

## RESOLUTION NO. PC -2022

### RESOLUTION OF THE FORT BRAGG PLANNING COMMISSION FOR THE APPROVAL OF COASTAL DEVELOPMENT PERMIT 4-21 (CDP 4-21) TO REMOVE UNDERGROUND GASOLINE STORAGE TANKS AT 225 N. MAIN ST.

**WHEREAS**, Alzghoul Hussein submitted an application for a Coastal Development Permit on December 6, 2021; and

**WHEREAS**, the application was deemed complete on August 10, 2022.

**WHEREAS**, the Project is located at 225 N. Main St. in the Central Business District in the Coastal Zone; and

**WHEREAS**, the land use Service Station is not a permitted use in this district; and

**WHEREAS**, CLUDC §17.90.080(C) states that development that occurred after March 1, 1972, the effective date of the Coastal Zone Conservation Act, if applicable, that was not authorized by a required coastal development permit or otherwise authorized under the Coastal Act, is not lawfully established or lawfully authorized development. No improvements, repair, modification or additions to such existing development may be approved, unless the City also approves a coastal development permit that authorizes the existing development; and

**WHEREAS**, the Project is subject to the City of Fort Bragg's Local Coastal Program; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on October 19, 2022 to consider the Project and take public testimony; and

**WHEREAS**, the project is categorically exempt pursuant to California Environmental Quality Act ("CEQA"), 14 California Code of Regulations §15330 Minor Actions Taken to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances (b) Minor Clean Up (1) Removal of Sealed, non-leaking drums or barrels of hazardous waste or substances that have been stabilized, containerized, and are designated for a lawfully permitted destination; and

**NOW THEREFORE BE IT RESOLVED**, that based on the entirety of the record before it, which includes without limitation, the CEQA, Public Resources Code §21000, et seq. and the CEQA Guidelines, 14 California Code of Regulations §15330, et seq.; the Fort Bragg Coastal General Plan; the Fort Bragg Coastal Land Use and Development Code; the Project application; all site plans, and all reports, and public testimony submitted as part of the Planning Commission's meeting of October 19, 2022 Planning Commission deliberations; and any other evidence, the Planning Commission of the City of Fort Bragg hereby finds as follows:

A. General Findings

1. The foregoing recitals are true and correct and made a part of this Resolution;
2. The documents and other material constituting the record for these proceedings are located at the Community Development Department;

B. Coastal Development Permit Findings

1. *The proposed use is consistent with the General Plan, any applicable specific plan, and the Local Coastal Program;*

The proposed project will remove equipment for a non-conforming use and will not have

impacts on coastal resources which is consistent with the City of Fort Bragg Local Coastal Program.

*2. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Development Code and the Municipal Code;*

The removal of the UST will bring the property into compliance with the CLUDC because it will facilitate the reuse of the site for an allowable land use. Additionally, the conditions placed on the project to eliminate nuisance conditions will bring it into compliance with the Municipal Code.

*3. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity;*

The tanks are below ground. It is required that after the tanks are removed, conditions on the site require that the existing grade be restored. Thus, the removal of the tanks will not impact the overall site design, location or size.

*4. 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) 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.*

The proposed removal of the tanks will make the site less hazardous and support public health and safety. The conditions on the permit and the oversight of Mendocino County Environmental Health and the North Coast Regional Water Quality Board will ensure that the removal process is completed without creating hazardous conditions.

*5. The proposed use complies with any findings required by Section 17.22.030 (Commercial District Land Uses and Permit Requirements): The use complements the intense, pedestrian and regionally oriented shopping areas of the CBD, and will not detract physically from the basically pedestrian nature of the CBD.*

The proposed removal of the tanks is required to finalized the decommissioning of the gas station which is not a permitted use in this district because it is a car-oriented use.

*6. Feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment;*

Special conditions on the project have been established that will limit the environmental

impacts during the tank removal and disposal process.

*7. Services, including but not limited to, water supply, sewage disposal, solid waste, and public roadway capacity have been considered and are adequate to serve the proposed development;*

The proposed project would have no impact on water supply and sewage disposal. The applicant has identified an appropriate solid waste disposal location for the tank/solid waste. As conditioned, any remaining liquid in the tank must be disposed of through a certified hazardous waste hauler, thus the proposed project, as conditioned, would not have an impact on services.

**BE IT FURTHER RESOLVED** that the Planning Commission of the City of Fort Bragg does hereby make the findings contained in this Resolution and approves Coastal Development Permit 4-21) for the Project subject to the following conditions of approval:

Standard Conditions

1. This action shall become final on the 11th day following the decision unless an appeal to the City Council is filed pursuant to CLUDC Chapter 17.92 – Appeals;
2. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and compliance therewith is mandatory, unless an amendment has been approved by the City. Any condition directly addressing an element incorporated into the application exhibits shall be controlling and shall modify the application. All other plans, specifications, details, and information contained within application shall be specifically applicable to the project and shall be construed as if directly stated within the condition for approval. Unless expressly stated otherwise, the applicant is solely responsible for satisfying each condition prior to issuance of the building permit.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and compliance therewith is mandatory, unless an amendment has been approved by the City;
4. This permit shall be subject to the securing of all necessary permits for the proposed development from City, County, State, and Federal agencies having jurisdiction. All plans submitted with the required permit applications shall be consistent with this approval. All construction shall be consistent with all Building, Fire, and Health code considerations as well as other applicable agency codes;
5. If any person excavating or otherwise disturbing the earth discovers any archaeological site during project construction, the following actions shall be taken: 1) cease and desist from all further excavation and disturbances within 100 feet of the discovery; and 2) notify the Director of Public Works within 24 hours of the discovery. Evidence of an archaeological site may include, but is not necessarily limited to shellfish, bones, flaked and ground stone tools, stone flakes produced during tool production, historic artifacts, and historic features such as trash-filled pits and buried foundations. A professional archaeologist on the list maintained by the Northwest Information Center of the California Historical Resources Information System or Listed by the Register of Professional Archaeologists shall be consulted to determine necessary actions;

6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
  - a. That such permit was obtained or extended by fraud.
  - b. That one or more of the conditions upon which such permit was granted have been violated.
  - c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare, or safety or as to be a nuisance.
  - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more conditions.
7. Unless a condition of approval or other provision of the Coastal Land Use and Development Code establishes a different time limit, any permit or approval not exercised within 24 months of approval shall expire and become void, except where an extension of time is approved in compliance with CLUDC Subsection 17.76.070(B).
8. The Standard and Special Conditions of Approval shall be incorporated and printed in the Construction Plans submitted at the time of building permit application.
9. Applicant shall indemnify, hold harmless, and defend the City of Fort Bragg against any claim brought against the City stemming from the City's approval of this project.

#### Special Conditions

1. Once construction is scheduled, the applicant shall contact the City to request the referral for a Cultural Monitor. This shall be done at least three weeks prior to work commencing.
2. The applicant shall provide the City with a copy of the environmental health permit as proof that all work will be done to minimize any potential impacts on the environment.
3. Tank removal and associated activities shall be limited to Monday-Saturday 7:00am to 10:00 pm. During tank removal and associated activities, equipment not in use shall not be left idling.
4. All equipment that pertains to the gas station or auto-shop both outside and inside the building shall be removed.
5. Prior to commencing work, the applicant shall provide a copy of the contract with the certified hazardous waste handler. Upon completion, the applicant shall provide proof that the material was handled by a hazardous waste hauler and the final destination where the hazardous waste was disposed.
6. The applicant shall establish containment protocol to ensure that if spills or leaks take place during the movement of hazardous materials, they will not discharge into a public or private body of water, sewage system, watercourse, or into the ground.
7. The Applicant shall utilize the following dust management methods in the grading and earth moving activities associated with tank removal:
  - a. Grading shall be designed and grading activities shall be scheduled to ensure that repeat grading will not be required.
  - b. Clearing, earth-moving, excavation operations or grading activities shall cease when the wind speed exceeds 25 miles per hour averaged over one hour.
  - c. The area disturbed by clearing, demolition, earth-moving, excavation operations or grading shall be minimized at all times.

- d. Graded areas that are not re-paved shall be vegetated as soon as possible, but within no longer than 30 days, to minimize dust and erosion. Disturbed areas of the construction site that are to remain inactive longer than three months shall be seeded and watered until grass cover is grown and maintained.
- e. The construction site shall be watered during excavation to suppress dust.
- 8. The existing landscaped areas on the site shall be maintained. Additionally, if concrete or pavement is removed from the site and not replaced, those areas shall be landscaped with approved drought tolerant landscaping.
- 9. If tank removal activities result in the demolition of driveways that removes paving for the first 20 feet of the driveway that connects from Main Street, the driveway shall either be completely removed and the sidewalk reconstructed, or the driveway shall be repaved with a minimum length of 20 feet from the public right-of-way.
- 10. Prior to excavation of the tanks, the applicant shall apply for a grading permit and provide a stormwater control plan for the removal process. The plan shall include measures to prevent the infiltration of disturbed soils and construction materials into the public storm drains.
- 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.
- 12. Within 60 days of issuance of the Coastal Development Permit to remove the USTs, the following shall be resolved:
  - a. All equipment that pertains to the gas station or auto-shop both outside and stored inside the building shall be removed.
  - b. 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.
  - c. Exterior water spigots shall be sealed to prevent water theft.
  - d. 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.

- e. 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.
- f. 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.

13. Applicant shall apply for an encroachment permit at least two weeks prior to commencing any activities that impede the public right of way.

**BE IT FURTHER RESOLVED** that this Resolution shall become effective immediately upon its passage and adoption.

**The above and foregoing Resolution was introduced by \_\_\_\_\_, seconded by \_\_\_\_\_, and passed and adopted at a regular meeting of the Planning Commission of the City of Fort Bragg held on the 19th day of October 2022, by the following vote:**

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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**Jeremy Logan, Chair**

**ATTEST:**

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**Sarah Peters, Administrative Assistant**