

Lemos, June

From: Leslie Kashiwada <kashiwa@mcn.org>
Sent: Monday, July 26, 2021 4:06 PM
To: Lemos, June
Subject: My final appeal documentation and presentation slides
Attachments: LJK_AppealDocumentation_Complete.pdf; LJK_Presentation.pdf

Please find attached a PDF of my final full written appeal statement and a PDF of images I would like to have shown during my presentation. I can also send you the slides as a Power Point. I understand these will be posted online before the meeting.

Let me know if there is anything else you need.

-Leslie

ADDITIONAL SUBMISSION BY APPELLANT LESLIE KASHIWADA

July, 26, 2021

I, Leslie Jan Kashiwada, Ph.D. am submitting the following statement with regards to my appeal of the Planning Commission approval of the permit for Best Development Group to build a Grocery Outlet at 815 S. Franklin St., Fort Bragg. My qualifications as a qualified expert is provided in Appendix I.

Procedural Objections:

The required noticing for this project did not meet the legal requirement, including, but not limited to, timely posting of the notices in a prominent location on the site of the proposed building about this appeal hearing. This is true for the prior hearing before the Planning Commission as well.

There were also procedural issues with how timely public comments were accepted by the city, published on the city's website, and made available to the public prior to and during the public hearings, including at the initial public hearing date before the Planning Commission. These issues prevented the public from having timely access to all relevant information in order to inform their public comments, which were also cut short during the hearing itself when the Planning Commission reduced oral comment times to only two minutes per speaker rather than three minutes per speaker as had been indicated on the published agenda. That meant many people who had prepared a script for their oral public comments were cut short. Moreover, since many people participated via Zoom, they were unable to even submit their prepared scripts to the City at the meeting when they could not finish reading their prepared public comments.

In addition, all required parties did not receive mailed notice of the appeal hearing. I am the appellant and did not receive mailed notice of this hearing. I was told at the time of filing my appeal that the appeal hearing would likely be July 12, 2021.

Overall:

The purpose of any CEQA document (like an MND or EIR) is to provide documentation of likely impacts and the projected significance of each, and to suggest and analyze the effectiveness of possible mitigations for potentially significant impacts (or indicate that the impact cannot be mitigated to less than significant). Required public comment isn't just something to tolerate and get through – it is designed to gain the perspective of a wide audience who might bring up issues not previously considered and who could be affected by the impacts of a project. Unfortunately, this process has been undertaken in an adversarial way by staff, and concerns are mostly treated with contempt, derision, or dismissed outright as simply opinion rather than being respected as valuable public input, and, in some cases, qualified expert opinion.

While the staff is there to help shepherd projects through the process, staff should not be an advocate for the developer by fending off or ignoring valid concerns. Instead, all documents produced by and for the developer should be reviewed in a careful analytical way, and all comments fully documented and indexed, and made readily available to the public. The role of staff should be to examine applicant submissions thoroughly alongside all applicable policies because what is left out is often just as important, if not more so, than what is included. In addition, this MND is particularly rife with unsupported assertions rather than findings supported with robust studies and evaluated with established thresholds of significance. Anything can be asserted or assumed to have no significant impact if there is no standard or threshold for evaluation or no relevant facts provided that are necessary to perform the required analysis.

The City is constrained by the requirement that ALL policies in the CLUDC (Coastal Land Use and Development Code) are adhered to, rather than a less stringent standard, such as a preponderance of land use policies being met, with allowance for relaxation of a few standards based on perceived benefit of the project to the community (not benefit to the developer, which should be irrelevant). Currently, this requirement often isn't adhered to, with some policies being ignored or effectively waived by staff on an ad hoc basis. The inconsistent application of the requirement that ALL policies in the CLUDC be met opens the city decisions up to challenges based on arbitrary and capricious decision-making, favoritism or even allegations of corruption.

With regards to this MND, page 11 of the Initial Study includes a list of environmental factors where the project might have a "Potentially Significant Impact" or the impacts might be "Potentially Significant Unless Mitigation [is] Incorporated." Curiously, only Biological Resources, Geology/Soils and Noise were identified in this list even though there is substantial evidence supporting a fair argument that the project may have potentially significant impacts in other areas as well, including those areas identified in various public comments.

Not identified as being potentially impacted were **Aesthetics**, Agriculture and Forestry Resources, **Air Quality**, Cultural Resources, Energy, Greenhouse Gas Emissions, Hazards & Hazardous Materials, Hydrology/Water Quality, **Land Use/Planning**, Mineral Resources, Population/Housing, Public Services, Recreation, **Transportation**, Tribal Cultural Resources, **Utilities/Service Systems**, Wildfire, or **Mandatory Findings of Significance**. Based on the details and aspects of the proposed project, the 6 highlighted categories should have also been identified as having "Potentially Significant Impact" or the impacts might be "Potentially Significant Unless Mitigation [is] Incorporated" including several areas where the project contributes to cumulatively significant impacts when considered with other projects.

The Initial Study asserts, but does not support that: "An explanation for all checklist responses is included, and all answers take into account the whole

action involved and the following types of impacts: off-site and on-site; cumulative and project-level; indirect and direct; and construction and operational. The explanation of each issue identifies (a) the threshold of significance, if any, used to evaluate each question; and (b) the mitigation measure identified, if any, to reduce the impact to less than significance. The mitigation measures are provided in the Mitigation Monitoring and Reporting Program (MMRP) (see Appendix D).

This sounds complete and thorough, at least superficially, but the Initial Study did not meet these criteria, and neither did the Mitigated Negative Declaration prepared using this document.

In addition, the IS/MND and all the public comments received for this project are tucked away in the agenda and meeting notes for the Planning Commission meeting rather than being part of the more readily accessible active permit page for the Community Development Department. One has to know which meeting (City Council, Planning Commission, etc) and which date to find these items. This is governmental obfuscation, not transparency, particularly when the city formerly provided all information about pending development projects on a special webpage that was deleted from the City's website during the entitlement review process for this project. The city actually purposefully limited public access to information on this project during Covid-19 when City Hall was closed to the public so people couldn't even go in to review the relevant information in person.

The following contains fact-finding, analysis and discussion of some areas of environmental impact previously brought up in public comments where the IS/MND falls short. This section will be followed by discussion of some of the 32 special conditions applied to this permit. The number of special conditions alone is a clear indication that this application is incomplete and lacking in merit because it required so many alterations to even be able to come close to determining that it was consistent with our local planning requirements.

Land Use/Planning – Building Re-use versus New Building (not included in IS/MND) or Coastal General Plan Consistency Analysis

Issue:

The Coastal General Plan states that building re-use is preferred over new construction (e.g., Policy LU-3.5 “Encourage the adaptive re-use and more complete utilization of buildings in the Central Business District and other commercial districts”). The CEQA document did not mention, let alone discuss the feasibility of repurposing and retrofitting the existing building, including a cost-benefit or feasibility analysis of re-using the existing building versus demolition and new construction. This was also not adequately addressed in any of the staff reports or during the hearings.

Facts:

The Initial Study indicates that the project proposes to tear down the old Social Services Building (16,436 sq ft) and build a new building (16,157 sq ft) with a very different location and much greater visual impact than the existing building. Coastal General Plan Policy LU-3.5 or public comments related to building re-use versus demolition and new building construction and the shifted location of the new building were not addressed during any phase of the CEQA or permit review process. Facts relevant to the analysis of the feasibility of retaining and reusing the existing building were provided in several public comments but these facts were not incorporated into any analysis of this area of concern.

Analysis:

Given that adaptive re-use of existing buildings is the established policy of the city per the Coastal General Plan Policy LU-3.5, the IS/MND and permit review need to address the feasibility of repurposing and retrofitting the existing building, including a cost-benefit analysis of re-using the existing building versus demolition with a new building. During the project review, city staff asserted that the old building had mold issues and therefore could not be reused, for the proposed Grocery Outlet, but no evidence of this, including no mold, mildew, or interior air quality studies were prepared or presented to back this unsupported assertion. In fact, no attempt was made to address the feasibility of reuse or consistency with Policy LU-3.5 in any way; it was simply ignored. The mere desire of the applicant to construct a new building is not sufficient grounds to waive the local requirement to consider adaptive re-use in a meaningful way.

Conclusion:

The CEQA document and agenda materials are rife with errors of omission. Simply ignoring policies that don't suit the developer's preferences is not acceptable. One can only assume that the developers are not willing to consider adaptive building re-use, and that requiring them to do so would kill the project. If that is the case, then it should be stated up front, not ignored. As a franchise, Grocery Outlet has particular preferred looks and branded designs, but there are plenty of examples of feasible adaptive re-use of existing structures. One need look no further than the Grocery Outlet stores in Ukiah and Willits to find such examples.

Aesthetics

Issue:

Both the IS/MND assert that the project would have a "Less Than Significant Impact" on a scenic vista or other aesthetic resources. But the "threshold of significance" was only a restatement of the required conclusion, and not a measurable threshold or metric. The CEQA documents did not bring up Coastal General Plan policies that were adopted and intended to protect visual resources, nor did they discuss how the proposed project might impact those resources, including signage and the altered building location on the site relative to the existing building.

Facts:

The Citywide Design Guidelines and corresponding Coastal General Plan policies were not mentioned in section 2.3, including the protection of view corridors, and aesthetically-pleasing mature trees, avoiding blocking viewsheds, and establishing a strong tie to both streets on corner lots that should encourage pedestrian activity. Yet the proposed building footprint and elevations have the potential to substantially degrade the existing visual character and quality of public views towards the ocean, which was mentioned in various public comments and objections. In addition, there was no analysis of the proposed signage under Design Guidelines, Chapter 4.

Analysis:

The new building footprint and elevations have the potential to substantially degrade the existing visual character and quality of public views towards the ocean from South and Franklin streets, and proposed the removal of all vegetation on the north side of the lot, including three mature trees. This impact could be mitigated by re-using and revitalizing the existing building or by moving the location of the proposed building on the merged lots. For instance, employee parking could be provided in a lot along South Street by pushing the building footprint to the south. This would minimize the impact of the boxy building elevations on the existing viewshed.

The proposed illuminated sign on the southeast corner of the site and the illuminated channel sign on the sign parapet along the front elevation do not meet Chapter 4 of the Citywide Design Guidelines due to interior illumination and bright, jarring colors that clash with the proposed exterior color. The design aspects of these signs is a reminder that the very nature of franchise stores (even when locally owned and operated) do not fit within the community and neighborhood character.

Note that several special conditions were put in place by the Planning Commission, including lowering the height of the building. Retaining the trees was not explicitly included in a written condition, as it should have been because it is required by applicable Coastal General Plan policies discussed in public comments and at the meetings, even though staff stated that the applicant agreed to retain the existing trees. However, a special condition of retaining the trees was not included in the list so it isn't actually an aspect of this project even though it is being treated as such based on the Planning Commission deliberations, and lowering the height of the building while allowing it to be sited as before does nothing to protect existing viewsheds.

Conclusion:

Instead of discussing the actual visual impact of the building and proposing possible mitigations, along with discussion of the pros and cons of each proposal, the CEQA documents merely state that there is no significant impact without even attempting to first establish an applicable threshold of significance

for these potentially significant visual impacts. This is patently false and provides another instance of a huge error of omission.

Biological Study – Biota

Issue:

The criteria for determining whether or not the project would have a significant impact or potentially significant impact on biological resources merely restated the checklist of six areas of concern and did not include measurable thresholds of significance. The Biological Review and Fort Bragg Wetland Report are inadequate and incomplete. CDFW comments about the first study were mostly addressed through mitigation measure BIO-1 and Special Conditions 3, 4, and 18, but significant gaps remain. In addition, as far as I am aware, CDFW was not asked to review the supplemental Wetland Report to see if their concerns were addressed. Instead staff just assumed that was the case despite lacking any qualifications to do so because staff members are not scientists with biological expertise or even really any planning expertise. Mature trees to be retained as discussed by the Planning Commission during the hearing on May 26 was not included in the list of Special Conditions and it must be added in an enforceable manner in order for the city to determine that this project, as conditioned, is consistent with the applicable policies of the Coastal General Plan. The placement of bio-retention basins in the proposed locations may impact these protected biological resources but those impacts have not been addressed nor have the trees been protected from damage due to demolition or construction activities. So, even if they are retained, they may die due to the project activities seriously undermining their health and structural integrity because of likely and foreseeable damage to their root structures. The landscape plan still includes non-native, invasive plants per CDFW, and some of the native plants are not regionally appropriate, including planting additional Monterey cypress trees, which are prohibited by the Coastal General Plan as invasive non-locally native plants.

Facts:

The Biological Review prepared by Wildland Resource Managers consisted of a one-day visit on August 9, 2020. Plant species observed were listed and identified as dominant or not dominant. Gopher mounds were noted, as were two crows (note: these were probably ravens because crows don't occur in this area). No animal species were observed. Plants observed on the north side of the property were described generically as 'planted' and an incomplete list provided. The mature Monterey cypress trees and shore pine on the northwest side of the property were not mentioned, but do appear in the aerial photo on page 7. The Biological Review states (pages 8 and 9) that the soil type is hydric, but that the plant species identified on site during the visit are associated with non-hydric soil conditions. The planned survey for bats was abandoned due to weather.

CDFW commented on the Biological Review giving 5 recommendations (letter dated February 16, 2021, page 3):

A wetland delineation following ACOE protocol should be conducted to identify any locations where one or more wetland parameter indicators are present (**Recommendation 1**).

A supplemental Wetland Report was prepared based on a one-day site visit on March 15, 2021. Four locations were studied in detail, identifying numerous plants not previously described. The data sheet for site 1 noted 8 plant species (pages 8-9) 7 of which were not noted in the Biological Review. These were *Rumex acetosella* (OBL), *Plantago lanceolata* (FAC), *Danthonia californica* (FAC), *Anthoxanthum odoratum* (FACU), *Scarzonneroides autumalis* (FACU), *Oxalis pes-caprae* (UP), and *Trifolium subterraneum* (UP). OBL and FAC plant species covered 50% of the ground, while FACU and UP species covered 47% of the ground) and the hydrophytic vegetation indicator dominance test was >50%. Remarks indicated that “Hydrophytic plants are present but not sufficient to qualify as a wetland dominants.” [NOTE: OBL are obligate wetland plants and occur almost always under natural conditions in wetlands, FAC are facultative wetland plants, equally likely to occur in wetlands and non-wetlands, FACU are facultative upland plants, usually occurring in non-wetlands but occasionally found in wetlands, and UP are upland plants which occur in wetlands in another region, but occur almost always under natural conditions in non-wetlands in the region specified. <https://www.fws.gov/wetlands/documents/National-Wetland-Plant-List-Indicator-Rating-Definitions.pdf>] The data sheet for site 2 (pages 10-11) noted 7 plant species, none of which were noted in the Biological Review, though 2 of them were the same genus. None of those plant species were OBL species but 4 were FACU species representing 48% of the total ground cover, while UP species represented 47% of total ground cover. The data sheet for site 3 (pages 12-13) noted 5 plant species none of which were noted in the Biological Review. FAC species represented 10% of total ground cover, while FACU and UP species represented 90% of total ground cover. The data sheet for site 4 (pages 14-15) noted 4 plant species, 3 of which were not noted in the Biological Review. FACU species represented 10% of total ground cover, while UP species represented 81% of total ground cover. Soil sampling down to 18” was conducted at all 4 sites. The soil at site 1 was noted as sand/loam, site 2 was noted as sand/sandy loam, and both sites 3 and 4 were noted as sandy in the first 6 inches and sandy with small stones from 6-18 inches depth. There is no review of this study from CDFW. It is not known if one was requested or if it was not considered necessary.

Survey methods and qualifications of biologists conducting the bat survey should be provided to CDFW prior to surveys to ensure proper assessment. The survey should include visual surveys inside the building (**Recommendation 2**).

And

To ensure proper methods and timing of bat exclusion activities, methods for exclusion should be provided to CDFW for review and concurrence 30 days prior to commencement of removal (**Recommendation 3**).

One of the three mitigation measures included in the IS/MND included BIO-1 (B.3.a. in the City Council packet, page 4) states that “A bat survey shall be conducted prior to demolishing the existing building on-site. If no bats are found no further mitigation is required. If bats are discovered, prior to demolition the bats must be removed through live exclusion or similar means that do not harm bats. If bats are discovered no removal can occur during the maternity season (typically late May through mid-August) to protect flightless baby bats.” Special Condition 3 (page 10) also adds that, “Survey methods and qualifications of biologists conducting the bat survey should be provided to CDFW prior to surveys to ensure proper assessment. The survey shall include visual surveys inside the building. If a bat survey identifies bats present in the existing building, the method and timing of exclusion activities shall be provided to CDFW for review and concurrence 30 days prior to commencement of removal.”

Any nesting bird habitat within the Site designated for removal should be removed between September 1 and February 28 to reduce potential nesting habitat. If nesting habitat is to remain, and construction, grading, or other project-related improvements are scheduled during the nesting season (March 1 through August 31), a pre-construction nesting survey should be conducted no more than five days prior to commencement of project activities. The survey should include the parcel and suitable nesting habitat within a 100-foot buffer. If nesting birds are detected, appropriate buffers, monitoring, and operational restrictions should be put in place with review and concurrence from CDFW (**Recommendation 4**).

Special Condition 4 (pages 10-11) restates this recommendation almost word for word.

Landscaping plan should emphasize regionally appropriate California native plants and should not include invasive plants. (**Recommendation 5**).

Special Condition 18 (page 12) states that, “A landscape plan shall be prepared for review and approval by the Community Development Director that consists entirely of drought tolerant native species. All landscaping and irrigation shall comply with the requirements of the State of California Model Water Efficient Landscape Ordinance (MWELo).

Jacob Patterson noted the presence of great blue herons on the site (Public Comment 7A) and submitted photos of his observations. He also added them to the iNaturalist database, and those can be found at

https://www.inaturalist.org/observations?photos&place_id=any&subview=map&user_id=jrplaw&verifiable=any

I visited the site on several occasions and took photos documenting the three mature trees on February 15. These trees included two Monterey cypress and one unidentified pine, which appears to be a shore pine. Photos of those trees were included in my initial comments submitted on February 16 at 2:33 pm via email, during the public comment period for the Initial Study. I also visited the site

on July 20 around 6:15 pm and July 24 around 5:15 pm. While there, I photographed plants near the fence on the western side of the south lot and submitted those to iNaturalist (https://www.inaturalist.org/observations?place_id=any&user_id=ljkashiwada&verifiable=any). I noted many of the same plant species that were identified in the Wetland Report, some of which indicate the presence of seasonal wetlands.

As previously noted, the initial Biological Review was prepared from data collected on August 9, 2020, in the middle of summer during a drought year with less than half the normal amount of rain. No photos were provided to document the conditions. The only photos are satellite imagery from Google taken on an unknown date. It is not surprising that very few plants were noted on the south lot given the dry conditions. However, the satellite image on page 7 of the report (and below) shows a distinctly green area on the west side of the property next to the fence. The reddish line drawn by the authors of the review obscures that area of greenery (and does not appear to be drawn on the actual boundaries of the parcels). This same satellite image clearly shows the three mature trees on the northwest corner of the project site.

I visited the project site on July 20, 2021 and took photos of the area on the south lot showing a distinctly lower area next to the fence along with plants that are still green despite a second year of drought conditions (see attached photo). The motel on the other side of the fence backs right up to it and there is no evidence of landscape watering there that would support these plants.

The proposed northwest bio-retention basin is placed in the exact location of the two mature Monterey cypress trees. The proposed southwest bio-retention basin and landscaping is located in a area with potential to be an ESHA.

A chart showing precipitation in rain seasons 2018-19, 2019-20 and 2020-21 is shown below the photos.

Analysis:

The Biological Review prepared for the IS/MND was not performed in a way that could fully characterize the site. The one-day site visit in August, in the middle of summer, was not a good time to assess the plant species, and the follow-up Wetland Report identified far more plant species (more about this report in the next section). This is indicative of a superficial look at the plants on the initial site visit – a survey that probably wasn't expecting to find much and didn't. However, my visits on July 20 and 26 of this year, also in the middle of summer (and a second year of drought conditions), showed many plants near the fence not noted in the Biological Review. However those plants were noted in the Wetland Report. This is another indication that the first study was superficial at best, and potentially misleading.

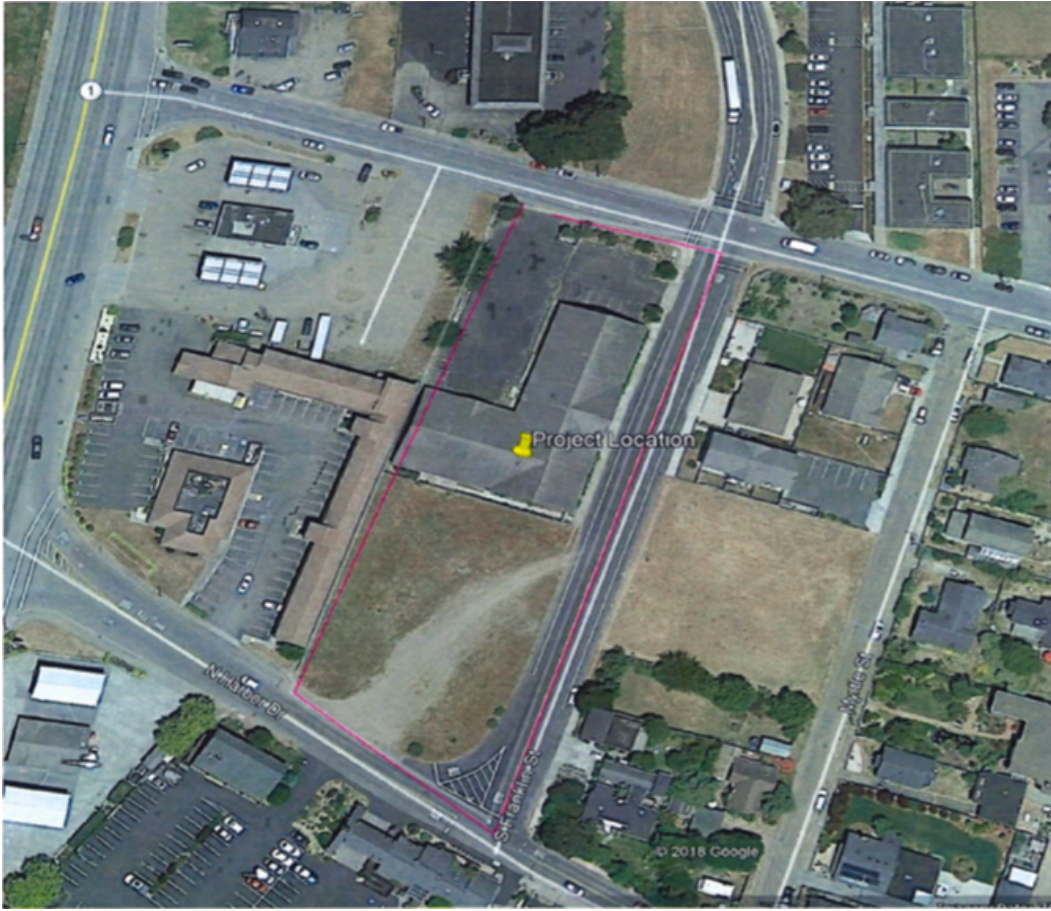
There was not sufficient time spent on the site to observe animals using the site as a primary habitat, other than noting the gopher holes. I also noted numerous gopher holes during my visits. Use of the site by birds, reptiles, insects, or amphibians for forage, resting, and/or nesting would not and could not be noted during such a short time period for observation. No conclusions about use of this site by animals can be made based on the Biological Review. The Wetland Report only surveyed plants and was not designed to assess use of the area by animals.

The CDFW recommendations were mostly addressed in the special conditions, however, the landscape plan (Special Condition 18) did not mention that the plan “should emphasize regionally appropriate California native plants and should not include invasive plants.” This special condition requires the use of drought-tolerant plants, which is an excellent idea, but the most current landscape plan shown still includes Monterey cypress, which is not regionally appropriate (though native to California) and is considered invasive. The landscape Special Condition is also incomplete and will be discussed further in a later section.

Note that while planting new Monterey cypress is not desirable, the presence (and retention) of mature Monterey cypress trees is desirable for the ecological services provided (e.g., habitat, carbon sequestration, shade, water retention) and aesthetic value. The Planning Commission indicated that they wanted the mature Monterey cypress trees and the mature pine on the northwest corner of the property to be retained, but there is no Special Condition in the permit that explicitly requires this. In addition, the placement of the northwest bio-retention basin is not clearly compatible with retaining the mature Monterey cypress trees because it is the location of their root structures and therefore this bio-retention basin must be moved or additional protective measure incorporated to protect their root structure from damage from construction activities. Protecting the mature trees includes not disturbing the ground with anything more than hand tools or an air spade within a minimum ten-foot radius around the trees in order to preserve and protect their root systems. In addition, the southwest bio-retention basin is located in an area that may be an Environmentally Sensitive Habitat Area (ESHA)(see below).

Conclusion:

The Biological Review was incomplete and insufficient to come to the conclusion that this project would have no significant or potentially significant impact on the environment, and there is substantial evidence in the record supporting the conclusion that the project will have a significant impact on biological resources that supports preparing an EIR and/or significant revisions to the IS/MND, including incorporating additional mitigation measures. Thus, the finding or determination that there will be no significant impact on biological resources cannot be made based on this report, or the Wetland Report (see below).



Fort Bragg Precipitation, Rain Seasons 2018-19, 2019-20, and 2020-21

Month/2018	Total Amount	Avg Amount
October	1.08	2.49
November	4.33	5.31
December	6.07	8.46
Month/2019	Total Amount	Avg Amount
January	7.33	7.51
February	14.36	6.84
March	7.60	6.27
April	2.28	3.32
May	6.35	1.80
June	0.02	0.72
July	0.05	0.09
August	0.24	0.21
September	0.75	0.45
Total:	50.46	43.47

7 inches above average, most of that excess from Feb 2019 with over 5.5 inches of rain falling the last 3 days of Feb

Month/2019	Total Amount	Avg Amount
October	0.62	2.49
November	1.24	5.31
December	7.26	8.46
Month/2020	Total Amount	Avg Amount
January	6.77	7.51
February	0.12	6.84
March	2.18	6.27
April	1.84	3.32
May	2.39	1.80
June	0.17	0.72
July	0.03	0.09
August	0.00	0.21
September	0.07	0.45
Total:	22.69	43.47

Biological Study 8/9/2020

only half the average amount of ppt

Month/2020	Total Amount	Avg Amount
October	0.14	2.49
November	2.39	5.31
December	3.63	8.46
Month/2021	Total Amount	Avg Amount
January	6.42	7.51
February	3.50	6.84
March	3.92	6.27
April	0.90	3.32
May	0.10	1.80
June	0.62	0.72
July*	0.00	0.09
Total to date:	21.62	42.72

Wetland Study 3/15/2021
most rain fell before 3/11
fractional rain fell 3/14 and 3/15

*no rain forecast through 7/31

only half the average amount of ppt

Data for 2019 from
<https://www.usclimatedata.com/climate/fort-bragg/california/united-states/usca0394>

Data for 2020 and 2021 from the Press Democrat

Biological Study – Soils

Issue:

The Biological Review was not sufficient to establish the presence or absence of wetland habitat (an ESHA) and CDFW requested further study. A supplemental Wetland Report was prepared but is inadequate because the area most likely to be classified as wetland was not sampled. Landscaping along western property boundary and the southwest bio-retention basin are located in this possibly sensitive area.

Facts:

The letter from CDFW stated that, “The Site is located within the Coastal Zone subject to California Coastal Act (CCA) and California Coastal Commission (CCC) coastal wetland regulations. The CCC’s regulation (California Code of Regulations Title 14) establishes a “one parameter definition” that requires evidence of only a single parameter to establish wetland conditions. The wetland delineation protocol in the U.S Army Corps of Engineers (ACOE) Wetland Delineation Manual (Environmental Laboratory 1987) and Western Mountains Valleys and Coast Supplement (ACOE 2010) describes how to evaluate and document wetland indicators of three parameters: vegetation, soil, and hydrology. The protocol also suggests delineations should occur two-weeks following a significant rainfall event during the growing season to observe indicators of hydrology and obtain accurate identification of plant species. With a single site visit in August, the presence of FAC plants, and no description of wetland assessment methods, the conclusion that wetlands are absent is not supported with substantial evidence. The IS/MND should provide substantial evidence to support the determination that wetlands are absent. A wetland delineation following ACOE protocol should be conducted to identify any locations where one or more wetland parameter indicators are present (**Recommendation 1**).”

The supplemental Fort Bragg Wetland Report was prepared by Wildland Resource Managers using data collected on March 15, 2021. This past spring was dry with very little rain. Fortunately, 1.63 inches of rain was recorded in Fort Bragg on 3/6/2021, 0.43 inches of rain on 3/9/2021, and 0.83 inches of rain 3/10/2021. This does not quite meet the requirement for significant rainfall two weeks prior to the study, but at least there was rain nine days, six days, and five days prior. There had been no rain for weeks before that. As previously described, four locations were studied in detail, identifying numerous plants not previously noted in the Biological Report (see facts section above). Soil sampling down to 18” was conducted at all four locations. The soil at site 1 was noted as sand/loam, site 2 was noted as sand/sandy loam, and both sites 3 and 4 were noted as sandy in the first 6 inches and sandy with small stones from 6-18 inches depth.

The site map (shown below) shows the four locations sampled. Each location was taken to represent one quadrant of the property. Note that the outline of the property lines was more accurately placed than in the site map in the Biological Review. Also note the green area next to the fence on the western side of the property. The photo I took on July 20 (see above) shows the plants along the fence to the left (west) of sites 2 and 3.

I found a number of *Rumex acetosella* (OBL) an obligate wetland plant in this area and documented this with a photo uploaded to iNaturalist. This photo can be viewed at <https://www.inaturalist.org/observations/88485082>

The site map for the project shows landscaping in this area and a bio-retention basin in the southwest side of the property.

Analysis:

This area of persistently green plants along the fence indicates that this area collects water, and has the potential to meet the “one parameter definition” of a wetland as described by CDFW. Yet, the locations studied in the Wetland Report did not sample this area. Instead, the four study sites were in the “table-top” area of the property. The distinctively different look of the more low-lying land running along the fence represents an entirely unique habitat zone on the south lot and there is no information about the plant and animal species that can be found there or that utilize it as habitat.

The proposed southwest bio-retention basin is sited along the fence, as is extensive landscaping. Unfortunately, the impact of digging up this area cannot be determined because the biological resources have not been described. So, while the Wetland Report superficially met the requirement of a more thorough study, it did not actually evaluate the area most likely to include a potential wetland, and area where I found previously undisclosed plants that indicate wetland conditions.

I do not know if CDFW was given the supplemental Wetland Report to review and confirm its adequacy to address their earlier concerns, but there is no evidence in the record to suggest that they have, nor is there any statement by this agency that the reports adequately described the entire site.

Conclusion:

The Fort Bragg Wetland Report and the Biological Review were incomplete and insufficient to come to the conclusion that this project would have no significant or potentially significant impact on the environment and staff is not qualified to opine on its adequacy. In particular, the area most likely to contain wetland habitat was not evaluated. The determination that there will be no significant impact on biological resources cannot be made based on the studies performed so far. In fact, there is substantial evidence in the record to support a fair argument that this project will have significant impact on biological resources and an EIR should be prepared or the IS/MND should be revised to include additional relevant analysis and potential mitigation measures.



Geology and Soils

Issue:

The mitigation measure GEO-1 and Special Condition 2 relies on the contractor to identify and report the presence of fossils or fossil bearing deposits.

Fact:

Special Condition 2 states, “Pursuant to Mitigation Measure GEO-1, in the event that fossils or fossil-bearing deposits are discovered during the project constructions, the contractor shall notify a qualified paleontologist to examine the discovery, and excavations within 50 feet of the find shall be temporarily halted or diverted. The area of discovery shall be protected to ensure that fossils are not removed, handled, altered, or damaged until the Site is properly evaluate, and further action is determined...”

Contractors are typically not qualified to identify fossils or fossil-bearing deposits, and have a counter incentive to report any findings as that might stall or delay construction and lengthen timelines for completion.

Analysis:

Given that contractors are not typically qualified to identify fossils or fossil-bearing deposits and have a conflict of interest in reporting such findings, it is essential that a qualified paleontologist be present on site during all earth-disturbing activities. In fact, there is local anecdotal evidence that contractors have bulldozed such deposits during the construction phase of other projects to avoid having to report them or comply with similar restrictions and requirements.

Conclusion:

The Mitigation Measure GEO-1 and Special Condition 2 are not written in a way to guarantee that fossils and fossil-bearing deposits are protected during the construction phase of the project.

Utilities/Service Systems – Water Usage and Water System Infrastructure

Issue:

The criteria for determining whether or not the project would have a significant impact or potentially significant impact on utilities and service systems merely restated the first two items on the checklist concerning water service and supply and did not include measurable thresholds of significance. The IS/MND and associated reports do not contain sufficient data about water use to determine if a significant impact or potentially significant impact might result both during the construction and operation of the proposed project.

Fact:

The Grocery Outlet Appeal Report prepared by city staff states that, “The impacts on the City’s existing water supply are negligible as the average water usage of a

Grocery Outlet, as supplied by the applicant, is 250 – 350 gallons per day, including irrigation for the landscaping. As drought tolerant landscaping will be required, the average is probably on the lower end of this scale. The usage is expected to be less than 25% of the average water usage of other grocers in the City. In part, this is due to the operations of the market which does not include a deli, meat counter, bakery, or food preparation. Everything arrives packaged and in addition to the landscaping, water is used mainly for sanitation, restrooms, and other minor uses. To provide further context, for the FY 19-20 the City produced 272,833,000 gallons of water and sold 200,164,052 gallons. In that year, grocery stores made up less than 2% of the City's water sales. The increase in water sales in the city would be approximately 0.055% and a 0.04% increase in the usage of treated water. This will be a less than significant increase in water usage."

A Water Model Study prepared by KASL Consulting Engineers indicated an estimated average daily demand for the Hare Creek Center (anchored by a Grocery Outlet) to be 8.260 gallons per day, with a maximum daily demand of 16,520 gallons per day and a peak hour demand of 23.128 per day using 4 different studies (page 4). This includes multiple buildings and landscaping.

The MND for the Hare Creek Project estimated that the water demand for the grocery store (Grocery Outlet) would be 960,000 gallons per year for internal operations, which is an average of 2667 gallons per day (page 43). The MND further states that the average of 55 gallons/year per square foot for a grocery store was in line with water usage in other stores in the area.

The proposed Grocery Outlet is 16,157 square feet. Using the established usage of 55 gallons/year per square foot, the usage should be around 888, 635 gallons per year, or 2,435 gallons/day.

The city has issued numerous water emergency declarations over the last two years, requesting that businesses and residents conserve water and reduce consumption. The most current mandatory reduction resulted in an 8% reduction in water use (from 0.716 million gallons per day to 0.653 million gallons per day) and water use is down 15% from July 2020.

There is no analysis of water usage during the construction phase of the project at all, and only conclusory statements and unsupported assertions concerning ongoing water use of the project once it is operational.

The water storage systems used by the city do not provide additional water. They are like a savings account, where money is set aside to use as needed to cover shortfalls. The current storage capacity is not sufficient to cover extended periods of drought because the estimated amount in storage at full capacity is 45 days or less.

Analysis:

The threshold for significant impact should be very low given the continued drought conditions. In fact, one could argue that any additional water demand is a significant impact on the ability of the city to obtain and provide water for existing businesses and residences. Merely saying that grocery stores don't use a significant percent of water supplies ignores the fact that the additional demand will still impact water usage, especially as everyone is being asked to cut back, and that this additional use likely amounts to a cumulatively considerable contribution to the overall impacts of successive development projects on the City's water supply and storage capacity.

Given that the applicant's estimate is water usage in 10% of the estimated water usage for grocery stores, the IS/MND or supplemental studies should have provided the source for this estimate rather than simply relying on an asserted but highly suspect projected amount of water use provided by the applicant without any support for the figure, and which clearly conflicts with the projections for water use associated with a comparable past project that was actually backed up by relevant studies and analysis.

In the absence of such documentation, this estimate seems unreasonably low and merely an unsupported assertion by the applicant, who has an incentive to underestimate water usage.

The cumulative impact of this project, along with other projects was not addressed, yet may require the city to build additional water storage capacity. In addition the impact of sea level rise and increasingly high king tides compromises the intake facility on the Noyo River, as discussed in numerous public comments and which is supported by substantial evidence in the record. The record clearly supports a fair argument that the project will contribute to these existing issues in a cumulatively considerable way and there is insufficient evidence in the record to support staff's recommended conclusion that this project does not present any concerns related to water supply.

Conclusion:

Any additional demand on water supplies has a significant impact on the availability of the city to produce and supply water to existing businesses and residents. Because no measurable threshold or metric was used related to water supply analysis, and the actual supported water analysis for a recent Grocery Outlet project of a similar size as this proposal indicates this project will have far higher water use than what was asserted by the applicant the determination that this project will have no significant impact on the city's water service system and supply cannot be upheld and the necessary findings required in order to approve the project cannot be made.

Utilities/Service Systems – Storm Water Drainage

Issue:

The criteria for determining whether or not the project would have a significant impact or potentially significant impact on utilities and service systems did not include measurable thresholds of significance for storm water drainage. The IS/MND discussed conditions under normal, dry, and multiple dry years, but did not address increasingly common flooding events from atmospheric rivers that are projected to continue to occur with increasing frequency and severity, as reported by numerous articles and studies, many of which have been submitted into the record through public comments.

Fact:

100-year, even 1,000-year events are now occurring regularly (floods in NE US, Europe and China), an indication of climate chaos (climate change). Atmospheric rivers increasingly drop phenomenal amounts of rain in short periods of time, resulting in catastrophic flooding. Moreover, the moon's orbit is predicted to begin fluctuating significantly more than it has been starting in the 2030s, increasing terrestrial tidal fluctuations and coastal flooding, which are predicted to devastate coastal communities.

Analysis:

It's seems contradictory to consider flooding events when we are experiencing multiple years of extreme drought. Nonetheless, the frequency of flooding from atmospheric rivers is increasing every year and is predicted to increase in the years to come, including during the useful life of the proposed development.

Relying on established standards of design for storm water drainage based purely on historical conditions will no longer serve us well or facilitate informed decision-making concerning this, or other, proposed development projects. This is not to say that the project design does not meet current standards, or will after Special Condition 1 and 24 are applied. Rather, consideration of 100-year and 1,000-year flood events need to be discussed, if only to look at what is predicted to result from system failure. That is, what natural systems will be impacted (e.g., Noyo River, Pacific Ocean) when a flooding event washing the contents of the parking lot and trash storage containers into them occurs. What hazards and hazardous materials will be deposited into these systems and what are the short-term and long-term impacts?

Conclusion:

Storm water drainage will likely fail during extreme flooding events, and an assessment of the results of that failure needs to be provided. The agenda materials and current IS/MND fail to incorporate this relevant information and modeling into the analysis, and there is substantial evidence in the record to support a fair argument that such analysis must be included in the IS/MND or an EIR for this project. Until such analysis is incorporated and circulated for review

by the public and responsible agencies, the City Council would be abusing its discretion to adopt the flawed IS/MND or approve this project.

Transportation – Pedestrian Safety

Issue:

Pedestrian safety was not analyzed in the IS/MND. However, during the public comment period and during the prior public hearings, numerous people indicated they welcomed this project because they could walk from their residence to the site, including many nearby residents of the multi-family housing developments in the vicinity. With this new information, complete routes of pedestrian travel from residences to the project site should have been analyzed in the agenda materials and IS/MND with regards to existing infrastructure and pedestrian safety due to crossing nearby streets to access the project on foot. The only external point of concern discussed at length during the Planning Commission hearings was the intersection of South and S. Franklin Streets. In addition, the location of the proposed building and point of entry for cars on S. Franklin Street was discussed as creating a substantial risk to pedestrians within the parking lot, which does not have internal pedestrian walkways separated from the vehicular travel lanes.

Facts:

The proposed site plan places the building on the north side of the merged parcel and all parking on the south side.

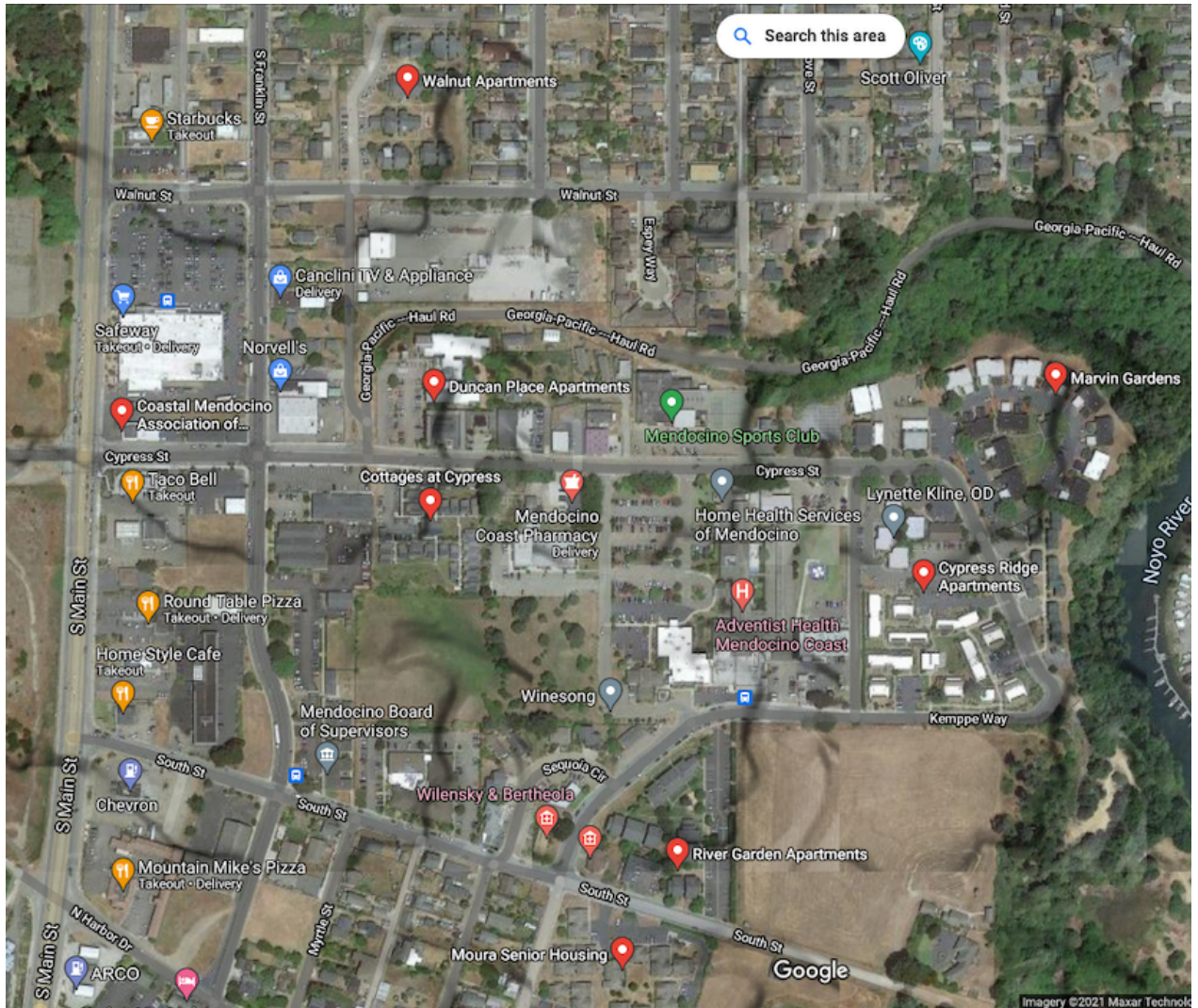
There are many dense multi-family apartment buildings in the vicinity of the proposed project, and this project will attract many pedestrians along routes from these apartment buildings to the site as evidenced by public testimony during the hearings (see map below).

The intersection of South Street and S. Franklin Street is currently only controlled with stop signs at Franklin Street (and no stop signs on South Street). Special Condition 25 requires the applicant to improve infrastructure at this intersection, including installing a 4-way stop, including signage, striping, and pedestrian facilities to provide crossing at all legs of the intersection. This Special Condition also requires the installation of sidewalk curb and gutter for a total length of 57 linear feet along the east side of S. Franklin Street, as well as a curb return to provide sufficient pedestrian landing facilities on the southeast corner of the intersection. These improvements must be completed prior to final certificate of occupancy on the building permit.

The proposed car entry from S. Franklin St into the parking lot is right in front of the store entrance, a location that presents a risk to pedestrian safety because it concentrates vehicular traffic entering the parking lot right where the greatest concentration of pedestrian activity is as well, which is heavily discouraged by the Citywide Design Guidelines. Special Condition 32 requires that the sidewalk at the southeast side of the building entrance must extend a minimum of 4' beyond the parking space length to provide additional pedestrian visibility for vehicles

entering the parking lot from S. Franklin Street. Additionally, another pedestrian ramp must be added to provide egress to the west side of the parking area.

Apartments near proposed Grocery Outlet



There were discussions during the hearings about flipping the overall site plan and moving the building location and vehicle entry points to the parking lot to improve pedestrian safety and parking lot layout, but the applicant asserted those changes were not possible without adequately explaining why. During the hearing several examples of the alternate layouts built by the applicant in other towns were shown. The applicant said changes similar to those discussed by the Planning Commission were made because it was required for the project to be approved by those other towns.

Analysis:

It is clear that this project is being welcomed by many people in the community, especially those who live in controlled-rent and senior apartment complexes on the south side of Fort Bragg. There were many comments expressing support and enthusiasm for this more affordable shopping option. Many of these supporters indicated they planned to walk from their residence (or place of work) to the site of the project.

The infrastructure for pedestrians is not sufficiently developed for pedestrians to safely walk to the site. Special Condition 25 partially addresses this concern by requiring the applicant to construct improvements to the intersection of South and S. Franklin Streets. These improvements are necessary, but not sufficient for pedestrian safety because there are other areas between the housing complexes and the site that need improvement. The various routes should have been thoroughly described and any additional improvements to pedestrian facilities along the routes of travel brought to the Planning Commission for consideration.

While Special Condition 32 was added to improve pedestrian safety at the entrance of the store, it is not even clear that it can be accomplished as there may not be sufficient room in the parking lot to accommodate the widened sidewalk. At the core of this issue is the insistence by the applicant that the site layout is the only one they will consider. Alternate layouts were discussed that may improve entrance and egress of cars to the parking lot and pedestrians to the building and bring the layout into conformity with applicable provisions of the Citywide Design Guidelines, but these were summarily dismissed as not feasible without actually evaluating the feasibility in any meaningful way. Yet, the applicants admitted that they had altered layouts in other locations (e.g., Truckee) to accomplish similar goals, and they did so because it was required for them to receive their permit, so it is clearly feasible for them to do so for their proposal in our town as well.

One problem seems to be that the proposed parking lot barely meets the minimum required parking spaces for the project, although one of those required spaces is now be designated for a cart corral as required by Special Condition 28 (the other cart corral is placed in an area previously designated for landscaping). In addition, internal pedestrian walkways to safely separate pedestrian paths of travel from vehicular paths of travel cannot be accommodated in the existing modified parking lot design, which was not reviewed by the Planning commission. A different layout may ameliorate the conflict between the need for parking and pedestrian safety. In fact, it might be necessary for the applicant to purchase additional land for parking (perhaps the lot between the Chevron and the project site on South Street) – perhaps allowing for a separate parking area for employees.

Conclusion:

The addition of Special Conditions 25 and 32 represent a significant change to the permit, changes that should have gone through the complete review process, including the Design Review to ensure that the project is consistent with applicable local requirements. Tacking on the Special Conditions does not address the significant impact the project will have on pedestrian traffic to and from the project site, and this impact should be thoroughly studied in an update MND or EIR along with the other relevant pedestrian safety concerns discussed above and in public comments.

Transportation – Traffic Study

Issue:

The analysis of traffic was muddled by the current state code using VMT as the criteria of measuring impact versus city code, which requires LOS be used to establish criteria for determining impact. Based on LOS, the traffic study said impact would be significant, especially at the intersection of Main Street and South Street and could not be mitigated. Special Condition 25 requires the addition of a 4-way stop at the intersection of South and S. Franklin streets, but no analysis was conducted to determine the impact this change would have on the flow of vehicles.

Fact:

Traffic will be impacted by increased vehicle traffic to and from the proposed project.

The traffic study indicated a decrease in LOS at the intersection of Main Street and N. Harbor Drive and the intersection of Main Street and South Street. The decrease in LOS at Main and South Streets was determined to be significant.

Discussions about improving the infrastructure and the affected intersections occurred during the hearing and in a document from CalTrans dated December 24, 2019. These included discussion about removing the left turn prohibition from N. Harbor Drive onto Main Street and possibly installing a roundabout, adding a signal at the intersection of Main Street and South Street. CalTrans indicated that the decrease in LOS was not sufficient to obtain state funds for improvement. Special Condition 16 requires a “fair share” contribution to improvements on Highway 1.

The required infrastructure improvement at the intersection of South and S Franklin streets as written in Special Condition 25 will significantly change the flow of traffic in the area.

Analysis:

While Special Conditions 16 and 25 partially address the traffic impacts, there is insufficient study of the various alternatives and their impacts. In particular, emergency vehicles access the hospital ER on South Street, and the addition of

a light at Main Street and a 4-way stop at Franklin Street may impact that access. That impact may be positive or may be negative, but there is no analysis to determine the best configuration of intersection improvements to achieve the desired objectives of increased access and safety for vehicles and pedestrians.

Conclusion:

This project will increase vehicle traffic (e.g., cars and delivery trucks) and pedestrian traffic to the site. These increases will be directly due to the proposed project. Other than the traffic study, these impacts were not well documented, and various alternatives to address the impacts were not proposed and discussed. Therefore, the necessary findings required in order to approve the project cannot be made.

Noise

Issue:

Although a measurable threshold of significance was established, there was no data to support the finding of no significant impact. Data presented were collected in 2008 (not 2011) in a different area of town.

This area of concern was well-addressed by other appellant

Air Quality

Issue:

Increased delivery truck traffic and car trips could degrade air quality in the neighborhood, but no measurable criteria or threshold of significance was established and no data were collected.

This area of concern was well-addressed by other appellant

Special Conditions

This permit had 32 Special Conditions applied to it, many of them incomplete or not enforceable, as raised in public comments. In addition, many of them should have triggered additional analysis and alternative mitigations, which should have required an amended MND, along with additional periods of public comment

Conclusions

As described above and in the other appeal document, as well as numerous public comments, the findings of this IS/MND are not supported and the approval by the Planning Commission overturned. As I have indicated here and in my previous comments, the IS/MND must be amended or an EIR required before the full impact of this project and be determined and the appropriate mitigations properly designed and applied.

Appendix I



Leslie Jan Kashiwada, Ph.D.

Leslie has lived in Fort Bragg since 1999 after teaching for many years in the San Diego area. She has a varied background in science including the evaluation of technical documents. She is also well read and has a many of interests including meditation, music, cooking, and gardening.

Education

Ph.D. Biological Oceanography, Scripps Institution of Oceanography 1985
Dissertation: Demersal Zooplankton of the Giant Kelp *Macrocystis pyrifera*:
Patterns of Emergence and the Population Structure of Three Gammarid
Amphipod Species
B.A. Biology with honors, University of California, Santa Cruz 1976

Career

2015 – present

California Department of Fish and Wildlife, Scientific Aid
Marine Region Education and Outreach
Write articles and produce printed and online content

2003-present

Director, Music Together on the Mendocino Coast
Music and movement classes for families with young children
Administration of all applicable policies, lesson planning and implementation,
grant writing, training

2011-2014

Community Center of Mendocino
Facilities Coordinator

2008-2011

Independent Consultant
Medical Transcription

2001-2003

California Department of Fish and Game, Scientific Aid
Video Analysis of footage taken from ROV

2000
US Census Bureau
Trainer

1988-1999
MiraCosta Community College
Professor of Biology
Department Chair 1998-1999
Director, Southern California Biotechnology Center 1995-1999
Taught courses in Marine Biology, Human Anatomy, Human Biology, Techniques
in Biotechnology, Biotechnology Seminar

1986-1987
MiraCosta Community College
Adjunct Faculty
Taught Human Biology

1986-1987
San Diego State University
Taught Oceanography, Science and Society

1976-1985
Scripps Institution of Oceanography
Research Assistant
Evaluated EIR and EIS reports for sewer outfalls along coastal California as
required by new water quality standards at state and federal level
Conducted research on meiofauna in the Central North Pacific
Designed and conducted research on the demersal zooplankton found in the
holdfasts of giant kelp, *Macrocystis pyrifera*
Course work: Physical Oceanography, Population and Community Modeling,
Marine Communities and Environment, Marine Geology, Marine Chemistry,
Marine Arthropods, Biological Oceanographic Techniques, Biology of Fishes,
Coastal Marine Geochemistry, Pelagic Ecology, Community Ecology, Applied
Statistics, Multivariate Analysis, Natural History of Coastal Habitats, Deep-Sea
Biology, and numerous specialized seminars

Leslie J Kashiwada, Ph. D.



Site of Proposed Project



Western Side of South Lot



Fort Bragg Precipitation, Rain Seasons 2018-19, 2019-20, and 2020-21

Month/2018	Total Amount	Avg Amount
October	1.08	2.49
November	4.33	5.31
December	6.07	8.46
Month/2019	Total Amount	Avg Amount
January	7.33	7.51
February	14.36	6.84
March	7.60	6.27
April	2.28	3.32
May	6.35	1.80
June	0.02	0.72
July	0.05	0.09
August	0.24	0.21
September	0.75	0.45
Total:	50.46	43.47

7 inches above average, most of that excess from Feb 2019 with over 5.5 inches of rain falling the last 3 days of Feb

Month/2019	Total Amount	Avg Amount
October	0.62	2.49
November	1.24	5.31
December	7.26	8.46
Month/2020	Total Amount	Avg Amount
January	6.77	7.51
February	0.12	6.84
March	2.18	6.27
April	1.84	3.32
May	2.39	1.80
June	0.17	0.72
July	0.03	0.09
August	0.00	0.21
September	0.07	0.45
Total:	22.69	43.47

Biological Study 8/9/2020

only half the average amount of ppt

Month/2020	Total Amount	Avg Amount
October	0.14	2.49
November	2.39	5.31
December	3.63	8.46
Month/2021	Total Amount	Avg Amount
January	6.42	7.51
February	3.50	6.84
March	3.92	6.27
April	0.90	3.32
May	0.10	1.80
June	0.62	0.72
July*	0.00	0.09
Total to date:	21.62	42.72

Wetland Study 3/15/2021
most rain fell before 3/11
fractional rain fell 3/14 and 3/15

*no rain forecast through 7/31

only half the average amount of ppt

Data for 2019 from
<https://www.usclimatedata.com/climate/fort-bragg/california/united-states/usca0394>

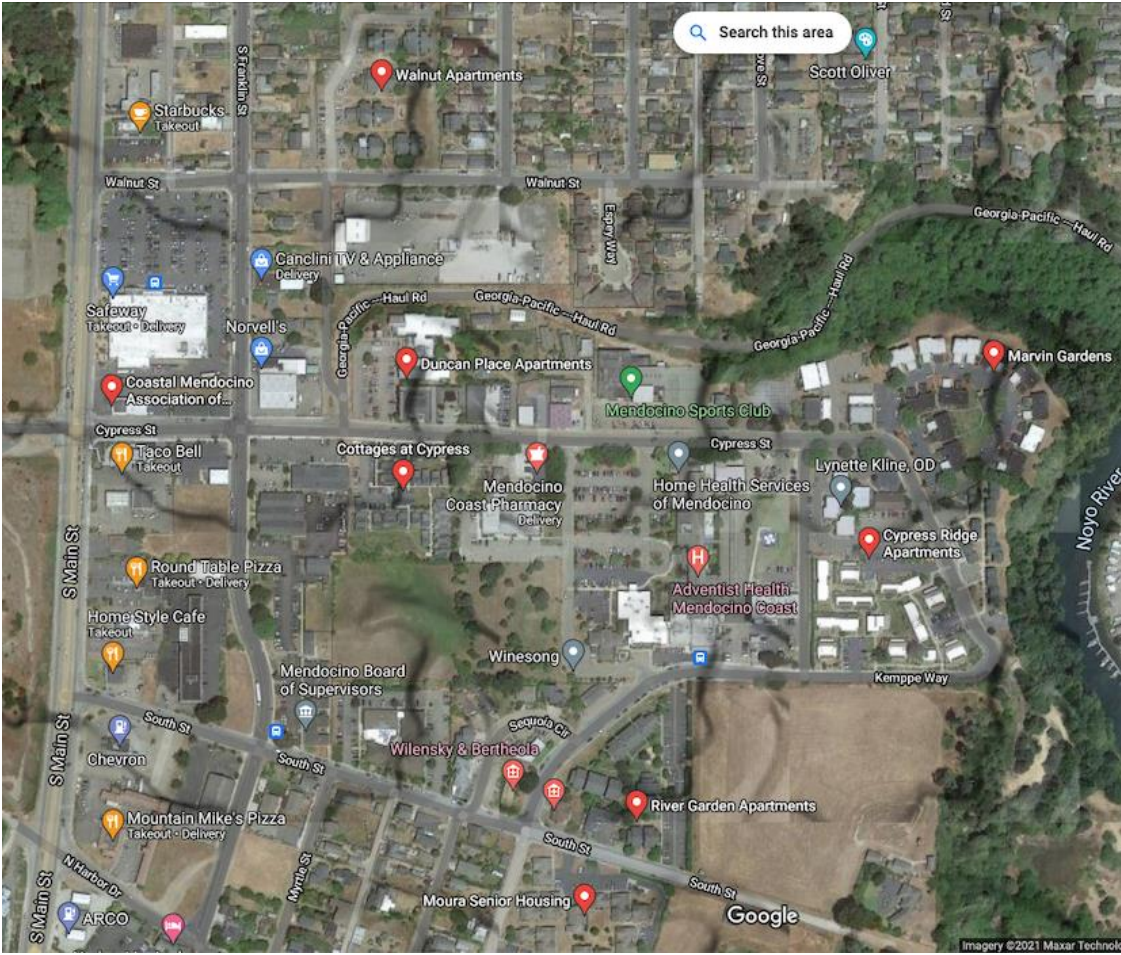
Data for 2020 and 2021 from the Press Democrat

Wetland Study Sites





Housing Near Proposed Project



From: [Leslie Kashiwada](#)
To: [Lemos, June](#)
Subject: Please add these plant photos to the admin record for the appeal
Date: Monday, July 26, 2021 4:24:35 PM

Site of plant photos below, southern lot along western fence line, photos by Leslie J Kashiwada, all rights reserved

Note Himalayan Blackberry climbing fence, July 20, 2021



Sheep Sorrel, July 26, 2021



Beach Strawberry, July 20, 2021



Plantain, July 26, 2021



Wild Radish, July 26, 2021



Cape Dandelion, July 26, 2021



Black Mustard, July 26, 2021



Wild Carrot, July 26, 2021

