



AGENCY: City of Fort Bragg
MEETING DATE: July 26, 2021
DEPARTMENT: Community Development
PRESENTED BY: Heather Gurewitz
EMAIL ADDRESS: hgurewitz@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

Receive Report, Conduct Public Hearing, and Consider Appeal of Planning Commission Decision by Leslie Kashiwada and by Ken Armstrong/FB Local Business Matters Regarding Approval of Coastal Development Permit 8-19, Design Review 1-19, Parcel Merger 1-19, and Adoption of Mitigated Negative Declaration and Mitigation Measures for the Proposed Grocery Outlet at 825 S. Franklin Street

ISSUE:

On June 9, 2021, the City of Fort Bragg Planning Commission approved Coastal Development Permit 8-19, Design Review 1-19, Parcel Merger 1-19, and adopted the project's Mitigated Negative Declaration. The City received two appeals to this decision. One filed by Dr. Leslie Kashiwada and one filed by Mr. Ken Armstrong and FB Local Business Matters.

ANALYSIS:

Project History

On June 3, 2019, the City of Fort Bragg received a complete application to develop a Grocery Outlet store at 825, 845, and 851 S. Franklin St. While this is a permitted use in the Highway Visitor Commercial Zone, because it is located in the coastal zone and constitutes development the project requires a Coastal Development Permit, Design Review, and a Parcel Merger.

BRR Architecture is proposing to construct a Grocery Outlet (retail store) on a 1.63-acre Site located at 825, 845, and 851 S. Franklin Street, Fort Bragg, and identified by Assessor's Parcel Numbers (APNs) 018-120-47, 018-120-48, and 018-120-49 (Site). (See ATTACHMENT 1) Grocery Outlet describes itself as a value grocer, meaning it sells brand name products at bargain prices due to its opportunity buying style. The Site is owned by Dominic and Juliette Affinito.

The project includes the demolition of an existing 16,436-square-foot vacant former office building and associated 47-space parking lot and wooden fencing along the property line, and the construction and operation of a 16,157-square-foot, one-story, retail store with a 55-space parking lot and associated improvements and infrastructure.

The project would include 51,650 square feet (1.18 acres) of hardscape areas that would be covered with the proposed store, parking lot, access ways or sidewalks, and driveways. Associated improvements and infrastructure on-site would include a loading dock and trash enclosure on the west side of the store, a parking area with 55-parking spaces on the south side of the store, an internal system of walkways and crosswalks, two (2) bicycle racks, two

(2) driveways, a new fire service line connection, replacement of an existing sewer connection, connection to underground utilities, two (2) bioretention basins for stormwater capture and treatment, proposed illuminated signage, and landscaping throughout the Site. The existing planted ornamental trees along the South Street frontage would be removed and replaced with landscaping as shown in sheet L1.0, ATTACHMENT 1. Landscaping includes trees and vegetation along the property boundaries within the proposed parking lot. Trees would be planted primarily along the north, south, and east boundaries, with a few along the west boundary, as well as one tree within each of the parking lot landscaping islands. Approximately 19,265 square feet (0.44 acres) of the Site would be landscaped and permeable, as the project would be designed to capture stormwater and pre-treat it on-site to remove dirt, oil, and heavy metals using bioretention basins located along the northwest and southwest boundaries.

The project proposes to include the installation of a six-foot, illuminated monument sign on the southeast corner of the Site. The monument sign would have 15 square feet of branding on each side, in addition to the unbranded base. Additionally, an 83.3-square-foot illuminated channel sign would be located on the sign parapet along the front elevation. A separate sign permit will be required for all site signage and shall be reviewed by Planning Commission prior to final approval in accordance with adopted Resolution PC 08-2021 Special Condition 20.

All exterior lighting would be limited to a maximum height of 18 feet and utilize energy-efficient fixtures and lamps. No permanently installed lighting would blink, flash, or be of unusually high intensity or brightness. Exterior lighting would be shielded or recessed and directed downward and away from adjoining properties and public right-of-way to reduce light bleed so that no on-site light fixture directly illuminates an area off-site, in compliance with regulations set by the International Dark-Sky Association.

The project will also include a merger of three (3) existing parcels (lots) to create one 70,828 square foot (1.63 acres) parcel (see Table 1, below) to accommodate the footprint of the proposed retail store within the resulting parcel.

The project would be operated by 15 to 25 full-time staff and two (2) managers. It would be open from 9:00 AM to 10:00 PM, 7 days per week.

City Actions on Project

In the initial review, City staff determined that the designs submitted were not approvable and required the applicant to redesign the project. The applicant submitted two revised plans to the City and staff determined that the second revised plans were approvable. These were the plans analyzed for California Environmental Quality Act (CEQA) purposes.

City staff determined the project was not exempt from CEQA and required an Initial Study (IS). The purpose of the Initial Study is to determine if a project would have significant environmental impacts (see ATTACHMENT 2). The City contracted with LACO to conduct this activity. As part of the Initial Study the applicant was required to complete a Biological Study (see ATTACHMENT 2, Appendix B), Traffic Impact Analysis (see ATTACHMENT 2,

Appendix C), and Cultural Resources Survey (see ATTACHMENT 2, Appendix A), reports which were reviewed by the City's consultant.

As a result of the Initial Study, the City determined that a Mitigated Negative Declaration (MND) would be the appropriate environmental document to be prepared for the project.

The Draft Initial Study and Mitigated Negative Declaration (hereafter "Initial Study" or "IS") was made available for public review from January 14, 2021 through February 16, 2021. The document was also sent to Caltrans, the Coastal Commission, and the California Department of Fish and Wildlife (CDFW) for review.

Based on comments received by CDFW, in March of 2021, an additional wetland delineation following the Army Corps of Engineers protocol was conducted in locations where one or more wetland parameter indicator was present. The results of the study determined no wetlands were present on the site. (see ATTACHMENT 3).

All public comments were reviewed and it was determined that there were no substantiated fair arguments or evidence that there could be a significant impact to the environment and thus no reason to revise or recirculate to the Initial Study/Mitigated Negative Declaration (see ATTACHMENT 2) or prepare an EIR.

Staff prepared a report and resolution that included 25 special conditions for the project. On May 26, 2021, the Planning Commission held a public hearing (see ATTACHMENT 5). Because the Commission required additional information from staff and the applicant, the hearing was continued to June 9, 2021 and staff presented a supplemental staff report (see ATTACHMENT 6) along with an Addendum to the Traffic Impact Analysis from the transportation engineers (see ATTACHMENT 8). At the June 9th hearing, the Commission added seven new special conditions to the project and voted 4-0, with 1 recusal, to adopt Resolution PC 08-2021, approving CDP 8-19, DR 1-19, MGR 1-19, and adopting the Mitigated Negative Declaration with Mitigation Monitoring Plan (see ATTACHMENT 7).

On June 15, 2021 the City received an appeal of the Planning Commission's decision from Leslie Kashiwada (see ATTACHMENT 9) and on June 17, 2021, the City received an additional appeal from an attorney representing Ken Armstrong and FB Local Business Matters (collectively referred to as "Armstrong Appeal") (see ATTACHMENT 10). While neither Appellant raised the argument that an EIR was required before the Planning Commission, Armstrong's attorney now makes that argument on appeal. The Kashiwada appeal raises non-CEQA issues as well as CEQA issues.

CEQA Issues

Preparation of an EIR is required when there is substantial evidence to support a fair argument that there may be a significant impact on the environment which cannot be mitigated. As demonstrated below, there is no evidence to demonstrate the Initial Study/MND was deficient or that an EIR should have been prepared. Neither appeal provides any such evidence as the appeals consist of unsubstantiated arguments, speculation and fears.

Section 15384 Substantial Evidence, of the CEQA Guidelines defines substantial evidence as follows:

(a) “Substantial evidence” as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

The following table provides an overview of the CEQA issues raised and the response from staff. However, evidence to support the CEQA procedure is also found in the Initial Study, the staff reports, and other documents attached hereto and contained within the administrative record.

Appeal Reason (Appellant)	Staff Response
The Initial Study/Mitigated Negative Declaration was seriously flawed and CEQA findings cannot be supported – (Kashiwada)	This is an introductory statement to the rest of the appeal. The IS was prepared in accordance with the CEQA statutes and guidelines. The Study was reviewed by City Legal Counsel. The analysis supports the conclusions in the IS/MND.
Appellant disagrees with CEQA Finding 1 - For the purposes of the California Environmental Quality Act (CEQA), a Mitigated Negative Declaration (MND) was prepared for the project and circulated for public review. The conclusion of the Mitigated Negative Declaration is there are not any potentially significant impacts that cannot be mitigated. (Kashiwada)	<p>Appellant did not provide substantial evidence to create a fair argument that there may be significant environmental impacts. Environmental review for the proposed project included preparation of an Initial Study and Mitigated Negative Declaration (IS/MND) pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code 21000 - 21189) and Guidelines (California Code of Regulations Title 14, Division 6, Chapter 3, Sections 15000 -15387). The IS/MND was circulated from January 14, 2021 to February 16, 2021, through the State Clearinghouse. The Initial Study and Mitigated Negative Declaration included 3 mitigation measures which have been incorporated into a Mitigation Monitoring and Reporting Program (see ATTACHMENT 2 Appendix D starting on page 316) which is being adopted as a part of the project.</p> <p>The Initial Study conclusively indicates that the project will have less than significant impacts with the required mitigation. Appellant’s disagreement does not provide substantial evidence that the IS is deficient or of a need to prepare an EIR.</p>

<p>Appellant disagrees with CEQA Finding 2 - The following impacts have been found to be less than significant and mitigation is not required to reduce project-related impacts: Aesthetics, Agriculture and Forestry, Air Quality, Cultural Resources, Energy, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use Planning, Mineral Resources, Population and Housing, Public Services, Recreation, Transportation, Tribal Cultural Resources, Utilities/Service Systems and Wildfire. (Kashiwada)</p>	<p>The Initial Study/Mitigated Negative Declaration dated December 2020 and circulated for public review from January 14, 2021, to February 16, 2021 and the subsequent wetland study, are conclusive in determining that the project will have less than significant environmental impacts in the areas listed in the finding. Some of the areas are addressed individually below, however, the full Initial Study provides a complete analysis of the potential for environmental impact (see ATTACHMENT 2). Appellants generalized disagreement does not provide evidence of deficiencies or the need to prepare an EIR.</p>
<p>Appellant disagrees with CEQA Finding 3 - The Initial Study identified potentially significant impacts to Biological Resources, Geology and Soils and Noise, which could result from the project as originally submitted. Mitigation Measures have been required to ensure potential impacts are limited to a less than significant level. (Kashiwada)</p>	<p>The Initial Study identified potentially significant impacts to Biological Resources, Geology and Soils, and Noise, which could result from the project as originally submitted. Mitigation Measures have been required to ensure potential impacts are limited to a less than significant level. These include:</p> <ul style="list-style-type: none"> a. Biological Resources: 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. b. Geology and Soils: In the event that fossils or fossil-bearing deposits are discovered during project construction, the contractor shall notify a qualified paleontologist to examine the

	<p>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 evaluated, and further action is determined. The paleontologist shall document the discovery as needed, in accordance with Society of Vertebrate Paleontology standards (Society of Vertebrate Paleontology 1995), evaluate the potential resource, and assess the significance of the finding under the criteria set forth in CEQA Guidelines Section 15064.5. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the project proponent determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project based on the qualities that make the resource important. The plan shall be submitted to the City of Fort Bragg for review and approval prior to implementation.</p> <p>c. Noise: Implementation of the following measures are required during the duration of the project construction period to reduce potential noise impacts on the nearby sensitive receptors:</p> <p>i. Construction shall be limited to between the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday, with no construction activities permitted on Sunday, or holidays;</p> <p>ii. All internal combustion engine-driven equipment shall be equipped with intake and exhaust mufflers that are in good condition and appropriate for the equipment. Air compressors and pneumatic equipment shall be equipped with mufflers and impact tools shall be equipped with shrouds or shields.</p> <p>iii. All unnecessary idling of internal combustion engines on-site shall be prohibited.</p> <p>The Initial Study provides a deeper analysis of these topics on pages 22-25, 31-34, 49-54 and was conducted pursuant to the California Environmental Quality Act (CEQA) Statute (Public Resources Code 21000 - 21189) and Guidelines (California Code of Regulations Title 14, Division 6, Chapter 3, Sections 15000 - 15387). Appellants generalized disagreement does not provide evidence of deficiencies or the need to prepare an EIR.</p>
<p>Appellant disagrees with CEQA Finding 4 - There have been comments from the public on the project and the Mitigated</p>	<p>During the public comment period for the Initial Study, public comments were received and considered (see ATTACHMENT 4). In response to DFW's comment, a wetland study was completed which verified the original conclusion and there was no need to modify the IS.</p>

<p>Negative Declaration. These comments have been considered and none of these comments change the conclusions of the Mitigated Negative Declaration. (Kashiwada)</p>	<p>Other public comments that were raised are addressed on pages 40 – 41 of the May 26th Staff Report (ATTACHMENT 5) which states, “<i>Thirteen (13) other comment letters were received from members of the public regarding this application as a result of circulation. One comment was in support of the project, while the rest came from opponents of the proposed project. Comments were generally concerned about traffic, location, and community character. These comments have been considered and none of these comments change the conclusions of the Mitigated Negative Declaration.</i></p> <p><i>Additionally, no further changes to the project were made as a result of these comments. Multiple comments expressed concern that the project is unsuitable in this location. This is an opinion and does not raise impacts which have not been addressed. The proposed project is a large retail grocery store in an area that is properly zoned and has a general plan designation that supports this type of use...</i>”</p>
<p>All public concerns were irrelevant and therefore dismissed without appropriate revisions to actually address the legitimate concerns presented in those comments. (Kashiwada)</p>	<p>Public comments are addressed on pages 40 – 41 of the May 26th Staff Report (ATTACHMENT 5) which states, “<i>Thirteen (13) other comment letters were received from members of the public regarding this application as a result of circulation. One comment was in support of the project, while the rest came from opponents of the proposed project. Comments were generally concerned about traffic, location, and community character. These comments have been considered and none of these comments change the conclusions of the Mitigated Negative Declaration.</i></p> <p><i>Additionally, no further changes to the project were made as a result of these comments. Multiple comments expressed concern that the project is unsuitable in this location. This is an opinion and does not raise impacts which have not been addressed. The proposed project is a large retail grocery store in an area that is properly zoned and has a general plan designation that supports this type of use...</i>”</p>

<p>Biological Study – Biota/Soils – Issues not adequately addressed and supplemental study not helpful or informative (Kashiwada)</p>	<p>A biological review was prepared as part of the IS. A wetland study (see ATTACHMENT 3) was done in response to the concerns raised by the State Agency and a condition was added to take care of bats. Disagreement with the study without evidence does not substantiate the need to redo the IS nor prepare an EIR. The City conferred with DFW after the Wetland study and indicated that there would be no changes to the IS. There was no further input from DFW.</p> <p>One public comment claimed that the presence of a blue heron documented on the site required additional protections. However, the site is not its normal habitat. According to the CDFW California Wildlife Habitat Relationships System <i>Ardea herodias</i>, the habitat for Great Blue Herons is “shallow estuaries and fresh and saline emergent wetlands. Less common...croplands and pastures.” Herons have been observed eating gophers and other rodents on lawns and other open spaces, but this does not qualify the space as blue heron habitat. “Nearly 75% of the diet is fish” according to CDFW and their habitat includes “perches and roosts in secluded tall trees. Also perches on kelp beds offshore... usually nests in colonies in tops of secluded large snags or live trees.” The site is far from secluded as it is right in the middle of a commercial district in town just one block east of a State Highway. The area where trees exist on site are frequented by transient human populations and is not suitable nesting habitat. There was no evidence of bird nesting as noted in the biological survey and the site, based on the wetlands survey cannot be considered Blue Heron habitat.</p>
<p>Water Usage – Issues not adequately addressed (Kashiwada)</p>	<p>Fort Bragg currently uses about 36% of its water entitlement from the Noyo River. The City also has a 45-acre-foot raw water reservoir to ensure adequate water storage during years of severe drought. The City’s water storage capacity meets the needs of the development buildout scenario. As the project is consistent with the zoning it would be accounted for in the buildout scenario, all as further detailed in the IS.</p> <p>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</p>

	<p>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.</p> <p>Appellant has not provided any evidence to show that there will be an impact on the City's water supply.</p>
<p>Water System infrastructure – Issues not adequately addressed (Kashiwada)</p>	<p>Appellant has not provided any evidence that there will not be adequate water pressure. The review completed by public works in the Coastal Development Permit on pages 8 and 30 of May 26th Staff Report and pages 68-69 of the Initial Study address this issue and show the matter was adequately analyzed.</p> <p>However, to further clarify this matter, because this is a commercial building, the applicant will be required to show that the facility has adequate pressure to accommodate fire suppression. However, this is not a CEQA impact because the project will not impact the water pressure of the existing distribution system. The fire hydrants in this location have sufficient pressure and flows as documented in the 2013 study and re-verified in 2015, the last time the City conducted a complete pressure system test. Nothing has changed in system pressure since that time and there is no reason to believe that this business will create a significant change, however, pursuant of the California Building Codes, the water pressure will be tested to document pressures mentioned above.</p>
<p>Stormwater Drainage – Issues not adequately addressed (Kashiwada)</p>	<p>The Conservation, Open Space, Energy and Parks Element of the City's Coastal General Plan imposes additional policies and requirements for developments of special water quality concern. This project has been identified as falling under these requirements and has been designed/conditioned to meet these requirements as discussed in pages 41-45 and 67-71 of the Initial Study and in pages 7-8, 13-15, 30-31 of the May 26th Staff Report and pages 12 and 16-17 of the June 9th Staff Report (see ATTACHMENT 5-6). The use of the 85th percentile is in accordance with the City's approved Coastal General Plan, Coastal Commission policies, and the State Water Board. Appellant has requested that the City go beyond approved</p>

	standards in its analysis and development of the project which is not required.
<p>Traffic Study and Pedestrian Safety – The vehicle traffic impact was acknowledged as actually significant, yet the study stated that impact could not be mitigated, no serious attempt to analyze various mitigation options. The special condition added in the meeting should have been included in the MND. (Kashiwada)</p>	<p>Under SB 743, as of July 2020, cities are no longer allowed to use a level of service (LOS) analysis to determine whether there was an impact for purposes of CEQA. Instead the required metric is based on vehicle miles traveled (VMT). As the Traffic Impact Analysis was completed in 2019, it contains outdated references to significant impacts as it relates to LOS not VMT. CalTrans’ comment on the IS also provides that LOS may no longer be used. As LOS cannot be used as a measure of significance, there cannot be a significant impact due to a change in the LOS. Conditions to impose non-CEQA issues are not mitigation measures and should not be included in a CEQA document. LOS impacts are instead appropriately addressed through the Special Conditions in Reso PC 08-2021 (see ATTACHMENT 7).</p> <p>The Technical Advisory established by OPR provides that locally serving retail uses of 50,000 square feet or less should be screened out from a VMT analysis. The proposed market is far under this threshold at 16,157 square feet. Public testimony at the Planning Commission meeting validated that the market would be local serving and also validated the IS that the project would reduce overall VMT as people would not travel as far to get to a market. For CEQA purposes, there is no significant traffic impact and it would be improper to add traffic-related conditions as mitigation measures.</p> <p>Appellant also raises the issue of worsening conditions at South Street and South Franklin Street due to the project. This intersection is an existing condition and not part of the project, nevertheless the project has been conditioned to install a 4-way stop sign at this location. Further, the Traffic Impact Analysis (TIA) prepared for the project indicated that the LOS would remain the same at this intersection under all conditions. Therefore, the project does not substantially increase hazards due to a geometric design feature.</p> <p>Appellant also refers to dangers of people turning left onto Highway One from the Arco Station. This project does not front on Highway One and the point that people disobey the signage at this location is not evidence of a defect of the IS or a dangerous geometric design feature.</p> <p>Appellant’s reference to the “harrowing” experience of making a left turn from South Street to Highway One falls under the rubric</p>

	<p>of argument, speculation, unsubstantiated opinion or narrative that does not constitute substantial evidence.</p> <p>See the remaining discussion below on non-CEQA traffic issues.</p>
Economic analysis (Kashiwada)	<p>CEQA does not require an economic analysis to determine what the impact of a project will be on other businesses within the City. Economic impacts are only considered if they lead to a physical change. The issues raised by Appellant are social issues and not part of CEQA. There is no argument raised that the project will cause physical impacts elsewhere in the City.</p>
Impacts of diesel exhaust emissions on nearby residences that are located to the East and South (Armstrong)	<p>The project will be required to comply with state regulations that limit the idling of on-road and off-road diesel-powered equipment. The Initial Study concluded that with the various rules and regulations that would be applied to construction, exhaust emissions would be minimized.</p> <p>To further clarify, the store will get delivery from four heavy duty diesel vehicles per week and four to five small truck deliveries per day. The total emissions of an idling Heavy Duty Diesel Vehicle per a 2008 EPA Report on Emission Facts: Idling Vehicle Emissions for Passenger Cars, Light-Duty Trucks, and Heavy Duty Trucks¹, says that a heavy duty truck idling for one hour will have the following emissions: CO - 0.0565000686 lbs. NOx- 0.0744346736 lbs. PM_{2.5} - 0.002358946 lbs. PM₁₀ - 0.0025639761 lbs.</p> <p>Vehicles, if left idling at all would not idle for more than an hour. This clarifies why the conclusion was made in the MND that the emissions from the diesel trucks would have a less than significant impact on any nearby residences or sensitive receptors.</p>
[The Initial Study] does not analyze whether emissions of other pollutants will violate state air quality	<p>The IS concluded that the emissions would not exceed the MCAQMD thresholds (see pages 18-21 and 35-36). The IS notes that the project will be required to comply with suppression of fugitive dust during construction and operation, pursuant to rule 1-430 of Chapter IV of Regulation 1 of the MCQAMD's Rules and Regulations, and the City's dust management plan</p>

¹ United States Environmental Protection Agency, Office of Transportation and Air Quality. "Emission Facts: Idling Vehicle Emissions for Passenger Cars, Light-Duty Trucks, and Heavy-Duty Trucks." Published October 2008.

standards (Armstrong)	<p>17.30.080(D) of the CLUDC and the site specific Dust Prevention and Control Plan required pursuant to Section 17.62.020(B) of the CLUDC, and maintaining all equipment in good working condition, fugitive dust, and exhaust emissions would be minimized. These requirements are mandated by law and enforced by the MCAQMD and must be followed by all projects.</p> <p>To further clarify, Page 19 of the IS shows Table 2 which has the MCQAMD Thresholds of Significance calculated in both lbs/day and in tons/year. The rates for construction range from 10-15 tons/year for ROG, NO_x, PM₁₀, PM_{2.5} and SO₂. Using the California Emissions Estimator Model as recommended by the California Air Pollution Control Officers Association (CAPCOA), it is clear that this project is below the threshold of significance. For example, for construction, the project's highest emission is estimated at 1.26 tons/year of PM₁₀ for construction in comparison to the threshold of significance which is 15 tons/year for construction related emissions. Furthermore, the overall operational emissions with no mitigation are even less significant. The highest emission projected is 1.42 tons/year of CO and the threshold of significance is 125 tons/year. This clarifies that no additional analysis was necessary because this project's emissions are well below the threshold of significance to be a significant impact.</p> <p>Appellant has not provided any evidence that the conclusions of the IS are in error.</p>
[The Project] could expose sensitive receptors to high concentrations of these pollutants (Armstrong)	See Discussion above relating to air impacts.
The Initial Study does not include any actual analysis of noise impacts on nearby residences. (Armstrong)	The Initial Study analyzed noise impacts and determined that the impact would be less than significant with mitigation incorporated. Appellant has not provided any evidence to dispute the Initial Study.
The new store is obviously going to create a massive traffic problem on Highway 1, since the report states it will add over 1,700	The Traffic Impact Analysis (TIA) discusses trip generation from the project on pages 16 – 17. Appellant misstates the findings of the TIA which indicates that there would be 36% reduction due to pass-by-trips, i.e., trips that were already on the road. The net trips are expected to be 1,094 new weekday trips and 1,818 new trips on a Saturday. Appellant has provided no evidence to

<p>new car trips on weekdays and over 2,800 on Saturdays (Armstrong)</p>	<p>contradict the conclusions of the TIA and the Addendum to the TIA and the project has been conditioned to pay its fair share of traffic improvements.</p> <p>See discussion above for further traffic analysis.</p>
<p>The City should impose mitigation measure to reduce travel by car and encourage other modes. (Armstrong)</p>	<p>Mitigation measures are imposed when there is a significant impact. In this case, the project is below the screening threshold established by OPR and the VMTs will likely be reduced overall as people will not have to drive to other cities for their groceries. It is further noted that there is public transportation adjacent to the project and also a pedestrian network.</p> <p>There are already no parking signs on the south side of South Street between South Franklin and Myrtle St. and on the south side of North Harbor Drive between South Franklin and Myrtle St. There is not enough space for a vehicle to pull off the road on the north side of North Harbor Drive. Furthermore, there is sidewalk on the south side of North Harbor Drive in the vicinity of the project, and it would not make sense to encourage pedestrians to walk on the opposite side of the street where there is insufficient space for safety.</p> <p>Furthermore, while this is not an issue for CEQA, the Coastal General Plan identifies the expansion of pedestrian paths of travel. This project with the implementation of Special Conditions will improve available pedestrian travel. Also, because of the proximity to the new housing project at South St. and Kempe, this project will provide a walkable marketing option.</p>

Non-CEQA Issues

Dr. Kashiwada’s appeal also raises a number of non-CEQA issues, challenging the General Findings, as well as a number of the findings related to the Coastal Development Permit and the Design Review. Unlike a CEQA challenge, in a challenge to these administrative land-use matters, a court gives deference to the City’s determination and a court will uphold a finding if it is supported by substantial evidence, even if there is other evidence to support a contrary decision.

These matters are addressed below.

<p>Appeal Reason (Appellant)</p>	<p>Staff Response</p>
<p>Project was not consistent with many</p>	<p>This is another introductory statement. The staff reports prepared for the Planning Commission and the Commission’s resolution of</p>

<p>of the City's Coastal General Plan policies (Kashiwada)</p>	<p>approval contain the required evidence to support the findings (see ATTACHMENTS 5-7).</p>
<p>Appellant disagrees with all general permit findings but specifically the following (Kashiwada)</p>	<p>See below:</p>
<p>Appellant disagrees with General Finding 3 The proposed project is consistent with the purpose and intent of the zoning district, as well as all other provisions of the General Plan, Coastal Land Use and Development Code (CLUDC) and the Fort Bragg Municipal Code in general; (Kashiwada)</p>	<p>The proposed project, as conditioned by 32 special conditions is consistent with the relevant policies of the Coastal General Plan and applicable provisions of the Coastal Land Use Development Code (CLUDC) and Fort Bragg Municipal Code.</p> <p>The proposed use is permissible in the Highway Visitor Commercial Zone as indicated in the CLUDC 17.22.030 Table 2-6. The City has required multiple redesigns of this project to meet the Citywide Design Guidelines and modifications to the landscaping, parking lot, and civic improvements to meet the City's codes. The staff report dated May 26, 2021 (see ATTACHMENT 5) and the supplemental staff report dated June 9, 2021 (see ATTACHMENT 6) provide thorough and sufficient analysis supporting this finding.</p>
<p>Appellant disagrees with General Finding 4: The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity; (Kashiwada)</p>	<p>The initial plans submitted by the applicant were not permissible. Staff provided direction and the plans were updated. Staff required additional changes, and the plans were deemed approvable by staff. The Planning Commission requested additional changes from the applicant which were added prior to the June 9th meeting, and the project was approved with a total of 32 special conditions included in the approval resolution. A complete analysis can be found in the staff report dated May 26, 2021 and the supplemental staff report dated June 9, 2021 provide thorough and sufficient analysis supporting this finding.</p>
<p>Appellant disagrees with General Finding 5. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical)</p>	<p>The staff reports from May 26, 2021 (including but not limited to pages 25-31) and June 9, 2021 provide detailed analysis and sufficient information to support that the site is physically suitable.</p>

<p>access and public services and utilities (e.g., fire protection, police protection, potable water, schools, solid waste collection and disposal, storm drainage, wastewater collection, treatment, and disposal, etc.), to ensure that the type, density, and intensity of use being proposed would not endanger, jeopardize, or otherwise constitute a hazard to the public interest, health, safety, convenience, or welfare, or be materially injurious to the improvements, persons, property, or uses in the vicinity and zoning district in which the property is located; (Kashiwada)</p>	
<p>Appellant disagrees with CDP Finding 1. The proposed development as described in the application and accompanying materials, as modified by any conditions of approval, is in conformity with the City of Fort Bragg's certified Local Coastal Program and will not adversely affect coastal resources. (Kashiwada)</p>	<p>As conditioned, the project conforms with the City of Fort Bragg's certified Local Coastal Program and will not adversely affect coastal resources per the complete analysis in the Staff Report and Supplemental Staff Report.</p> <p>The project is not located within 300 feet of a coastal bluff or mean high tide line, nor is it between the sea and the first road. The majority of the lot is developed with a building and parking lot. A biological study of the portion of the lot that is not developed was conducted and it was determined that it does not have any environmentally sensitive habitat. The zoning of this site is visitor highway commercial and it is intended to be developed for commercial activity. The analysis in the May 26th Staff Report provide sufficient support for this finding, specifically pages 5 - 31.</p>

<p>Appellant disagrees with CDP Finding 3 - Feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; (Kashiwada)</p>	<p>See the staff response to the concerns regarding the CEQA findings.</p>
<p>Appellant disagrees with CDP Finding 5 - The proposed development is in conformance with the City of Fort Bragg's Coastal General Plan; (Kashiwada)</p>	<p>The staff report dated May 26, 2021 pages 5 - 24 and the supplemental staff report dated June 9, 2021 provide a detailed analysis concluding that the project is in conformance with the City of Fort Bragg's Coastal General Plan. The appellant may not agree but this is not grounds to deny the project.</p>
<p>Appellant disagrees with CDP Finding 6 - The proposed location of the use and conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity; (Kashiwada)</p>	<p>The proposed project is located in an area surrounded by other commercial development, multi-family housing, and three non-conforming residential structures. The structures immediately to the south, west, and north of the project are of similar size (lodging facility) and frequency of use (gas stations, restaurants).</p> <p>Conditions of approval listed in PC Reso 08-2021 (see ATTACHMENT 7) were included to ensure that the use will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.</p> <p>The May 26th Staff Report pages 29-31 and the Supplemental Staff Report from June 9th provides sufficient evidence and reasoning for this finding.</p>
<p>Appellant disagrees with CDP Finding 7 - Services, including but not limited to, water supply, sewage disposal, solid waste, and public roadway capacity have been considered and are</p>	<p>Both the Initial Study and the Coastal Development Permit analysis required a review of how the project would impact public services. Through these analyses and in consultation with Public Works and Caltrans, it has been determined that the City has adequate capacity to serve the proposed development. The overall impacts of this development are negligible. Page 30 -31 of the May 26th Staff Report provides additional analysis. See also the discussion of water above under the CEQA issue.</p>

<p>adequate to serve the proposed development; (Kashiwada)</p>	
<p>Appellant disagrees with CDP Finding 8 - The proposed location of the use and conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity. (Kashiwada)</p>	<p>The proposed project is located in an area surrounded by other commercial development, multi-family housing, and three non-conforming residential structures. The structures immediately to the south, west, and north of the project are of similar size (lodging facility) and frequency of use (gas stations, restaurants). The May 26th Staff Report and June 9th Supplemental Report provide a thorough analysis of the City's Local Coastal Program, General Plan, Zoning, Site Standards. To ensure that this project is not detrimental, 32 Special Conditions were included in the project development. There is sufficient analysis and evidence provided to support the Planning Commission's Finding (see ATTACHMENT 7).</p>
<p>Appellant disagrees with DR Finding 1 - Complies with the purpose and requirements of this Section. (Kashiwada)</p>	<p>Design Review is intended to ensure that the design of proposed development and new land uses assists in maintaining and enhancing the small-town, coastal, historic, and rural character of the community. The consultant and staff conducted a thorough design review which initially required a complete building redesign. The design proposed to Planning Commission was based on the feedback provided to the applicant by staff. At the May 26, 2021 meeting, Planning Commission provided additional feedback to the applicant which were incorporated into the final proposed design. The final resolution added six additional conditions to satisfy the Planning Commissions design changes. The analysis in the May 26th (pages 31 – 36) and the June 9th Staff Report provide clear evidence why this finding can be made.</p>
<p>Appellant disagrees with DR Finding 2 - Provides architectural design, building massing, and scale appropriate to and compatible with the site surroundings and the community. (Kashiwada)</p>	<p>In CLUDC Section 17.22.050 Commercial District Site Planning and Building Standards, Table 2-9 lists the maximum building height as 35 ft. The project is surrounded on the north, west, and south by two story motels and the existing building is approximately 30 ft. The plans provided by the applicant listed the building height of less than 35 ft but special conditions have reduced the scale to a maximum of 28 ft and the parapets shall not exceed 23 ft. Based on the special conditions and surrounding buildings, this project is appropriate to and compatible with the site surroundings and the community. Additional analysis of the Design Review is in the staff reports dated May 26th (pages 31 – 36) and June 9th.</p>

<p>Appellant disagrees with DR Finding 3 - Provides attractive and desirable site layout and design, including building arrangement, exterior appearance and setbacks, drainage, fences and walls, grading, landscaping, lighting, signs, etc. (Kashiwada)</p>	<p>This project was redesigned during the planning process to meet the Citywide Design Guidelines and to address the recommendations of the Planning Commissioners. The design review on pages 31 – 36 of the May 26th Staff Report and the additional analysis in the June 9th Supplemental Staff Report provide conclusive analyses that substantiate Planning Commission’s Findings.</p>
<p>Appellant disagrees with DR Finding 4 - Provides efficient and safe public access, circulation, and parking. (Kashiwada)</p>	<p>This was a topic of discussion at both the May 26th and June 9th Public Hearings. The Level of Service Analysis required for the Coastal Development Permit resulted in the development of Special Conditions which are established to ensure that the project provides efficient and safe public access, circulation, and parking in compliance with the requirements of the CLUDC Chapter 17.36 Parking and Loading and the relevant sections of the Coastal General Plan Circulation Element 5. Pages 16 – 21 and 25 of the May 26th Staff Report and pages 12 – 15 of the June 9th Supplemental Staff Report provide sufficient evidence for this finding.</p>
<p>Appellant disagrees with DR Finding 5 - Is consistent with the Coastal General Plan, any applicable specific plan, and the certified Local Coastal Program if located in the Coastal Zone. (Kashiwada)</p>	<p>Pages 5 – 24 of the May 26th staff report provide analyses and evidence that support the Planning Commission’s Finding.</p>
<p>Appellant disagrees with DR Finding 6 - Complies and is consistent with the City's Design Guidelines. (Kashiwada)</p>	<p>See Response to Design Review Finding #2 and May 26th Staff Report, pages 31 – 36 and the Supplemental Staff Report from June 9 for the complete analysis.</p>

<p>Building Re-use versus new building was not analyzed or addressed. (Kashiwada)</p>	<p>The Coastal General Plan policy for adaptive reuse falls under Goal LU-3 which is to ensure that the Central Business District (“CBD”) remains the historic, civic, cultural, and commercial core of the community. The project does not fall within the CBD. Furthermore, as explained in the General Plan a Goal is “a general, overall, ultimate purpose, aim or end toward which the City will direct effort. Goals are a general expression of community values and, therefore, are abstract in nature. Consequently, a goal is not quantifiable, time-dependent, or suggestive of specific actions for its achievement” and therefore not a requirement. The building was constructed in 1996 and is not historical. The property owner is not required to reuse a building. Furthermore, the correspondence from the existing building owner (See ATTACHMENT 11) details the numerous attempts that have been made to re-use the existing building and the challenges with leasing or selling the property.</p>
<p>Traffic Study and Pedestrian Safety – The vehicle traffic impact was acknowledged as actually significant, yet the study stated that impact could not be mitigated, no serious attempt to analyze various mitigation options. The special condition added in the meeting should have been included in the MND. (Kashiwada)</p>	<p>As indicated above, the Traffic Impact Analysis (TIA) was prepared before the new laws relating to VMT came into place. According to the TIA, the only place where the LOS falls below the General Plan thresholds is for Year 2040 at the westbound approach of the Main Street/South Street intersection. As discussed above, this is no longer considered a significant impact. Two alternatives were mentioned in the TIA, however CalTrans, which controls Highway One did not require either suggestion based on the change to the VMT metric for determining significance and instead recommended that the City could opt for a “fair share” agreement to ensure funding contribution at a time in the future when warranted.</p> <p>The traffic conditions were properly included as project conditions and not as mitigation measures.</p> <p>As noted above, pedestrian safety is already addressed by the City’s no parking signs.</p> <p>The following Special Condition was added by the Planning Commission:</p> <p>25. The applicant shall install an all-way stop at the intersection of South Franklin St. and South Street, including signage, striping, and pedestrian facilities (sidewalk, curb, and gutter) to provide crossing at all legs of the intersection. The proposed intersection improvement would require the installation of sidewalk curb and gutter to City Standard Specifications for a total length of 57 linear feet along the east side of South Franklin St. as well as a curb return to provide sufficient pedestrian landing facilities on the south east corner of the intersection.</p>

	<p>This is a special condition not a mitigation measure because it does not have any relation to the CEQA analysis. The area that will be paved is on South Franklin St. and the stop sign will add an alternate pedestrian route, but there is already an existing safe pedestrian route.</p>
<p>Fair Share contribution to Main Street traffic control does not include implementation timeline. (Kashiwada)</p>	<p>While the fair share contribution does not identify a specific date, Special Condition #16 states that “The Fair-Share” agreement shall be executed and funds deposited with the City prior to certificate of occupancy. The project timeline provided plans for construction starting in the Spring of 2022 and the store opening in October of 2022. Therefore, by inference there is a timeline for the collection of the fair share contribution. In accordance with the guidelines supplied by Caltrans for Fair Share Agreements (see ATTACHMENT 13) the agreement language should remain “flexible” to allow for the most effective use of funds. During staff conversations with Caltrans, it was discussed that since the City’s general plan still requires the use of LOS for determining traffic impacts – we could require and implement transportation upgrades on state facilities using that metric, but only at the time in the future when the conditions warrant signalization. Since there are several factors that cannot be anticipated in advance, the City anticipates the term of the agreement to expire when the funds are expended or 10 years from the date of execution. The details of the agreement, including the implementation timelines were proposed to be worked out and established through the agreement process in collaboration with the applicant and City.</p>

Protecting Local Businesses:

While Dr. Kashiwada has indicated that she is not asserting the project is not worthwhile or potentially approvable, her conclusion really seems to get at the heart of the appeal. Dr. Kashiwada is not in favor of this development which she fears will harm the local economy and change the character of the community. A review of Mr. Armstrong’s co-appellant, Fort Bragg Local Business Matters Facebook page shows that it too, is primarily concerned with supporting local businesses and keeping out chain and discount stores.

The City understands to the need to protect local businesses and has done much to support such businesses. Over the last 15 plus years, the City has funded Microenterprise Development Programs, small business loan programs, put a moratorium on downtown parking fees, provided funds to Visit Fort Bragg, participated in economic development consortiums, and worked on countless projects with the goal of fostering the local economy and growing local businesses. The City has provided ample support and been extremely proactive in supporting economic development initiatives. These efforts have been successful in helping many local businesses establish and in create a diverse network of businesses. Over the years, the City has also worked to develop General Plans and Zoning Codes that limit the negative impacts of Formula type business on the community. In that, it

has taken both proactive and reactive measures to protect local business.

However, the need to protect local businesses does not mean that this project is not needed or permissible, even if it may provide some level of competition for the other existing grocery stores located in Fort Bragg. The City's tourism economy relies on a number of low wage employees to support the operation of the motels and hotels, restaurants, and shops. In fact, all industries require employees at all pay scales, many of which are low income. The most common response from employers in the area is that they cannot find good employees because the employees cannot find housing and cannot afford the cost of living on the coast.

The City of Fort Bragg is an economically disadvantaged community. According to Healthy Mendocino, the food insecurity for the City of Fort Bragg (Households receiving Supplemental Nutrition Assistance Program (SNAP) with children) is 61.9% which is higher than both the county and the national average. Additionally, the poverty rate is 24.9% which is higher than the state, county, and national average.

While there is not a site specific metric, anecdotally, the cost of living in Fort Bragg is higher because it is a small community at the end of a distribution line, which means that it is more expensive to transport goods and services and the cost is higher as the demand is smaller. The establishment of a lower cost grocery store in Fort Bragg would likely improve the quality of life for the low income residents, specifically families in Fort Bragg, by increasing their purchasing power for every dollar they earn. It will likely allow families that rely on SNAP to better feed their families and create more stability for low wage earners.

Conclusion

The Initial Study/Mitigated Negative Declaration is not deficient. It was conducted pursuant to the California Environmental Quality Act (CEQA) Statute (Public Resources Code 21000 - 21189) and Guidelines (California Code of Regulations Title 14, Division 6, Chapter 3, Sections 15000 -15387). There has been no evidence presented which requires a "redo" of the document or preparation of an Environmental Impact Report.

This is a mostly developed site in a Commercial Zone and the proposed project is a permitted use. The purpose of CEQA and the City's Coastal General Plan and Coastal Land Use Development Code are to protect the environment and the public welfare.

The extensive analysis conducted for this project, conclude that it conforms to the Coastal General Plan and is Consistent with the Coastal Land Use Development Code, meets the City Wide Design Guidelines, and will have a less than significant environmental impact with the required mitigation.

RECOMMENDED ACTION:

Deny the appeal of approved Permit Application CDP 8-19, DR 1-19, MGR 1-19 and the associated Mitigated Negative Declaration (SCH: 2021010142) and affirm the Planning Commission's resolution to approve the project with the 32 Special Conditions and the Mitigated Negative Declaration and Mitigation Monitoring Plan.

ALTERNATIVE ACTION(S):

- Request additional information and continue public hearing to later date.
- Add special conditions and uphold decision with special conditions.
- Uphold the appeal and overturn Planning Commission’s decision.

FISCAL IMPACT:

This is a planning entitlement and the project is required to provide a fair share of all development costs related to the project, therefore, there should be no negative fiscal impact from the project. There may be a related tax increase based on individuals purchasing more goods in town as opposed to Willits and Ukiah, but, there is no tax revenue analysis for the project as it does not have a bearing on whether the project is permissible.

GREENHOUSE GAS EMISSIONS IMPACT:

The Initial Study analyzes the potential GHG impact of the project on pages 35-36 and above in the analysis of the project. The project will have a less than significant impact on Green House Gas Emissions without mitigation required.

CONSISTENCY:

A complete consistency analysis is provided in the May 26th Staff Report Pages 5-24 and the June 9th Supplemental Staff Report pages 10, 12 – 13, and 16-17. The Initial Study was reviewed by an independent third party CEQA consultant and by the City’s attorney who have affirmed that the Initial Study was adequate to conclude that the project would have less than significant environmental impacts with incorporated mitigations and that the document was prepared in accordance with CEQA requirements.

IMPLEMENTATION/TIMEFRAMES:

If the decision is upheld, the applicant plans to begin construction in the Spring of 2022 with an intention to open in October of 2022.

ATTACHMENTS:

1. Updated Site Plans
2. CEQA Initial Study
3. Wetland Report
4. Public Comments on Initial Study
5. 05262021 Staff Report
6. 06092021 Staff Report
7. PC Resolution 08-2021
8. Traffic Impacts Analysis
9. Kashiwada Appeal
10. Armstrong/FB Local Business Matters Appeal
11. Applicant Rebuttal
12. Resolution Upholding Planning Commission Decision and Approving Project
13. Caltrans Correspondence
14. Public Hearing Notice on Grocery Outlet Appeal

NOTIFICATION:

1. Terry Johnson – Applicant
2. Jenna Markley – Applicant
3. Leslie Kashiwada
4. Ken Armstrong/FB Local Business Matters