

From: [Ducey, Peggy](#)
To: [Peters, Sarah](#)
Subject: FW: Public Comment -- 10/19/2022 PC Mtg., Item No. 6B
Date: Wednesday, October 19, 2022 12:59:20 PM

[Another public comment](#)

From: Jacob Patterson <jacob.patterson.esq@gmail.com>
Sent: Monday, October 17, 2022 1:03 PM
To: cdd <cdd@fortbragg.com>
Cc: Ducey, Peggy <PDucey@fortbragg.com>
Subject: Public Comment -- 10/19/2022 PC Mtg., Item No. 6B

Planning Commission,

I have reviewed the agenda materials concerning the removal of the underground fuel tanks at the former gas station at 225 N. Main Street and support the recommendation action. I encourage you to approve this CDP and adopt the draft resolution with any modifications the Planning Commission thinks are merited presented for your consideration. IMO, the draft approval resolution contains all the necessary analysis and each finding is properly explained when the supporting analysis in the staff report is considered. The City would be irresponsible to not approve this CDP because the project is necessary to address existing code enforcement and hazardous site conditions.

However, I am somewhat concerned that several of the proposed special conditions appear to go further than is justified by this simple CDP application to remove the non-compliant storage tanks. These conditions are a little confusing because they appear to relate to existing code enforcement concerns on the property and do not have a clear connection to the proposed project to remove the underground storage tanks. Specifically, Special Conditions Nos. 4, and 11, as well as portions of No. 12. The Planning Commission failed to address code enforcement issues with the Tall Man Brewing design review and I believe staff argued that they should not be addressed through the entitlement review process. I disagreed in that instance because the relevant code violations (e.g., boarded up windows and deferred maintenance of the exterior of the building) were directly-related to the proposed project and the project's compliance with the required design review findings. I am happy to see staff trying to address existing code enforcement and nuisance conditions as this permit application is processed but the City safely can only do that as part of an entitlement review rather than distinct code enforcement actions if the project itself is connected to the nuisance conditions on the site or if the special conditions are necessary in order for the City to make the required findings. In this case, the applicant did list "closure of gas station" as part of the project description but the closure of a gas station is not "development" whereas the removal of the underground fuel tanks is development. The relevant development in this CDP application is merely the removal of the storage tanks not the recitation of a past event, the closure of the non-conforming use of the service station in 2016. The storage tanks are not related to other aspects of the former service station other than perhaps the former fuel pumps, which have already been removed along with the signs leaving only the fuel tanks for removal pursuant to CLUDC § 17.42.180, subdivision H.

In this case, the proposed special conditions (e.g., Special Condition Nos. 4, 11, and 12) relate to other aspects of the former service station but this CDP does not involve a design review

with a relevant finding to connect to the special conditions, particularly Special Condition Nos. 4. and 11. Special Condition No. 12 is more complicated because it lists distinct components and some of the components arguably relate to the proposed project but others do not (e.g., cutting the bolts and repaving the excavation areas are related but non-compliant storage or future landscaping of project areas not impacted by the project and don't have a clear connection or nexus to the proposed development). In this case, there is a finding that the project complies with the certified LCP, which includes the CLUDC but it doesn't include the cited Municipal Code sections concerning nuisances. None of the CDP findings concern the site's overall compliance with Municipal Code requirements that are not part of the CLUDC and the CLUDC sections concerning non-conforming uses and the loss of legal non-conforming status do not refer to or incorporate Chapter 6.12 of the Municipal Code concerning Nuisances.

CLUDC § 17.42.180 addresses "Service Stations" and subdivision H specifically addresses what happens when a service station closes: "**H. Removal of tanks upon cessation or change of use.** If, for any reason, a service station ceases to sell gasoline for more than 115 out of 120 days, all gasoline pumps and signs shall be removed from the site and all gasoline storage tanks shall be removed or treated in compliance with Federal and State regulations, subject to the approval of the Fire Department." As such, the City can require the removal of the fuel tanks, fuel pumps, and signs as part of this CDP application but the CLUDC does not require the removal of other aspects of the former service station (e.g., the canopy over the former fuel pumps), which are not addressed in the LCP. The fuel pumps and signs have already been removed so the only remaining aspect of the former service station that the CLUDC requires to be removed when a service station ceases operation are the fuel tanks.

Those types of compliance issues could be addressed through code enforcement actions rather than entitlement reviews. Of course, if the applicant is fine with these conditions, this is not a concern and I don't think you need to remove the proposed special conditions absent such an objection; I just don't think the City actually has sufficient legal authority to require Special Condition Nos. 4, 11, and 12 because they are not even peripherally related to the CDP application to simply remove the underground tanks other than some aspects of Special Condition No. 12.

The special conditions are listed below with the concerning content highlighted in yellow.

SPECIAL CONDITION 4: All equipment that pertains to the gas station or auto-shop both outside and inside the building shall be removed.

SPECIAL CONDITION 11: Upon approval of the Coastal Development Permit, the following conditions shall be remedied:

- 1. All graffiti shall be removed within and all walls shall be maintained graffiti free in perpetuity.**
- 2. Site Maintenance. The site shall be cleared of trash or encampment paraphernalia prior to permit and then remain clear at all times thereafter.**
- 3. The applicant shall provide the contact information and an agent authorization letter of their local maintenance personnel to the Police Department to ensure that the property remains in the Trespass Letter program and that any security issues for the property can be handled quickly and efficiently.**
- 4. Cease Non-Conforming Site Activities Currently the two unpermitted activities listed**

below are taking place on site:

Storage - Outdoor. The storage of various materials outside of a structure other than fencing, either as an accessory or primary use.

Storage - Warehouse, Indoor Storage. Facilities for the storage of furniture, household goods, or other commercial goods of any nature. Includes cold storage.

SPECIAL CONDITION 12: Within 60 days of issuance of the Coastal Development Permit to remove the USTs, the following shall be resolved:

1. All equipment that pertains to the gas station or auto-shop both outside and stored inside the building shall be removed.

2. All bolts, ties, metal, and findings set in concrete on the site shall be either cut to be flush with the concrete or extracted and protected with a sufficient cover. Holes and voids throughout the site shall either be filled with concrete or dirt and seeded with non-invasive ground cover.

3. Exterior water spigots shall be sealed to prevent water theft.

4. All weeds shall be manually removed from the site and the property shall be maintained weed free. Weeds shall be properly disposed of in green waste and shall not be left open on the property.

5. The demolition site shall have a level surface of either, concrete, asphalt, vegetated dirt or other surface approved by the Public Works Department upon completion of all work.

6. The applicant shall consult with the City of Fort Bragg and the Mendocino County Planning and Building Services prior to any modifications to the exterior structures and concrete to ensure that all work is permitted per Building Code regulations.

Regards,

--Jacob