

September 16, 2106,

Dear Members of the St. Helena Planning Commission and
Noah Housh, Planning Director;

St. Helena's residents have been concerned about the Davies Winery Project (Davies Vineyard) for years. And over the years, they have repeatedly voiced their concerns, particularly those related to the project's impacts on pedestrian safety near the high school and elementary school and the Project's inconsistency with St. Helena's General Plan and Zoning Ordinance.

Perhaps members of the council are unaware that the Davies Project is remains under ligation with the 1st District Court of Appeal in San Francisco and that it is expected to be heard by the end of 2016. We strongly feel that approving signage on this project is premature.

Our attorney has informed us that in general, it is the law that someone builds and makes improvements at their own risk when litigation is pending. There are several cases that discuss this very issue and I have attached them at the end of this letter.

Those residents, including members of Petitioner Citizen's Voice St. Helena respectfully request that the planning commission postpone any decision concerning signage for this project until the ruling from the Court on our Writ of Mandate.

Please feel free to call me concerning this matter at 707 246 6389

Respectfully,
Susan Kenward

Citizens' Voice St. Helena

In [Woodward Park Homeowners Assn. v. Garreks, Inc. \(2000\) 77 Cal.App.4th 880, 92 Cal.Rptr.2d 268 \(Woodward Park\)](#), a project to build two car washes was approved despite a claim by a homeowners' association that because of noise issues an EIR was required before the City of Fresno could approve the project. The trial court agreed and ordered the preparation of an EIR. Despite the pending lawsuit and the trial court's order, the developer continued construction and completed the project without obtaining an EIR. On appeal, the City of Fresno argued that an EIR was no longer required because the project was completed. The Court of Appeal held the matter was not moot because "[t]his case does not present a situation where a ruling by this court can have no practical impact or not provide the parties relief." (*Id. at p. 888, 92 Cal.Rptr.2d 268.*) The court concluded the project could be modified, torn down, or eliminated to restore the property to its original condition. (*Ibid.*)

Similarly, in [Bakersfield Citizens for Local Control v. City of Bakersfield \(2004\) 124 Cal.App.4th 1184, 1202-1204, 22 Cal.Rptr.3d 203](#), the Court of Appeal held that partial

construction of a commercial development project did not moot the appeal because the project could still be modified, reduced, or mitigated. It also applied the exception supporting review where the issues presented are of broad public interest likely to reoccur. (See also [Save Tara v. City of West Hollywood \(2008\) 45 Cal.4th 116, 84 Cal.Rptr.3d 614, 194 P.3d 344](#) [appeal from approval of project to develop site with historic house for senior citizen housing conditioned on future compliance with CEQA not rendered moot by approval of final EIR during pendency of the appeal because no irreversible physical or legal change occurred during pendency of action, and plaintiff could still obtain relief of City setting aside approvals, ultimately remanded for reconsideration of approvals in light of EIR]; [California Oak Foundation v. Regents of University of California \(2010\) 188 Cal.App.4th 227, 280, 115 Cal.Rptr.3d 631](#) [EIR for project necessitating removal of live oak trees not rendered moot by removal of the trees after efforts to stay project were unsuccessful because restoration of the site to its original condition could be compelled, additional mitigation measures could be ordered, or the project could be modified, reconfigured or reduced]; ***1549** [Association for a Cleaner Environment v. Yosemite Community College Dist. \(2004\) 116 Cal.App.4th 629, 641, 10 Cal.Rptr.3d 560](#)[removal of gun range without EIR not moot although project ****392** completed because of possibility that initial study under CEQA could result in mitigated negative declaration or EIR with mitigation measures].)