range of sale or rental prices: _____

Household sizes expected: _____

8. **For proposed Commercial use:**

Type of Commercial use

Neighborhood Commercial

(e.g. Neighborhood Commercial, Highway Commercial, etc.)

Neighborhood/City/regionally oriented area:

North Petaluma, commercial neighbors

Square footage of sales area:

N/A

Square footage of loading facilities:

N/A

9. **For proposed Industrial use:**

Estimated number of employees per shift: _____

Square footage of loading facilities: _____

10. **For proposed Public/Institutional use:**

Describe type of use: _____

Estimated number of employees per shift: _____

Estimated occupancy: _____

Square footage of loading facilities: _____

Community benefits to be derived from project:

11. **For proposed Mixed Use:**

Describe type of use: _____

Square footage of each type of use: _____

Ratio of parking provided for each type of use: _____

Note: If an Initial Study or Environmental Impact Report is required, the applicant is required to pay the consultant fee plus 25% administrative overhead and actual cost of staff time and materials.

C. Environmental Effects

Are any of the following items applicable to the project or will the project result in any of the potential impacts identified below?

Respond to each question and attach additional sheets with explanations and information on any item checked "yes".

1. ☐ Yes ☒ No Will there be a change in existing features of any bays, tidelands, or hills, or substantial alteration of ground contours, including any grading (also see Question #6)?
2. ☐ Yes ☒ No Will there be a change in quality or quantity of any ocean, bay, lake, stream, river, marsh, or ground water, or alteration of existing drainage patterns.
3. ☐ Yes ☒ No Will there be a change in scenic views or vistas from existing residential areas or public lands or roads?
4. ☐ Yes ☒ No Will there be a change in development patterns, scale, or character of the area in the vicinity of the project?
5. ☐ Yes ☒ No Is the site on filled land or has a slope of 10 percent or more?
6. ☐ Yes ☒ No Will there be a change in topography due to grading? If yes, provide the existing average slope. Indicate the greatest change in elevation due to grading.
7. ☐ Yes ☒ No Will the project result in the removal or damage to any trees or rock outcroppings?
8. ☐ Yes ☒ No Will the project result in significant amounts of solid waste or litter?
9. ☐ Yes ☒ No Use or disposal of potentially hazardous materials, such as toxic substances, medical wastes, flammable materials, or explosives.
10. ☐ Yes ☒ No Will there be a change in dust, ash, smoke, fumes, or odors in the vicinity.
11. ☐ Yes ☒ No Will there be a change in existing noise or vibration levels in the vicinity (use of heavy equipment, pneumatic tools, significant truck traffic, etc.)
12. ☐ Yes ☒ No Will there be a change in demand for municipal services, including police, fire, schools, water, sewer, etc.
13. ☐ Yes ☒ No Will there be a change in existing circulation patterns or result in substantial amounts of additional traffic?
14. ☐ Yes ☒ No Will there be a substantial increase in fossil fuel consumption (electricity, oil, natural gas, etc.)?
15. ☒ Yes ☐ No Is the site adjacent to, or within the vicinity of, any creeks, wetlands, the **Petaluma River**, parks, marsh, agricultural lands, open space, or airport?
16. ☐ Yes ☒ No Have any prior environmental studies been completed for the project site? Studies

would include noise, geologic or geotechnical, traffic, hydrology, tree preservation, cultural resources, etc. If yes, please list and provide copies.

17. ☐ Yes ☒ No Is the site potential habitat for threatened or endangered fish, wildlife, or plant species?
18. ☐ Yes ☒ No Are there existing structures on the site? If so, please explain their current use and age.
19. ☐ Yes ☒ No Will any structures be demolished?
20. ☒ Yes ☐ No If the site is vacant, provide information on the previous use. **See included Project Statement**
21. ☐ Yes ☒ No Is the site or structure of known historical or cultural significance?
22. ☐ Yes ☒ No Is the site within an historic district?
21. Provide a statement indicating willingness to comply, if the project is required to comply with the City's phase II storm water program and management plan.

I, Heather Kratt, the property owner and applicant, am willing to comply with the city's phase II storm water program and management plan, if required.



22. Please attach labeled photos of the site and the surrounding area. **See included maps and photos**

Please note that, depending upon the nature of the application, additional studies or analysis may be required including, but not limited to, traffic, tree preservation, noise, and soils.

Declaration Required

I hereby certify that the statements furnished above and in the attached exhibits, if applicable, present, to the best of my ability, the data and information required for this initial evaluation of this project, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.



Signature of ☒ Applicant / ☒ Property Owner

10/23/22
Date



CITY OF PETALUMA

POST OFFICE BOX 61
PETALUMA, CA 94953-0061

Teresa Barrett
Mayor

Brian Barnacle
D'Lynda Fischer
Mike Healy
Dave King
Kevin McDonnell
Dennis Pocekay
Councilmembers

November 15, 2022

Heather Kratt
H&H Estate
PO Box 750354
Petaluma, CA 94954

RE: The Floodway, proposed Conditional Use Permit
APN: 007-422-028
File No. PLUP-2022-0027

Dear Ms. Kratt:

Planning staff have received your Minor Conditional Use Permit application (City Application No. PLUP-2022-0027) and required cost recovery deposit for a proposed project at 4951 Stony Point Road (APN: 007-422-028, referred to in your application as 4875 Petaluma Blvd North) in Petaluma. The Project Statement and Tentative Site Layout describe using the site as a "community marketplace" to host mobile food vendors, artisans, artists, food growers and producers, local beer and wine producers, musicians, and such – all of a mobile or transient nature – on a daily basis. They also indicate that any structures utilized would be temporary and removable in a flood situation. Before billing the project's cost recovery fund to cover the staff time to route the project for Citywide review and continued Planning review your proposed Conditional Use Permit for the "community marketplace", staff wanted to communicate our concern about the CUP request for a community marketplace at this location for the reasons described below.

When reviewing a project for compliance with the Implementing Zoning Ordinance (IZO), staff considers both the proposed land use and the physical development needed to support the proposed use. Based upon staff's initial review of your application, we would categorize the proposed land use as *General Retail* in that it involves the selling of many lines of merchandise. *General Retail* uses are typically open to the public and operate 5-7 days per week for 8-10 hours per day, similar to your proposal. Most *General Retail* uses occupy commercial structures on sites developed with parking, driveways, pedestrian access facilities and access to utilities provided. You clearly indicate that your project does not propose permanent construction or site development.

As your Project Statement notes, the parcel is located entirely within a *Floodway* District (FW) and is zoned *Floodway*. Implementing Zoning Ordinance (IZO) [Section 6.050\(A\)](#) states that since the regulatory *Floodway* is "an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, no encroachments within Floodway lands are permitted; including fill, new construction, intensification of existing use, change to more intensive use, substantial improvements, and other development."

**Community Development
Department**
11 English Street
Petaluma, CA 94952

Phone (707) 778-4301
Fax (707) 778-4498

Building Division
Phone (707) 778-4301
Fax (707) 778-4498
E-Mail:
cdd@cityofpetaluma.org

To Schedule Inspections
Phone (707) 778-4479

Planning Division
Phone (707) 778-4470
Fax (707) 778-4498
E-Mail:
petalumaplanning@cityofpetaluma.org



Floodway zoning does recognize that some uses may be appropriate. As outlined in IZO Section 6.050(B) uses are limited to activities such as open space and agricultural uses not requiring a fence or closed building, circuses, carnivals, and other similar transient amusement enterprises provided a zoning permit has been obtained from the Community Development Department, and any other open type of use as determined by the Zoning Administrator (Director of Planning) to be of the same general character as these permitted uses. Planning staff note that:

- The *General Retail* use that you are proposing is not consistent with agricultural activities or transient amusement enterprises;
- While one may consider the proposed community marketplace concept to be an “open type of use,” a reoccurring daily operation would not be considered transient, and the zoning permit required for transient uses cannot be obtained for longer than 60 days per year; and
- Operation of a General Retail use of the scope and intensity that you propose would require site development in the form of parking, driveways, pedestrian walkways, and installed utilities in order for it to support essential public safety, health, and welfare needs.

Additionally, land uses that may be allowed within the *Floodway* through approval of a Conditional Use, as allowed by IZO [Section 6.050.\(C\) 1-4](#), are limited to:

1. Open air public and private recreational facilities such as parks, golf courses, and athletic fields,
2. Private and public docking, mooring, and boat launching facilities,
3. Above-ground public utility and private service facilities such as water and sanitation pipelines, roads, bridges, and similar facilities, and
4. Improvements in stream channel alignment, cross section, and capacity including modification of riverbank and flood protection.

The proposed community marketplace does not appear to fit within the uses allowed for consideration through the Use Permit process.

In summary, the proposed community marketplace on the parcel at 4951 Stony Point and within the boundaries of the *Floodway* is not a land use that the City’s Implementing Zoning Ordinance allows as a permitted use or upon obtaining a Zoning Permit or a Conditional Use Permit. Based on this staff is not able to support the Conditional Use Permit as requested.

You may wish to consider the short-term Zoning Permit vehicle (IZO [Section 7.070](#)) as a possible means of proposing a community marketplace at the site, but of a lesser extent; including not more than 60 days in the year and outside of the defined rainy season. Should you pursue the short-term Zoning Permit approach, full review would then occur by the various City Departments. As early notes, Planning would anticipate that proposed hours of operation would need to be minimized, parking provision and drive aisle accessibility would need to be detailed and code compliant, and aesthetics would need to be detailed and considered.

If you would like to move forward with your application, by directing deposit of the initial deposit on the staff time and materials to process the application, City staff will need to deny the administrative application. That denial could then be appealed to the Planning Commission for

their consideration as to whether a community marketplace within the *Floodway* is (1) permissible within the constraints of the IZO and, if so, then (2) a desired use within the *Floodway*.

I expect that this information is a great disappointment. We hope that you will take this information as constructive and in the spirit of minimizing your application deposit costs. We have not charged the project's cost recovery fund for the preparation of this correspondence, but we must do so if the application proceeds.

If you have any questions regarding this letter, please contact me at trobbe@cityofpetaluma.org or at (707) 778-4318.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tiffany S. Robbe".

Tiffany Robbe
Deputy Planning Manager

Copy: Andrew Trippel, Planning Manager
Heather Hines, Interim Community Development Director

November 27, 2022

Re: The Floodway Community Marketplace – 4875 Petaluma Blvd N – PLUP-2022-0027

To Whom It May Concern:

I'm surprised by the Planning Department's quick dismissal of our application. I believe I presented a very clear and compelling application fully deserving of proper consideration. It appears that our application was not escalated as requested, but instead summarily dismissed without conducting a proper review, sharing it with other city departments, asking us any clarifying questions about our project, or even cashing our check.

I firmly believe there will never be a better proposed use for that lot. It meets the existing allowed uses, requires no development, and will be an attractive business at the northern gateway to downtown Petaluma. It's a win-win. I'd think the city would be grateful that two skilled business owners purchased the lot, cleaned it up, and intend to generate much needed tax revenue for the city.

Your arguments against our business seem to focus on keywords picked from our application rather than their intent in the zoning laws. Those keywords or alleged concerns include: floodway, retail, and transient.

We are fully aware that our lot is in a floodway, hence the tongue in cheek name we gave to our community marketplace. Deputy Planning Manager, Tiffany Robbe, has suggested that a floodway is "hazardous" and therefore we shouldn't operate a business there. If and when there is another flood, it won't have any great impact on our business because we are mobile. We will have advance notice of any impending flood and will quickly vacate the lot. The fact that it's a floodway is irrelevant to the operation of our business.

It seems that the real risk in a flood is to the surrounding properties that have permanent structures and are just across the street from our lot. I was told that the last time it flooded (about 15 years ago), the city had to pay damages to those businesses because the river had not been properly maintained. We are not trying to remove the floodway designation from our lot and there will be no assets present for a flood to damage.

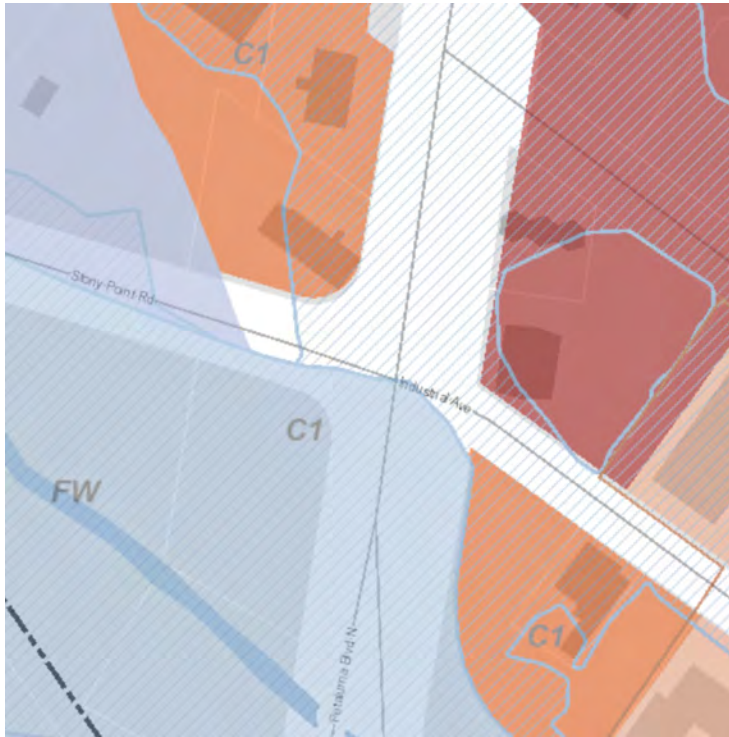
It's curious that the floodway map shows the floodway taking a sharp right turn at Petaluma Blvd N. If our lot floods, the lots across the street will also flood, so I'd be interested in knowing how the designations for the surrounding properties were arrived at. The floodway designation seems arbitrary.



Source: [FEMA Flood Map Service Center](#) | [Search By Address](#)

Ms. Robbe suggests that retail is not allowed on our lot, but everything I've read conflicts with that conclusion. The zoning law specifically identifies circuses and carnivals as an allowed use, and those are retail businesses. Our community marketplace is similar in nature to a circus or carnival except we won't have dangerous amusement rides. Our lot is surrounded by other retail businesses. It is also zoned C1, which states "the C1 zone is applied to existing smaller-scale shopping centers with off-street parking, or clusters of street-front stores that serve the surrounding neighborhood." That clearly describes our intended use of the lot, as we will be a cluster of vendors with off-street parking serving the surrounding neighborhood.

We've spent a lot of time and money purchasing and cleaning up this lot. We purchased the lot in good faith because it is zoned for commercial business.



Source: [Zoning Map - City of Petaluma](#)

Finally, Ms. Robbe seems concerned with the use of the word "transient" in the zoning law. It's clear that the intent of the word "transient" in the zoning code means the business can be moved in the event of a flood, as opposed to building a permanent structure on the lot. In this context, the word transient means impermanent. Every vendor on our lot will be mobile, so all can be quickly and easily moved in the event of an imminent flood or any other natural disaster. Also, I see no reason why we would be restricted from using our lot year-round when there are neighboring lots that also have the floodway designation yet operate year-round.

Please escalate and process our application, as was requested back on October 23. When sharing our application with the other city departments, please include Ms. Robbe's dismissal letter and my response to it. Thank you.

Regards,

Heather Kratt



CITY OF PETALUMA

POST OFFICE BOX 61
PETALUMA, CA 94953-0061

Kevin McDonnell
Mayor

Brian Barnacle
Janice Cader-Thompson, *Dist. 1*
Mike Healy
Karen Nau, *Dist. 3*
Dennis Pocekay
John Shribbs, *Dist. 2*
Councilmembers

**Community Development
Department**
11 English Street
Petaluma, CA 94952

Phone (707) 778-4301
Fax (707) 778-4498

Building Division
Phone (707) 778-4301
Fax (707) 778-4498
E-Mail:
building@cityofpetaluma.org

To Schedule Inspections
Phone (707) 778-4479

Planning Division
Phone (707) 778-4470
Fax (707) 778-4498
E-Mail:
petalumaplanning@
cityofpetaluma.org



February 28, 2023

Heather Kratt
H&H Estate
PO Box 750354
Petaluma, CA 94954

RE: The Floodway – Request for Conditional Use Permit

APN: 007-422-028

File No. PLUP-2022-0027

Dear Ms. Kratt:

The purpose of this letter is to inform you that the Planning Manager has determined that the Minor Conditional Use Permit (CUP) application (City Application No. PLUP-2022-0027) for the proposed project at 4875 Petaluma Blvd North (previously addressed as 4951 Stony Point Road) (APN: 007-422-028), submitted December 1, 2022, cannot be approved. Additionally, and as previously stated in Planning Staff's advisory letter dated November 15, 2022 (Attachment D), the proposed community marketplace use on the parcel located at 4875 Petaluma Blvd. North and within the boundaries of the Floodway is not a land use that the City's Implementing Zoning Ordinance (IZO) allows as a Permitted use.

The applicable regulations used to make this determination are principally found in Chapter 6 (Floodway & Flood Plain Districts) and Chapter 24 (Administrative Procedures) of the City's IZO. For purposes of review of this project, we use the definition of development in Chapter 6, which generally defines Development as "any man-made change to improved or unimproved real estate," and the definition in Chapter 28, which generally defines Development Project as "any project which would establish any new or changed use of any real property."

Permitted Uses, Floodway District

As outlined in [IZO Section 6.050\(B\)](#), permitted uses are limited to the following:

1. Open space agricultural uses not requiring a fence or closed building such as cropland, orchards, and livestock feeding and grazing.
2. Circuses, carnivals, and other similar transient amusement enterprises provided a zoning permit has been obtained from the Community Development Department.
3. Modification of Native or Riparian Vegetation. Where modification or removal of native or riparian vegetation is required, such modification or removal may be permitted after obtaining a development permit consisting of written approval from the Director, provided that such proposed modifications in the Flood Plain have been found to be consistent with the General Plan.
4. Any other open type of use as determined by the Zoning Administrator (Director of Planning) to be of the same general character as the above permitted uses.

5. Periodic dredging of silt material from the navigable portions of the Petaluma River for maintenance purposes, when said silt material is removed from the floodway area.

Permitted uses are first required to obtain a Development Permit pursuant to [IZO Section 6.070\(B\)](#)¹. Circuses, carnivals, and other similar transient amusement enterprises, as well as any other open type use determined by the Zoning Administrator/Planning Manager^{2,3} to be of that same general character, must also obtain a Zoning Permit for short-term activities as outlined in [IZO Section 7.070](#). Zoning Permits are issued by the Director for a period not to exceed 60 consecutive days in any one calendar year.

Conditional Uses, Floodway District

Conditional Uses within the Floodway, as outlined in [IZO Section 6.050\(C\)](#), are limited to those that follow:

1. Open air public and private recreational facilities such as parks, golf courses, and athletic fields.
2. Private and public docking, mooring, and boat launching facilities, providing such facilities shall be designed and constructed so as not to restrict the carrying capacity of the designated floodway.
3. Above-ground public utility and private service facilities such as water and sanitation pipe lines, telecommunication facilities in accordance with Chapter 14.44 of the Petaluma Municipal Code, roads, bridges, and similar facilities, providing such facilities shall be designed and constructed so as not to restrict the carrying capacity of the floodway.
4. Improvements in stream channel alignment, cross section, and capacity including modification of river bank and flood protection levels, other than periodic dredging of material from the navigable portions of the Petaluma River for maintenance purposes, when said material is removed from the floodway area.

The Planning Manager is unable to find that the proposed use is one of the listed Permitted uses numbered 1, 2, 3, or 5 above. Considering Permitted use number 4, the Planning Manager is likewise unable to find the project as proposed to be an open type use of the same general character as permitted use 1, 3, or 5 and was unable to find it the same as those described at permitted use 2, which are transient uses and which require a Zoning Permit limiting duration to 60 days in a calendar year, in that the proposed use is year-round and cannot be considered a transient use. Furthermore, the Planning Manager is unable to find that the proposed community marketplace use is similar to any of the uses listed above that may be allowed subject to Conditional Use Permit approval. In conclusion, as the proposed project is not a land use that the City's Implementing Zoning Ordinance allows in a Floodway as a Permitted use or upon obtaining Conditional Use Permit approval, the proposed project, including the Conditional Use Permit application, is denied.

The proposed project was excluded from California Environmental Quality Act (CEQA) review in accordance with Section 21080(b)(5) of CEQA Guidelines, which states that CEQA analysis is not needed for projects for which a public agency is recommending denial. (If, under some alternative scenario, the project were to be considered for approval in the future, additional CEQA review would be required.)

This decision by the Planning Manager may be appealed to the Planning Commission for their consideration as to whether a community marketplace within the Floodway is permissible within the constraints of the IZO. Should the Planning Commission find that the proposed use is one listed at [IZO Section 6.050\(C\)](#) as possible via the Conditional Use Permit process, they could remand the proposed entitlement back to staff for full review and processing, with specific direction that the subsequent CUP

¹ It has been the Department's practice to designate the Floodplain Administrator role, pursuant to IZO 6.070.C, to the Public Works & Utility Department City Engineer or Assistant Director. This role is currently designated to Gina Benedetti-Petnic, Assistant Director of PW&U.

² The administrative administrator of the Zoning Ordinance is the Community Development Director, pursuant to IZO 1.030.

³ The Community Development Director has designated the role of Zoning Administrator to the Planning Manager, under the authority of IZO Sections 24.020 and 1.030.

decision occur either at the Planning Commission or staff level. A Planning Commission decision may be appealed to the City Council.

Any appeal request must be made in writing within fourteen (14) calendar days of the date of this denial letter and shall be filed with the City Clerk. If no appeal is filed within that time, the staff decision shall be final. An appeal shall be addressed to the Planning Commission in writing and shall state specifically the grounds for the appeal and the relief sought by the appellant. The appeal fee as specified by Resolution 2010-206 N.C.S., as adopted by the City Council shall accompany the appeal.

If you have any questions regarding this letter, please contact me at atrippel@cityofpetaluma.org or at (707) 778-4367.

Sincerely,

A handwritten signature in blue ink, appearing to read "Trippel", is positioned above the printed name.

Andrew Trippel
Planning Manager

Copy: Larissa Alchin, Associate Planner
Tiffany Robbe, Deputy Planning Manager
Brian Oh, Community Development Director

Attachment A– Flood Plan Administrator Letter dated February 15, 2023

Attachment B - Points of Clarification

Attachment C - Further Information

Attachment D - Planning Staff's letter dated November 15, 2022



CITY OF PETALUMA

POST OFFICE BOX 61
PETALUMA, CA 94953-0061

Kevin McDonnell
Mayor

February 15, 2023

Brian Barnacle
Janice Cader-Thompson,
Dist. 1
Mike Healy
Karen Nau, Dist. 3
Dennis Pocekay
John Shribbs, Dist. 2
Councilmembers

Andrew Trippel
Planning Manager
City of Petaluma Planning Department
PO Box 61
Petaluma, CA 94953-0061

RE: The Floodway, proposed Conditional Use Permit

APN: 007-422-028

File No. PLUP-2022-0027

Dear Andrew:

Public Works & Utilities

City Engineer
11 English Street
Petaluma, CA 94952
Phone (707) 778-4303

Environmental Services
Ellis Creek Water
Recycling Facility
3890 Cypress Drive
Petaluma, CA 94954
Phone (707) 776-3777
Fax (707) 656-4067

Facilities, Parks &
Streets Maintenance
840 Hopper St.
Petaluma, CA 94952
Phone (707) 778-4303
Fax (707) 206-6065

Transit Division
555 N. McDowell Blvd.
Petaluma, CA 94954
Phone (707) 778-4421

Utilities & Field Operations
202 N. McDowell Blvd.
Petaluma, CA 94954
Phone (707) 778-4546
Fax (707) 206-6034

E-Mail:
publicworks@
cityofpetaluma.org

Public Works Department has carefully reviewed the Minor Conditional Use Permit (CUP) application submitted by Ms. Heather Kratt on behalf of H&H Real Estate LLC for the proposed project at 4875 Petaluma Blvd. North referenced in the subject line. In consideration of the applicable Floodway & Flood Plain Districts regulations found in Chapter 6 of the Implementing Zoning Ordinance (IZO), and the submitted materials from the applicant, I would not be able to support this project located within the Floodway Zone, nor would I be able to issue a Development Permit from the Floodplain Administrator as is required by IZO 6.070 (B) .

From the preliminary information provided to date from the applicant, and consistent with the Planning Director's finding (see Planning Denial Letter) that this proposed use is not consistent with permitted or conditional uses, I cannot approve this proposed encroachment in the Floodway pursuant to IZO Section 6.050 (A), [IZO Section 6.050](#). See below.

6.050 Floodway District (FW).



All areas within the boundaries of the "Areas of Special Flood Hazard" and identified as "Floodway" areas are [zoned](#) Floodway.

A. *Encroachments in Floodway.* Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, no encroachments within Floodway lands are permitted; including fill, new construction, intensification of existing use, change to more intensive use, substantial improvements, and other development, except as specified herein as permitted or conditional land uses, and provided that a certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

Exception does not apply.

The exhibit below, excerpted from the FEMA Firm Maps, shows the subject property fully within the Floodway Zone.

Project Site Map in Floodway Zone



Sincerely,

Gina Benedetti-Petnic, CE,
Assistant Director of Public Works and Utilities
Floodplain Administrator

Copy: Tiffany Robbe, Deputy Planning Manager
Larissa Alchin, Associate Planner
Brian Oh, Community Development Director
Christopher Bolt, Director of Public Works and Utilities
Pamela Tuft, Special Projects Consultant

Points of Clarification

Designation of the Floodway and Floodplain are made by the Federal Emergency Management Agency (FEMA), who identifies flood hazards and risks based on a scientific and engineering process and incorporates this data into their flood maps, known as Flood Insurance Rate Maps (FIRMs). These flood maps support the Federal Insurance and Mitigation Administration Flood Insurance Program and serve as the basis for community floodplain management by guiding the development of local and regional mitigation actions to reduce flood risk and build more resilient communities. FEMA last updated its Petaluma flood maps in 2016. Implementing Zoning Ordinance Section 6.020 provides that any Federal updates to the Floodway Map are adopted by reference and become part of the zoning ordinance.

The subject parcel is zoned Floodway; it does not also have a C1 (Commercial 1) zoning designation. The property is entirely within the regulatory Floodway. Floodway is the established zoning district, not an overlay district as is the case of the Floodplain. Regarding the image inserted in the Rebuttal Letter, the C1 notation at the intersection corner is an artifact of an older mapping layer. Before the 2016 FEMA mapping revision, the Floodway zoning designation covered the majority of the subject parcel but did not cover the intersection corner. When the maps were updated to reflect the official Federal updates to the Floodway Map pursuant to IZO 6.020, the former C1 artifact was not noticed and, therefore, not removed by hand. We are working to have this artifact removed from the digital zoning map.



Source: Zoning Map - City of Petaluma, 2023

Ms. Robbe seems concerned with the use of the word “transient” in the zoning law. It’s clear that the intent of the word “transient” in the zoning code means the business can be moved in the event of a flood, as opposed to building a permanent structure on the lot. In this context, the word transient means impermanent. Every vendor on our lot will be mobile, so all can be quickly and easily moved in the event of an imminent flood or any other natural disaster. Also, I see no reason why we would be restricted from using our lot year-round when there are neighboring lots that also have the floodway designation yet operate year-round.

The Floodway and Flood Plain Districts chapter of the IZO uses the word transient once, and that is at IZO Section 6.050(B)2 where it states that circuses, carnivals, and other similar transient amusement enterprises may be permittable uses on lands designated as Floodway, provided that a Zoning Permit (and

a Development Permit per Section 6.070(B) including certification demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge) is first obtained. As outlined in IZO Section 7.070, a Zoning Permit is required to allow Short-Term Activities including outdoor sales such as pumpkins, other produce, goods, or merchandise as well as circuses, for a period of not to exceed 60 days in a calendar year. In this context of the City of Petaluma IZO and the Floodway, the word “transient” specifically regards a use of not more than 60 days in a calendar year.

Further Information

As staff has completed the first round of review, we wanted to share an initial list of information and studies noted would be needed to accommodate further evaluation and processing of a CUP request should the land use be found to be Permitted or allowed subject to Conditional Use Permit approval. The following is provided for the benefit of the applicant and is intended to raise your awareness regarding potential issues and information gaps.

Please know that Planning review did not consider an outstanding policy question regarding what site improvements (such as driveway and parking space surfacing and weight rating, access points, bathroom provision, and ADA provision) are required for on-going use of a site, where fixed structures are not intended, but where man-made changes to real estate and a new use of the real property are proposed.

Planning Division

1. **Plan Set.** The project tentative site plan (layout) must be drawn to scale by a profession and show accurate lot size and configuration. Please include the following information in your resubmitted site plan (see also Public Works comments below). Provide site plan(s) with the following features:
 - a. Property lines, dimensions, and all easements. Please note there is a 90' wide easement to the Sonoma County Water Agency partially located on the property.
 - b. Delineate center line and top of bank of Petaluma River. Show 50' setback measurement from top of bank and 200' setback measurement from centerline of river. As required by Petaluma General Plan Policy 4-G-1, Program D, a 50' setback from the top of bank, is required with no development in that setback except for greenway enhancement improvements. Staff is unclear what the 10' restricted access (riverbank protection) area shown on submitted plans is in reference to. General Plan policies including 8-P-28 and 30 designate the Petaluma River Corridor (PRC) as a 200' setback from the centerline of the Petaluma River, as a set aside for a flood terrace system and direct no additional development in this area.
 - c. Proposed automobile, bicycle and ADA parking spaces, drive aisles, loading areas, curbing, and car-stops. Include dimensions and locations. Please refer to the SPAR Information Handout Appendix A for more information. The parking area seems to show parking and drive aisles in the same location, please separately delineate each area.
 - d. Proposed landscape areas and pedestrian paths.
 - e. Proposed retail area, including square footage of area and proposed food cart/truck.
 - f. Proposed seating area with number of tables and chairs, including any shade structures.
 - g. Proposed, trash enclosures and screening; including locations, finishes and dimensions.
2. **Project Description.** Provide complete and detailed project description including operational scope, such as number and specification of vendors and hours of operations to clarify intensity of use proposal, number of parking spaces requires, etc.
3. **Certification of No Increase in Flood Levels.** IZO Section 6.050 requires that certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
4. **Development Permit Required.** Required by IZO Section 6.060.B and outlined at IZO 6.070.B, E, F, and G and including Certification of Zero Net Fill.

5. **CEQA.** As with other aspects of the project's review, additional studies and information are anticipated to be needed as the scope of the proposal is fully understood.
6. **Flood Plan Evacuation.** The CUP Rebuttal Letter dated November 27, 2022, asserts that a flooding event would have little impact on the proposed project and that advance notice of flooding would allow time to quickly vacate the property.
 - a. Please provide an emergency plan describing how all proposed temporary facilities including but not limited to sanitary facilities, mobile vendors, parking bollards, seating areas, tents, umbrellas, and all other items located on the property will be removed prior to a flooding event.
7. **Compliance with General Plan 2025.** All of the property has a Land Use Designation of Floodway. See applicable General Plan policies, including:
 - a. 1-Goal-5, the Petaluma River policies
 - b. Policy 4-P-1, Program D, of the Natural Environment element of the GP 2025 calls for a 50' setback from the top of bank, with no development in that setback except for greenway enhancement improvements. Program K under that same Policy, prohibits placement of impervious surfaces in the Floodway.
 - c. 8-Goal-8, the Surface Water Management policies, including:
 - i. Policy 8-P-28, designating the area upstream of the Corps weir and below the confluence of Willow Brook Creek with the Petaluma River, within the floodplain and adjacent to the Petaluma River as the Petaluma River Corridor (PRC) and directing that the PRC shall be set aside for the design and construction of a flood terrace system to allow the River to accommodate a 100-year storm event.
 - ii. Policy 8-P-30, directs that, upstream of the Corps weir, within a 200' setback from centerline of the Petaluma River, no additional development shall be permitted on lands within that 400' wide corridor, given natural and physical constraints and includes a series of modeling and technical requirements and improvements.
 - iii. Policy 8-P-32 directs continued implementation of mandatory zero-net fill upstream, and when appropriate zero-net runoff.
8. **Compliance with River Access and Enhancement Plan.** All of the property is within the City's River Access and Enhancement Plan which includes policies relative to development, landscaping, design, etc.

Public Works

Jeff Stutsman, City Engineer, at JStutsman@cityofpetaluma.org or 707-776-3673.

Per Chapter 6 of the "Floodway and Flood Plain District" of the Petaluma Zoning Code, the floodway is an extremely hazardous area due to the velocity of flood waters, and no new encroachments within the floodway lands are permitted, which includes fill, new construction, intensification of existing use and change to more intensive use. The only permitted land use is open space agriculture, circus, carnivals, and other similar transient amusement enterprises. These are considered short-term, low-intensity uses. No permanent structures are allowed in the floodway.

9. Provide more detail site plan and project description on what is being proposed?
 - a. How do vehicles enter and exit the property?
 - b. How is parking delineated?

- c. No additional fill material is allowed on the site or any impervious surfaces allowed; how do you provide a firm surface for proposed use and prevent tracking of soil off the site?
- d. Are the facilities proposed set up and taken down daily or left up year around and what type of facilities are being proposed?
- e. Do you plan on operating year-round and what plans would be in place for a large storm event? Items such as canopy, garbage facilities, and restroom can become buoyant and float down the river causing larger issues.

Building Division

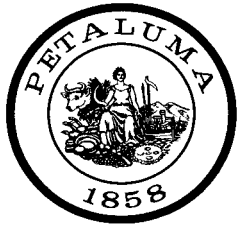
Charles Lucas, Deputy Chief Building Official - CLucas@cityofpetaluma.org or by phone at 707-778-4595

- 10. Site improvements for public use facilities or places of public accommodation require building and/or grading permits. Permit applications shall demonstrate compliance with current California Building Standards Code in CCR Title 24 as adopted by the City of Petaluma.
- 11. The construction documents submitted with the application for permit shall be accompanied by a site plan showing to scale the size and location of new construction and existing structures on the site, distances from lot lines, the established street grades and the proposed finished grades and, as applicable, flood hazard areas, floodways, and design flood elevations; and it shall be drawn in accordance with an accurate boundary line survey.
- 12. CBC 1612.1 is applicable within flood hazard areas. All new construction of buildings, structures and portions of buildings and structures, shall be designed and constructed to resist the effects of flood hazards and flood loads. For buildings that are located in more than one flood hazard area, the provisions associated with the most restrictive flood hazard area shall apply. The applicant shall demonstrate compliance for all improvements proposed on construction documents submitted for permit.
- 13. Effective June 16, 2021, new buildings are required to have all electric construction as defined in Petaluma Municipal Code 17.36 and permanent supply of electricity as the source of energy for all space heating, water heating (including pools and spas), cooking appliances, and clothes drying appliances, and has no natural gas or propane plumbing installed in the building.
- 14. Proposed project will require building permit application and construction plan approval in compliance with current California Building Standards Code in CCR Title 24 as adopted by the City of Petaluma. The Building Division reviews applications and plans in accordance with these and the City municipal code. The applicant will need to demonstrate compliance with the construction documents.
 - a. Full plan submittal is required as applicable to project scope. Architectural, civil, structural, mechanical, electrical, and plumbing systems are to be prepared by state licensed design professionals. See City file preparations standards: Electronic File Preparation Standards - Petaluma (cityofpetaluma.org).
 - b. Building permit construction documents are to include occupancy classifications, design occupant load, general building area and height limitations, type of construction, and fire sprinkler provisions data for each building, structure or improvement on the subject parcel. Each separate building should have a separate permit for construction.

Fire Prevention Division

Jessica Walton, Contract Plans Examiner- JWalton@cityofpetaluma.org

- 15. Any individual tent over 700 sq. ft and tents put together over 400 sq. ft. requires a permit from the Fire Department.



CITY OF PETALUMA

POST OFFICE BOX 61
PETALUMA, CA 94953-0061

Teresa Barrett
Mayor

Brian Barnacle
D'Lynda Fischer
Mike Healy
Dave King
Kevin McDonnell
Dennis Pocekay
Councilmembers

November 15, 2022

Heather Kratt
H&H Estate
PO Box 750354
Petaluma, CA 94954

RE: The Floodway, proposed Conditional Use Permit
APN: 007-422-028
File No. PLUP-2022-0027

Dear Ms. Kratt:

Planning staff have received your Minor Conditional Use Permit application (City Application No. PLUP-2022-0027) and required cost recovery deposit for a proposed project at 4951 Stony Point Road (APN: 007-422-028, referred to in your application as 4875 Petaluma Blvd North) in Petaluma. The Project Statement and Tentative Site Layout describe using the site as a "community marketplace" to host mobile food vendors, artisans, artists, food growers and producers, local beer and wine producers, musicians, and such – all of a mobile or transient nature – on a daily basis. They also indicate that any structures utilized would be temporary and removable in a flood situation. Before billing the project's cost recovery fund to cover the staff time to route the project for Citywide review and continued Planning review your proposed Conditional Use Permit for the "community marketplace", staff wanted to communicate our concern about the CUP request for a community marketplace at this location for the reasons described below.

When reviewing a project for compliance with the Implementing Zoning Ordinance (IZO), staff considers both the proposed land use and the physical development needed to support the proposed use. Based upon staff's initial review of your application, we would categorize the proposed land use as *General Retail* in that it involves the selling of many lines of merchandise. *General Retail* uses are typically open to the public and operate 5-7 days per week for 8-10 hours per day, similar to your proposal. Most *General Retail* uses occupy commercial structures on sites developed with parking, driveways, pedestrian access facilities and access to utilities provided. You clearly indicate that your project does not propose permanent construction or site development.

As your Project Statement notes, the parcel is located entirely within a *Floodway* District (FW) and is zoned *Floodway*. Implementing Zoning Ordinance (IZO) [Section 6.050\(A\)](#) states that since the regulatory *Floodway* is "an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, no encroachments within Floodway lands are permitted; including fill, new construction, intensification of existing use, change to more intensive use, substantial improvements, and other development."

**Community Development
Department**
11 English Street
Petaluma, CA 94952

Phone (707) 778-4301
Fax (707) 778-4498

Building Division
Phone (707) 778-4301
Fax (707) 778-4498
E-Mail:
cdd@cityofpetaluma.org

To Schedule Inspections
Phone (707) 778-4479

Planning Division
Phone (707) 778-4470
Fax (707) 778-4498
E-Mail:
petalumaplanning@cityofpetaluma.org



Floodway zoning does recognize that some uses may be appropriate. As outlined in IZO Section 6.050(B) uses are limited to activities such as open space and agricultural uses not requiring a fence or closed building, circuses, carnivals, and other similar transient amusement enterprises provided a zoning permit has been obtained from the Community Development Department, and any other open type of use as determined by the Zoning Administrator (Director of Planning) to be of the same general character as these permitted uses. Planning staff note that:

- The *General Retail* use that you are proposing is not consistent with agricultural activities or transient amusement enterprises;
- While one may consider the proposed community marketplace concept to be an “open type of use,” a reoccurring daily operation would not be considered transient, and the zoning permit required for transient uses cannot be obtained for longer than 60 days per year; and
- Operation of a General Retail use of the scope and intensity that you propose would require site development in the form of parking, driveways, pedestrian walkways, and installed utilities in order for it to support essential public safety, health, and welfare needs.

Additionally, land uses that may be allowed within the *Floodway* through approval of a Conditional Use, as allowed by IZO [Section 6.050.\(C\) 1-4](#), are limited to:

1. Open air public and private recreational facilities such as parks, golf courses, and athletic fields,
2. Private and public docking, mooring, and boat launching facilities,
3. Above-ground public utility and private service facilities such as water and sanitation pipelines, roads, bridges, and similar facilities, and
4. Improvements in stream channel alignment, cross section, and capacity including modification of riverbank and flood protection.

The proposed community marketplace does not appear to fit within the uses allowed for consideration through the Use Permit process.

In summary, the proposed community marketplace on the parcel at 4951 Stony Point and within the boundaries of the *Floodway* is not a land use that the City’s Implementing Zoning Ordinance allows as a permitted use or upon obtaining a Zoning Permit or a Conditional Use Permit. Based on this staff is not able to support the Conditional Use Permit as requested.

You may wish to consider the short-term Zoning Permit vehicle (IZO [Section 7.070](#)) as a possible means of proposing a community marketplace at the site, but of a lesser extent; including not more than 60 days in the year and outside of the defined rainy season. Should you pursue the short-term Zoning Permit approach, full review would then occur by the various City Departments. As early notes, Planning would anticipate that proposed hours of operation would need to be minimized, parking provision and drive aisle accessibility would need to be detailed and code compliant, and aesthetics would need to be detailed and considered.

If you would like to move forward with your application, by directing deposit of the initial deposit on the staff time and materials to process the application, City staff will need to deny the administrative application. That denial could then be appealed to the Planning Commission for

their consideration as to whether a community marketplace within the *Floodway* is (1) permissible within the constraints of the IZO and, if so, then (2) a desired use within the *Floodway*.

I expect that this information is a great disappointment. We hope that you will take this information as constructive and in the spirit of minimizing your application deposit costs. We have not charged the project's cost recovery fund for the preparation of this correspondence, but we must do so if the application proceeds.

If you have any questions regarding this letter, please contact me at trobbe@cityofpetaluma.org or at (707) 778-4318.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tiffany S. Robbe".

Tiffany Robbe
Deputy Planning Manager

Copy: Andrew Trippel, Planning Manager
Heather Hines, Interim Community Development Director



Heather Kratt <heather.kratt@gmail.com>

Minor CUP application at 4875 Petaluma Blvd North

Alchin, Larissa <lalchin@cityofpetaluma.org>

Fri, Mar 3, 2023 at 10:23 AM

To: Heather Kratt <heather.kratt@gmail.com>

Cc: Holly Manzano <holly@manzano.com>, "Trippel, Andrew" <atrippel@cityofpetaluma.org>, "Robbe, Tiffany" <trobbe@cityofpetaluma.org>

Hi Heather,

We look forward to meeting with you on Monday at 11 am. Please come to the Planning Counter when you arrive at City Hall.

I hope the information provided below helps clarify your questions about the CUP review process and publicly available information.

- 1. In this determination letter, we see that Ms. Robbe's initial denial letter is included but our rebuttal letter is not. Please confirm that my rebuttal letter was provided to each department for consideration in their review.* The letter Planning provided to you on Tuesday is a compilation of Staff's review and an explanation of our determination that the project could not be approved as submitted. It has not been Planning's practice to attach the applicants submitted project materials to such a letter. Please be assured your rebuttal letter was included in the review and was routed to all departments along with the other application materials submitted.
- 2. Because our rebuttal letter is not included in this determination letter, it appears that our rebuttal is not part of the public record. If that is the case, please explain why our feedback would be omitted from the public record.* All submitted application material is part of the public record along with Staff's letter and supporting documentation. Anyone from the public may ask for the project files at the Planning Counter and all submitted material including your letter would be included and available in that file.
- 3. Please confirm when the zoning code, and specifically those sections referenced in this determination letter, were originally written. Please provide a public source for that date, as that should be public information.* The Floodway and Floodplain Districts were a part of the previous zoning ordinance adopted in 1973, City Council Ordinance No. 1072 N.C.S. At that time the Floodway and Flood Plan Districts were contained in Chapter 16. The current Implementing Zoning Ordinance was adopted in 2008, by City Council Ordinance No. 2300 N.C.E. According to the Implementing Zoning Ordinance online version, some sections of Chapter 6 were updated as recently as May 2022. Typically zoning ordinances are amended incrementally to include updated information, clarify the code or comply with new laws. There are links within the online code at the bottom of the section identifying when they were last updated and by what City ordinance. We can look at this together at our meeting Monday. The City Clerk also has publicly available online resources of adopted City Ordinances and Resolutions. You can search city records at <https://cityofpetaluma.org/city-clerk-records/>
- 4. Please confirm when those specific zoning codes were last updated and provide a public source for that date as well.* As noted above if a section of the zoning code was updated since its adoption in 2008 there will be a link to the adopting ordinance provided online.

5. *Please confirm the dates in the past 20 years in which the city has cleared, dredged, or otherwise maintained the river that runs along our property and those surrounding our property.* I've reached out to Public Works for information on this topic.

Thank you,

Larissa Alchin

Associate Planner
City of Petaluma | Community Development
lalchin@cityofpetaluma.org

Petaluma is in a drought. There are many programs and incentives to help you conserve water! Learn more [HERE](#).

From: Alchin, Larissa <lalchin@cityofpetaluma.org>

Sent: Thursday, March 2, 2023 9:32 AM

To: Heather Kratt <heather.kratt@gmail.com>

[Quoted text hidden]

[Quoted text hidden]

From: Green, Jordan <JGreen@cityofpetaluma.org>

Sent: Tuesday, May 23, 2023 9:01 AM

To: Trippel, Andrew <atrippel@cityofpetaluma.org>; Heidi Bauer <heidibauer2000@gmail.com>; Blake Hooper <bmphooper1@gmail.com>; Janice Cader-Thompson <janicecader@gmail.com>; Rick Whisman <rwhisman@yahoo.com>; Darren Racusen <darrenracusen@gmail.com>; roger mcerlane <rogermcerlane@mac.com>; Sandi Potter <sandi.lee.potter@gmail.com>

Cc: Oh, Brian <boh@cityofpetaluma.org>; Hines, Heather <hhines@cityofpetaluma.org>; Brady, Dylan <DBRADY@cityofpetaluma.org>; Benedetti-Petnic, Gina <GPETNIC@cityofpetaluma.org>; Tuft, Pam <ptuft@cityofpetaluma.org>; Robbe, Tiffany <trobbe@cityofpetaluma.org>; Herrera, Dan <DHerrera@cityofpetaluma.org>; Danly, Eric <EDanly@cityofpetaluma.org>; Flynn, Peggy <PFlynn@cityofpetaluma.org>; Bolt, Christopher <cbolt@cityofpetaluma.org>

Subject: RE: Appeal Hearing (Questions from Planning Commissioners)

Good morning Planning Commissioners,

Staff are responding to additional questions asked by the Commission last evening. Please consider the questions and our responses **in red** below.

1. **Who owns the property to the south and the west - specifically Parcel A and Parcel 2 in Figure 4 on p. 7 of the staff report?**

Both parcels are owned by the Patrick J. Nelson Trust. Staff did not research or review adjacent land uses during Planning review of the proposed development project.

2. **Would parking have to be 50 or 100 feet away from the river?**

Required parking for an approved land use would have to be located at least 100 feet away from the top of bank of the river. We wrote in the staff report that: The site plan is also missing key Petaluma River setbacks measured from the top of bank. Pursuant to General Plan Policy 4- G-1, Program D, a 50-foot setback from the top of bank is required where no development is allowed except for greenway enhancement improvements, and pursuant to the River Access and Enhancement Plan (1996), a 100-foot minimum development setback is required where no flood terrace exists on the upstream segment of the Denman Reach and pursuant to General Plan Policy 8-P-28 and 8-P-30, a 200-foot setback from the Petaluma River centerline is required of any additional development upstream of the Corps weir to accommodate a flood terrace system alongside the River in order to accommodate a 100-year storm event. Staff created an exhibit showing the approximate 100' setback from the top of riverbank on the subject property, as the site does not have a flood terrace (Figure 4).

This is similar to Question 1.3 in the Appeal Hearing (Questions from Planning Commissioners) email. We provided the following information yesterday:

5/22 additional information – The River Access and Enhancement Plan (RA&EP) calls for varying widths of setbacks from the center line of the River based on individual reaches of the River, The subject property is illustrated on Page 61 of the RA&EP with X-section B-B. On Page 74, Program 13.c. identifies the buffer zone as follows “Between US 101 and Petaluma Boulevard North, the Bugger Zone should extend 45’ from top of new bank, assuming a terraced flood control channel has been installed. If a trapezoidal channel is necessary or no flood control work commences, the Buffer Zone will extend

100' from the top of the new bank..." As stated, the RA&EP requires a 100' Buffer Zone on the subject parcel.

The General Plan 2025 Program 4-P-1.L. reads, "Continue to implement, where appropriate, flood terrace improvements to reduce localized flooding in concern with habitat enhancement projects."

5/19 – The River Access and Enhancement Plan, Section C-C, calls for a 100-foot minimum development setback from the River's top of bank in places where no flood terrace exists on the upstream segment of the Denman Reach (applicable), and General Plan Policy 8-P-30, specifies a 200-foot setback from the centerline of the Petaluma River upstream of the Corps weir with no additional development permitted on lands within that full 400-foot wide corridor. The Floodway area is determined through a scientific and engineering report by the Federal Insurance Administration and does not correlate to a specified distance from the mid-bank of the River. Top of bank and centerline data are not maintained, so any development proposal would have to provide those data. The 100-foot setback described in the figure provided in the staff report is an estimate developed by staff.

3. Are utilities - electric, water, and sewer - available on the appellant's property? How might mobile food trucks and other businesses get power, especially in the evening and night hours? Generators?

This is a question for the appellant. Staff did not entertain utility options for the proposed development project because staff found that the proposed land use could not be approved.

Sincerely,

Jordan Green

Assistant City Attorney

City of Petaluma | City Attorney

office. 707-778-4565 | JGreen@cityofpetaluma.org



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From: Trippel, Andrew <atrippel@cityofpetaluma.org>

Sent: Monday, May 22, 2023 5:19 PM

To: Heidi Bauer <heidibauer2000@gmail.com>; Blake Hooper <bmhooper1@gmail.com>; Janice Cader-

Thompson <janicecader@gmail.com>; Rick Whisman <rwhisman@yahoo.com>; Darren Racusen <darrenracusen@gmail.com>; roger mcerlane <rogermcerlane@mac.com>; Sandi Potter <sandi.lee.potter@gmail.com>

Cc: Green, Jordan <JGreen@cityofpetaluma.org>; Oh, Brian <boh@cityofpetaluma.org>; Hines, Heather <hhines@cityofpetaluma.org>; Brady, Dylan <DBRADY@cityofpetaluma.org>; Benedetti-Petnic, Gina <GPETNIC@cityofpetaluma.org>; Tuft, Pam <ptuft@cityofpetaluma.org>; Robbe, Tiffany <trobbe@cityofpetaluma.org>; Herrera, Dan <DHerrera@cityofpetaluma.org>; Danly, Eric <EDanly@cityofpetaluma.org>; Flynn, Peggy <PFlynn@cityofpetaluma.org>; Bolt, Christopher <cbolt@cityofpetaluma.org>

Subject: Re: Appeal Hearing (Questions from Planning Commissioners)

Good evening,

Below **in red** are updated/expanded responses to last Friday's questions and new questions with responses asked over the weekend. Thanks again for providing us with your questions in advance of tomorrow's public hearing.

Question 1

1. What year was the fill placed in the East and West sides of the River? I believe it was in the mid to late 60's or early 70's. How much fill was added? Is the fill on the West side of the banks higher than the East bank?

5/22 additional information – Public Works Special Projects Consultant (and former Planning Director) Pam Tuft recalls that a single permit was issued for the placement of some fill dirt on the east top of bank properties. She believes this happened in the 1980s. The permit was signed by a staff engineer, issued in error, and not discovered for a number of months. The Community Development Department Director and City Engineer made the decision not to rescind the permit or require the removal of the fill. To Tuft's knowledge, no permit for gravel fill was issued for either side of the River in this Reach during 1984-1999 while she was in the Planning Department. Thereafter, Tuft held a position in the City Manager's office, managing the General Plan and projects relating to Council goals.

The General Plan 2025, adopted in 2008 along with the read option of the Petaluma Access and Enhancement Plan (Policy/Program 4-P-1.A.), includes Policy/Program 4-P-1.K., which states, "Prohibit placement of impervious surfaces in the Floodway i.e., parking lots, roadways, etc.) with the exception of pathways and emergency access improvements." The IZO dated effective January 17, 1973, allowed "As an ancillary use to a permitted use within an adjacent zoning district: Loading and unloading areas, and parking lots, provided there shall be no structural improvements other than paved driveways, parking areas and landscaping" [IZO Section 16-502 Permitted Uses, Floodway Districts, Subsection 3 (1979)]. This allowable ancillary use was eliminated during the 2008 IZO update in response to the 2025 General Plan.

5/19 - Staff are researching this question and will provide information if available.

2. Could you add photos and video from the 2023 flooding of this site and the surrounding area? I would like to see past videos and photos of this site flooding before and after the flood control project was completed.

5/22 additional information – Ms. Tuft provided four images (attached) describing 1982, 2005, and 2023 flood events. She notes that the Final Map, recorded November 30, 1971, that created the subject parcel (reference 6-100 of City records) indicates this property is Lot 3, containing .82 acres. The Map states in large print, “ALL EXISTING IMPROVEMENTS BELOW ELEVATION 37.5 (USC&GS DATUM) ARE SUBJECT TO FLOODING”.

5/19 - Staff are researching this question and will provide media if available.

3. I see 100’ and 400’ setbacks from the middle of the River. Is it 100 or 400 feet from the River's mid-bank to the outside of the floodway?

5/22 additional information – The River Access and Enhancement Plan (RA&EP) calls for varying widths of setbacks from the center line of the River based on individual reaches of the River. The subject property is illustrated on Page 61 of the RA&EP with X-section B-B. On Page 74, Program 13.c. identifies the buffer zone as follows “Between US 101 and Petaluma Boulevard North, the Bugger Zone should extend 45’ from top of new bank, assuming a terraced flood control channel has been installed. If a trapezoidal channel is necessary or no flood control work commences, the Buffer Zone will extend 100’ from the top of the new bank...” As stated, the RA&EP requires a 100’ Buffer Zone on the subject parcel.

The General Plan 2025 Program 4-P-1.L. reads, “Continue to implement, where appropriate, flood terrace improvements to reduce localized flooding in concern with habitat enhancement projects.”

5/19 – The River Access and Enhancement Plan, Section C-C, calls for a 100-foot minimum development setback from the River's top of bank in places where no flood terrace exists on the upstream segment of the Denman Reach (applicable), and General Plan Policy 8-P-30, specifies a 200-foot setback from the centerline of the Petaluma River upstream of the Corps weir with no additional development permitted on lands within that full 400-foot wide corridor. The Floodway area is determined through a scientific and engineering report by the Federal Insurance Administration and does not correlate to a specified distance from the mid-bank of the River. Top of bank and centerline data are not maintained, so any development proposal would have to provide those data. The 100-foot setback described in the figure provided in the staff report is an estimate developed by staff.

4. Summer of 2022: who cut trees and tree branches in the River? Were permits pulled and approved for cutting and removing brush and trees on the banks of the River?

5/22 additional information – Staff has not found that any City department conducted river maintenance along that stretch of the Petaluma River in 2022.

Response **5/19** - Staff are confirming if Public Works provided maintenance for this River segment in 2022. We note that the appellant indicates they have conducted maintenance activity; however, no permits were requested.

5. What is the land use designation for the driving range? Has the City received any proposals to develop that land?

5/22 – no new information

5/19 - The General Plan Land Use designation of the driving range lands, which appear to consist of APNs 007-422-043, 007-422-019, and 007-422-039, is largely Community Commercial (CC) overlain with Floodplain or are above the Floodplain. Smaller areas of the site are designated as Floodway (along Stony Point Road), and Neighborhood Commercial (nearest the PBN/Stony Point intersection. Development is allowed in the Floodplain with an approved Development Permit issued by the Floodplain Administrator. The City does not have a formal proposal to develop that land. Over the years, staff has heard from a number of interested parties who explore various development concepts; however, no inquiry has advanced.

Question 2

1. If approved for either a conditional use or permitted use, how would an approval impact flood insurance rates for the homeowners in the affected parts of Petaluma?

5/22 – no new information

5/19 – Staff are researching this question to determine if the potential impact can be quantified, and we will provide that information if available. As described in the staff report, the City's CRS rating is based upon the degree to which City regulations comply with and implement FEMA regulations for Floodway protection, and compliance with FEMA regulations is one measure used to develop the CRS rating.

Question 3

1. It appears that the surrounding sites – Henny Penny and Denny's – are at approximately the same elevation. What is the elevation difference between the proposed site and those existing restaurants?

5/22 - City topographic data indicates that all areas are \pm 33 ft. in elevation. The Henny Penny site was developed in 1968, and the Denny's was developed in 1969. Without archival research, it's difficult to determine if the existing development was subject to floodplain development policies. Staff note that the Denny's site is not included in the Floodway, and only a very small portion of the Henny Penny site is included in the Floodway; however, both sites are included in the 100-year Floodplain.

2. What amount of fill would be needed to raise the site above flood hazard, is that at all feasible or allowed?

5/22 - IZO Section 6.030.CC defines No Net Fill as "Any material brought on to a project site within a flood plain area that would displace flood waters. All fill shall be offset by the removal of a like amount of material. This material may be removed from a portion of the project site; or it may be removed from a site in the immediate area where the removal of compensating material from the off-site location can be determined, to the satisfaction of the City Engineer and the Sonoma County Water Agency, to result in a reasonable equivalence of hydrology and hydraulics to the situation before the development. For purposes of compliance, one or more individual parcels or an entire reach may demonstrate a "zero net fill" balance."

Pursuant to [Section 6.070 General Provisions](#), zero net fill policies are enforced in both the Floodway and Floodplain. Also, Section 6.050.A – Encroachments refers to fill when regulating encroachments into the Floodway when it states that “Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, no encroachments within Floodway lands are permitted; including fill, new construction, intensification of existing use, change to more intensive use, substantial improvements, and other development, except as specified herein as permitted or conditional land uses, and provided that a certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.”

3. Is the flood hazard caused by the blockage of the bridge and road crossing the river, constraining the flow and diverting it onto the site?

5/22 – IZO [Section 6.020 Flood Plan and Floodway Areas](#) specifies that the Petaluma River Basin Flood Plain and Floodway Areas are defined as those areas of Special Flood Hazard identified by the Federal Insurance Administration through a scientific and engineering report entitled “Flood Insurance Study for the City of Petaluma”, dated August 1979, with accompanying Flood Boundary and Floodway Map; and accompanying Flood Insurance Rate Maps. Official revisions or updates thereto are adopted by reference and declared to be a part of this Ordinance. This Flood Insurance Study is the minimum area of applicability of this Ordinance. The most recent update was received in 2016. Development review doesn’t necessarily consider what characteristics in the area may contribute to the Floodway or Flood Plain zoning designation. It focuses on the proposed development project’s compliance with applicable regulations.

Best,

Andrew

Andrew Trippel, AICP

Planning Manager
City of Petaluma | Community
Development

atrippel@cityofpetaluma.org

Curious about what is happening
with the Petaluma Fair and
Fairgrounds? [Click to learn more.](#)

From: Trippel, Andrew <atrippel@cityofpetaluma.org>

Sent: Friday, May 19, 2023 9:14 AM

To: Heidi Bauer <heidibauer2000@gmail.com>; Blake Hooper <bmhooper1@gmail.com>; Janice Cader-Thompson <janicecader@gmail.com>; Rick Whisman <rwhisman@yahoo.com>; Darren Racusen <darrenracusen@gmail.com>; roger mcerlane <rogermcerlane@mac.com>; Sandi Potter

<sandi.lee.potter@gmail.com>

Cc: Green, Jordan <JGreen@cityofpetaluma.org>; Oh, Brian <boh@cityofpetaluma.org>; Hines, Heather <hhines@cityofpetaluma.org>; Brady, Dylan <DBRADY@cityofpetaluma.org>; Benedetti-Petnic, Gina <GPETNIC@cityofpetaluma.org>; Tuft, Pam <ptuft@cityofpetaluma.org>; Robbe, Tiffany <trobbe@cityofpetaluma.org>; Herrera, Dan <DHerrera@cityofpetaluma.org>; Danly, Eric <EDanly@cityofpetaluma.org>; Flynn, Peggy <PFlynn@cityofpetaluma.org>; Bolt, Christopher <cbolt@cityofpetaluma.org>

Subject: Re: Appeal Hearing (Questions from Planning Commissioners)

Good morning,

Please consider staff responses provided below in red to questions received from Commissioners. Please note that staff believe the issue on appeal is whether or not the proposed use is an allowable use in the city's floodway according to the Implementing Zoning Ordinance. While some questions may not be ultimately pertinent to the issue on appeal, we are working to respond to all of your questions. Thank you for providing your questions in advance of Tuesday's public hearing, and please continue to raise any additional questions.

Question 1

1. What year was the fill placed in the East and West sides of the River? I believe it was in the mid to late 60's or early 70's. How much fill was added? Is the fill on the West side of the banks higher than the East bank? **Staff are researching this question and will provide information if available.**
2. Could you add photos and video from the 2023 flooding of this site and the surrounding area? I would like to see past videos and photos of this site flooding before and after the flood control project was completed. **Staff are researching this question and will provide media if available.**
3. I see 100' and 400' setbacks from the middle of the River. Is it 100 or 400 feet from the River's mid-bank to the outside of the floodway? **The River Access and Enhancement Plan, Section C-C, calls for a 100-foot minimum development setback from the River's top of bank in places where no flood terrace exists on the upstream segment of the Denman Reach (applicable), and General Plan Policy 8-P-30, specifies a 200-foot setback from the centerline of the Petaluma River upstream of the Corps weir with no additional development permitted on lands within that full 400-foot wide corridor. The Floodway area is determined through a scientific and engineering report by the Federal Insurance Administration and does not correlate to a specified distance from the mid-bank of the River. Top of bank and centerline data are not maintained, so any development proposal would have to provide those**

data. The 100-foot setback described in the figure provided in the staff report is an estimate developed by staff.

4. Summer of 2022: who cut trees and tree branches in the River? Were permits pulled and approved for cutting and removing brush and trees on the banks of the River? Staff are confirming if Public Works provided maintenance for this River segment in 2022. We note that the appellant indicates they have conducted maintenance activity; however, no permits were requested.
5. What is the land use designation for the driving range? Has the City received any proposals to develop that land? The General Plan Land Use designation of the driving range lands, which appear to consist of APNs 007-422-043, 007-422-019, and 007-422-039, is largely Community Commercial (CC) overlain with Floodplain or are above the Floodplain. Smaller areas of the site are designated as Floodway (along Stony Point Road), and Neighborhood Commercial (nearest the PBN/Stony Point intersection). Development is allowed in the Floodplain with an approved Development Permit issued by the Floodplain Administrator. The City does not have a formal proposal to develop that land. Over the years, staff has heard from a number of interested parties who explore various development concepts; however, no inquiry has advanced.

Question 2

1. If approved for either a conditional use or permitted use, how would an approval impact flood insurance rates for the homeowners in the affected parts of Petaluma? Staff are researching this question to determine if the potential impact can be quantified, and we will provide that information if available. As described in the staff report, the City's CRS rating is based upon the degree to which City regulations comply with and implement FEMA regulations for Floodway protection, and compliance with FEMA regulations is one measure used to develop the CRS rating.

Best,

Andrew

Andrew Trippel, AICP

Planning Manager
City of Petaluma | Community
Development

atrippel@cityofpetaluma.org

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From: Trippel, Andrew <atrippel@cityofpetaluma.org>

Sent: Thursday, May 18, 2023 10:33 AM

To: Heidi Bauer <heidibauer2000@gmail.com>; Blake Hooper <bmhooper1@gmail.com>; Janice Cader-Thompson <janicecader@gmail.com>; Rick Whisman <rwhisman@yahoo.com>; Darren Racusen <darrenracusen@gmail.com>; roger mcerlane <rogermcerlane@mac.com>; Sandi Potter

<sandi.lee.potter@gmail.com>

Cc: Green, Jordan <JGreen@cityofpetaluma.org>; Oh, Brian <boh@cityofpetaluma.org>; Hines, Heather <hhines@cityofpetaluma.org>; Brady, Dylan <DBRADY@cityofpetaluma.org>; Benedetti-Petnic, Gina <GPETNIC@cityofpetaluma.org>; Tuft, Pam <ptuft@cityofpetaluma.org>; Robbe, Tiffany <trobbe@cityofpetaluma.org>; Herrera, Dan <DHerrera@cityofpetaluma.org>; Danly, Eric <EDanly@cityofpetaluma.org>

Subject: Re: Appeal Hearing

Good morning,

Staff have received the questions below from the Planning Commission. While we are researching and preparing responses, we want to make you all aware of information that will be forthcoming. We will provide an initial, if not complete, response by the end of the day on Friday - May 19.

We greatly appreciate receiving your questions in advance so that we can prepare fully informed, thoughtful responses. Thank you!

1. What year was the fill placed in the East and West sides of the River? I believe it was in the mid to late 60's or early 70's. How much fill was added? Is the fill on the West side of the banks higher than the East bank?
2. Could you add photos and video from the 2023 flooding of this site and the surrounding area? I would like to see past videos and photos of this site flooding before and after the flood control project was completed.
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5. What is the land use designation for the driving range? Has the City received any proposals to develop that land?

Best,

Andrew

From: Brady, Dylan <DBRADY@cityofpetaluma.org>

Sent: Thursday, May 18, 2023 8:02 AM

Cc: Green, Jordan <JGreen@cityofpetaluma.org>; Oh, Brian <boh@cityofpetaluma.org>; Trippel, Andrew <atrippel@cityofpetaluma.org>; Hines, Heather <hhines@cityofpetaluma.org>

Subject: Appeal Hearing

Hello Commissioners,

Since I helped Planning Staff with their staff report and determination for the floodway zoning appeal and for due process for the appellant, assistant city attorney Jordan Green, cc'd here will be advising the Planning Commission for next Tuesday's appeal item. If you have any questions about the appeal please include Jordan in your emails. I know staff appreciates receiving the questions ahead of the hearing, so we can review the Zoning Code or any case law to help provide you the best that guidance we can.

Thanks for your service and see you on Tuesday.

Dylan Brady

Assistant City Attorney

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