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City of Fort Bragg  
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RE: AUTOZONE      Fort Bragg      Coastal Development Permit 9-18 (CDP 9-18)  
Design Review 3-18 (DR 3-18)  
Minor Subdivision 1-18 (DIV 1-18)

Ms. McCormick,

As you know, AutoZone has dedicated significant economic, planning and creative resources to this project, reviewed by the City's Planning Commission during its September 25, 2019 meeting. Further, the company has repeatedly extended itself to accommodate the City of Fort Bragg's preferences with respect to many aspects of its proposed Fort Bragg location. The company thanks you and the City for a fair staff report. While the City decided not to make a recommendation to the Commission as to approval or denial, the report was at least honest. The staff detailed this thoroughly conditioned project's compliance with every single City development standard analyzed. Further, the report documented the lockstep consistency of the company's proposed new use of this long-vacant land with the Coastal General Plan, and with all related policies. Moreover, the City's report detailed the project's conformance, as per staff's requirements, with all of the City's design guidelines. Your evenhandedness in delivering the staff's oral staff report further illustrated the point. To prompt fairness to those who might offer legitimate criticism of the project, staff points out the Planning Commission's legitimate discretion in reviewing the project. For example, the report indicated that "many design elements are subjective and Planning Commission may interpret this analysis differently." However, staff did not counsel the Planning Commission in favor of absolute discretion, and tried to ensure objectivity with respect to the company's application through clear tables, photographs, and narrative explanation that in the aggregate, all supported approval. For example, the report memorialized that the company's use of the proposed development site is "permitted as a matter of right in the CH zoning district." During the meeting, the Planning Commission's Chair and its legal advisor stated that the project should be evaluated exclusively on its merits, in relation to the City's applicable standards and requirements. A comment made by Commissioner Jeremy Logan, just before he moved to deny the project, pointed to the significant defect in the proceedings on September 25, 2019. Commissioner Logan was candid, and said "there is a kind of business that Fort Bragg wants, and there's a kind that we don't, and it's written in the Code."

AutoZone appreciates the decision by the City to notice a second public hearing in this matter, and provide the company with the opportunity to be heard. Unfortunately, AutoZone's team is not available to attend the meeting tonight. This letter details matters with respect to which the company seeks dialogue with the City, and proposes that tonight's public hearing be opened and continued to a date certain convenient for the City, so that this matter may reasonably and fairly be considered, inclusive of input from the applicant, and concluded.

*No Opportunity to be Heard*

While the City noticing a second public hearing is acknowledged and appreciated, it is inexplicable that the Commission did not hear from the AutoZone before voting to deny this project. As you know, I was present at the meeting with my company's entire team, including a corporate colleague, our real estate broker, our planner, and the project architect. If the Commission had questions or concerns, we were entitled to the opportunity to answer and respond, and ready to do so. It now appears that the City understands this reality, and made an appropriate decision to afford AutoZone a chance to be heard. Again, our team simply cannot attend tonight's meeting. ***AutoZone trusts and hopes that the following information will prompt the Planning Commission to give a company waiting two (2) years to proceed with this matter as little as two (2) weeks, so that full attendance at a meeting is possible.*** In support of that proposal, we start this letter with some detail as to the odd events of September 25, 2019.

Approximately an hour and a half into the public hearing, the Planning Commission's Chair closed the public hearing, but said that the Commission would "call a few of you back up if we need." Her unmistakable intent was to end public comment, and transition to Commission deliberations, augmented as necessary with information from the applicant and/or the staff. In fact, the Chair stated "my thinking is . . . perhaps you have questions for AutoZone specifically, or the applicant again, we can ask them to come back up also." The Chair also mentioned the Commission's capacity to inquire of staff "with questions that arose." The Chair was one hundred percent (100%) correct. Regardless of the formality of the Chair's closure of the public hearing, the Commission's indisputable prerogative is to get the information that it needs to perform its function.

Despite the simplicity of this situation and the Chair's stated intention and desire to elicit additional evidence for Commission consideration, the Commission's legal advisor interjected. He correctly stated that once a public hearing closes, the Commission deliberates. Regrettably, he proceeded to make the incorrect statement that it would be "inappropriate to seek out evidence that wasn't already submitted during the public hearing portion." The Chair evinced surprise at this comment, and asked "what if we have a question [for] . . . someone who didn't speak yet, so for instance a representative from AutoZone?" The Commission's lawyer indicated that if representatives of AutoZone chose not to speak during the public hearing, it would be "inappropriate to invite somebody outside to speak." At the risk of stating what we know you understand, AutoZone is not "somebody outside" at a hearing for which it has waited for more than two (2) years.

What the Assistant City Attorney neglected to inform the Chair at the meeting is that the Commission has, and at all times prior to voting retains the ***absolute discretion to re-open the public hearing*** to get information that it wants. It is unclear why legal counsel did not offer this approach to the Chair. Perhaps he believed that the land-owner, and not AutoZone, was the applicant in this

matter? Regardless, we trust that the Commission's legal advisor is knowledgeable, and if asked, will surely confirm the accuracy of our assertion – ***AutoZone could and should have been heard on September 25, 2019.*** At a bare minimum, the Commission should have taken up the question of re-opening the public hearing in order to hear from the applicant. All the company asks is a fairness and due process. AutoZone does not perceive Fort Bragg as a City that denies a person the chance to be heard, yet that is exactly what happened on September 25, 2019. The scheduling of tonight's second public hearing suggests that the company is correct, and that after the fact, the City recognized the flaw in proceedings and wanted to correct it. Throughout my personal experience attending commission and city council meetings during twenty-eight (28) years of developing AutoZone stores, I've not seen a community that didn't avail itself of a question and answer time with the applicant, and/or the team of technical professionals involved in the development process up to that point. AutoZone respectfully requests its chance to be heard on a night when its team can attend the meeting.

The company notes that even before the City's decision to notice a second public hearing, staff recommended that the Commission refrain from acting until staff had adequate time to prepare findings in support of its motion to deny the project. However, given the Assistant City Attorney's insistence upon the public hearing in this matter being closed on the twenty-fifth, the denial of any opportunity for AutoZone to make comment or respond to questions and concerns on that date when the company's entire team was present, and the fact that AutoZone is not available to attend this evening's meeting, ***this second public hearing in this matter should not conclude tonight.***

Frankly, given the nature of the issues stated in this letter, we submit that the City staff and AutoZone need some time to work together as to what must be presented to the Planning Commission before this matter concludes. A full supplemental staff report, including without limitation additional information provided in this letter, should be prepared. Accordingly, the company's request this evening is for the Planning Commission to select and schedule a convenient and new date certain, and then open and continue this evening's public hearing until that date. We submit that after two (2) years of work regarding development of a property that has been vacant since at least 1942, AutoZone and the City owe that much to one another.

#### *References to Class Action*

With regard to those residents who mentioned the class action lawsuit against AutoZone by the State of California, the company wants to clarify the record of proceedings. AutoZone was one of many retail businesses involved in this lawsuit, along with many grocery and restaurant businesses. The lawsuit stemmed from items that the public discarded into on-site trash containers winding up in the waste bins. At least five (5) businesses which presently operate in the City of Fort Bragg were included in that lawsuit. O'Reilly's, CVS, Rite Aid, Safeway & Dollar Tree.

AutoZone has owned its role in this matter, and fully cooperated with the California State Attorney General's Office and multiple District Attorneys to reach this settlement. We have enhanced our policies, processes, systems, and training geared toward proper handling and disposal of oil, used filters, hazardous materials and other waste. AutoZone is committed to complying with the terms of the settlement agreement, and continuing to cooperate with the State and all parties involved. Presuming that the City takes appropriate action tonight, we will submit copies for future

Planning Commission review of our Environmental Business Plan which outlines the measures and training now in place to prevent future pollution. Moreover, the company welcomes the City conditions proposed to monitor and ensure good corporate citizenship on these important environmental matters.

*City Concern regarding Formula Businesses*

AutoZone has determined that this topic, more than any other, prompted for the Planning Commission's action on September 25, 2019. AutoZone is aware of the national discussion of how communities can thoughtfully and legitimately safeguard their interests when it comes to the presence of businesses with a presence that extends far beyond the city limits. AutoZone is not a company that came to Fort Bragg and told staff about a uniform design that must be implemented per company policy. In fact, there have been many back and forth discussions with planning staff. Significant design changes have been made to the proposed building to get to this point. Much time has been spent reviewing the existing businesses and architecture which in Fort Bragg. AutoZone seeks to capture those elements and materials which are commonly used in Fort Bragg, and feels that what we have proposed, architecturally speaking, will be an attractive addition to your town. If for some reason the Planning Commission disagrees, we will be happy to work further with the Commission and staff. AutoZone is open to architectural upgrades that may help the Commission find a more favorable response to this submission. Candidly, the company has no idea what design elements are objectionable to the Commission, because the discussion at the last meeting did not address such appropriate matters.

The City is just commencing its discussion of how to fairly address the presence of future formula businesses in the community. The City Council meets tomorrow night to discuss this topic. Fort Bragg has recognized that its current standards and codes do not include a comprehensive, informed or defensible approach to "formula businesses." One thing is certain – formula business is not a land use that the Planning Commission, or even the City Council has the discretion to regulate as such. AutoZone is not a land use; "retail store" is a land use. The City's legal advisors are wisely counseling caution with respect to the adoption of a "balanced" local law. Right now, Planning Commission denial of this project will take place in a vacuum. The City's policy leaders have not yet decided how they wish to approach this matter, and AutoZone respectfully submits that it is not for the Planning Commission to act unilaterally on such an important matter. We direct your attention to the analysis section of the City Council staff report that will be considered on October 24, 2019. Apart from a definition and a standard as to mobile vending units and mobile vending vehicles, the Coastal Land Use and Development Code does not reference "Formula Businesses." We ask that you counsel the Commission that many of the objections to this project on September 25, 2019, even considered in their best light, amount to a decision to reject AutoZone at the project site based upon its identity, not a decision to reject a retail store at that location. We would welcome a meaningful dialogue with the Commission and even the community on the stated but flawed perception of our company, and the role we will play in Fort Bragg. Despite the high value we would place on such communication, its substance is not an appropriate matter for the Commission's consideration by any standard. There is currently no proper and non-discriminatory basis upon which to turn AutoZone away from the City.

### *Purported Findings in Denial*

The primary City policy discussed during the Planning Commission meeting of September 25, 2019 was Policy LU-4.1. Indeed this policy is the “lead” basis of the City’s proposed resolution denying this project. In making his motion to deny the project, Commissioner Logan indicated that this policy was all he needed in order to do so. As you know, that policy reads as follows:

*“Formula Businesses and Big Box Retail: Regulate the establishment of formula businesses and big box retail to ensure that their location, scale, and appearance do not detract from the economic vitality of established commercial businesses and are consistent with the small town, rural character of Fort Bragg.”*

During their discussion on September 25, 2019, Planning Commissioners offered conclusory statements to suggest that AutoZone’s “location, scale and appearance” are somehow inconsistent with the economic vitality of established businesses in the City, and Fort Bragg’s identity as a small and rural town. AutoZone would have welcomed the chance to explain to the Commission that the location, scale, and appearance of the building proposed reflected only what the City’s land use development standards and the input of City staff required. The major defect in proceedings on September 25, 2019 is that no one mentioned to the Planning Commission that ***read in context, Policy LU-4.1 is directed at Fort Bragg’s “Central Business District,” i.e., the City’s “historic civic, cultural, and commercial core of the community.”*** As you know, AutoZone’s proposed site is not located in the Central Business District. Rather, the site has a land use designation in the Coastal General Plan of “Highway Visitor Commercial.” This error is only one reason the City’s basis for rejecting AutoZone should be reconsidered, with AutoZone allowed to participate in the discussion. As telling as this error was, an omission must also be noted. The Commission neglected to consider the Land Use policies most relevant for the project site.

Policy LU-3.4 provides that the City should “[e]ncourage infill development of vacant and underdeveloped land in the Central Business District and adjacent commercial areas before amending the Coastal General Plan and rezoning to obtain additional commercial land elsewhere.” The demonstrable history of the proposed project site as vacant as far back as 1942, the number and nature of the adjacent and proximate uses, and the location of the proposed AutoZone store off the coastline all make this project an ideal opportunity for the City to adhere to Policy LU-3.4. This is not an easy property to develop. As Paul Clark explained, AutoZone was the first potential buyer/developer since the current landowner acquired the project site willing to undertake the process of securing City land use approvals for a buildable project. In fact, this policy’s orientation in favor of infill in commercial areas *outside* the Central Business District prior to an amendment of the Coastal General Plan, will effectively and undeniably minimize the number of properties re-zoned to commercial use in more environmentally sensitive locations subject to the Coastal General Plan.

An additional note relevant to the consideration of this project is that the Coast General Plan sets forth a vision of scenic view maintenance in relation to building size that specifically permits a maximum square footage of fifteen thousand (15,000). *See*, Policy LU-4.3(c). Any discussion of the scale of the proposed project is incomplete if it fails to note that AutoZone proposes to build a store half (½) the maximum size allowed as a matter of right.

Another point for consideration as the Planning Commission determines whether it wishes to move forward tonight is the fact that ***any objection to the destruction of trees in this matter is a response to a City decision***, not a choice by AutoZone. Numerous discussions with planning staff back in late 2017 related to the best siting for the proposed store. Your verbal staff report acknowledged that the City's Coastal General Plan does not identify the project location as a "potentially scenic view." However, you stated that the site is undeveloped, and that because of other undeveloped residential parcels to the west, it offers views and has a "feeling of open space." After a site visit, and informed by Coastal Commission input, City staff instructed AutoZone that the northern half of the site was the best option to preserve the horizon line and the blue-water views of Noyo bay at the site. Thus, you explained the view easement required by the City and agreed to by the company in order to protect a view from development. AutoZone accepted the northern location and the view easement because the City asked it to do so. The company stands equally ready and willing to provide an alternative layout for the proposed development, with the building located on the southern side of the lot if the Planning Commission wants to review such a proposal. Doing so would address concerns of the citizens who spoke against removing the six (6) existing and mature trees (Bishop Pine, Monterey Pine, and Douglas Fir) noted in your staff report, and the seventh (7<sup>th</sup>) tree you described in your verbal report. Tree preservation would also be consistent with very brief conclusory comments by Commissioners in relation to that point. If these trees are indeed more important to the City than the blue-water views that the Coastal Commission and City staff sought to protect, so be it. AutoZone willingly accepted the City-mandated view easement to protect the resource identified by the City as most valuable. If the Commission wants AutoZone to re-site the building to provide for maximum preservation of the trees, that can and should be discussed. Tree preservation in the context of City direction favoring the current site of the building is not a proper, reasonable or equitable basis for denial of this project. Given the eventual construction of residential structures on the lots between the project site and the water, the City is wise to consider the matter carefully.

### *Conclusion*

AutoZone intends this letter to start a renewed and focused dialogue on the proposed project. We request that the Planning Commission open the public hearing in this matter, and continue it to a date certain acceptable to the City staff and the Commission. Accommodation of that request will allow AutoZone representatives to work with the City staff, and return to the Commission for the conclusion of a public hearing that includes a discussion of the real issues. This public hearing pertains to a land use proposal, not the rejection or acceptance of AutoZone's presence in Fort Bragg based upon an improper and inaccurate foundation. AutoZone has confidence that when given the chance, it can and will dispel the perception of the company stated by residents on September 25, and build community confidence and trust. The company embraces accountability to the City, and wants to join the ranks of the Fort Bragg's best corporate citizens, fully dedicated to the City's prosperity and well-being.

The Planning Commission did not receive information to which it was entitled. For example, AutoZone and the property owner decided to subdivide the lot, and Commissioners wanted to understand that decision. Simply stated, AutoZone could not make the deal work financially if it had to take on the burden of purchasing the whole lot, and asked the property owner if he would

allow us to subdivide the lot, and sell us half. Further, no information has been presented to the Planning Commission regarding the projected sales tax that the proposed store will likely generate, or the jobs that a new AutoZone store will bring to the community.

The public comment of some residents, who AutoZone submits did not likely a complete cross-section of the community, the conclusory dialogue among and between Commissioners (often revolving around a policy that doesn't apply to the proposed project site, ignoring core policies that do so apply, and running contrary to your staff report), and the unaddressed comments of the Chairperson, leave no doubt. The hearing on September 25, 2019 must be continue.

Vice-Chair Stan Miklose's sincere, direct and passionate agreement with Commission Logan said it all. The message sent by the Planning Commission on September 25, 2019 was not a rejection of a development project based upon its merits or lack thereof. It was "*we don't need them here.*" AutoZone submits and trusts that the City agrees that the best community development strategies never include that sort of thinking, and that the Planning Commissioners deserve the chance to entertain all sides of this matter, and not take action based upon false or improper premises. While the City has a legitimate and vested interest in considering the merits of appropriate regulation of "formula business," the decision on September 25, 2019 did not advance that interest. Rather, the Planning Commission's conspicuous *rejection of AutoZone based upon its identity, rather than the merits of its project*, was undoubtedly inconsistent with what the City's legal counsel would prescribe as a defensible path to proper regulation of "formula business." In deciding whether to recommend that the Commission open and continue the public hearing in this matter until a date certain in order to hear from the applicant, please ask them a question: if this application had been from an owner/builder, for approval of development of a retail store equivalent to that proposed, with the tenant to be identified at a later time, would the Commission really have voted to deny?

We thank you and the Commission for your consideration of this request to continue tonight's public hearing for two (2) weeks, or whatever amount of time City staff feels is more appropriate. AutoZone looks forward to close cooperation and coordination with City staff to ensure that the next public hearing date concludes this matter before the Planning Commission.

Sincerely,



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