



CITY OF FORT BRAGG

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January 26, 2015

Mr. Curt Babcock
Environmental Program Manager
California Department of Fish and Wildlife
Northern Region
619 Second Street
Eureka, CA 95501

Re: January 20th CFW letter regarding Hare Creek Center MND (SCH#1014122062)

Dear Mr. Babcock:

The City of Fort Bragg ("City") has received the January 20th, 2015 comment letter of the California Department of Fish and Wildlife ("CDFW") on the Mitigated Negative Declaration ("MND") (SCH#2014122062) prepared for the proposed Hare Creek Center shopping center in Fort Bragg. Thank you for submitting your timely comments to the City of Fort Bragg and for taking the time to read the Hare Creek Center MND. The City respects the role that your agency plays as a Trustee Agency to protect fish and wildlife resources under the California Environmental Quality Act.

Your letter implies that there will be secondary impacts from the project on species of concern (coho salmon, steelhead trout and Chinook salmon, aka salmonids) by way of the effect of the project's increased water demand on water diversion rates. As explained herein, there are no such impacts caused by the Hare Creek Center project as: 1) no new diversions are needed to meet the proposed project's water demand; 2) the project's water demand can be met by the City's existing water rights and diversions which are protective of salmonid populations; and 3) the water demand of the new project can be met without increasing historic rates of pumping given recent City water conservation success. The City respectfully submits the following facts to support our determination that the project would not have impacts on salmonid species of concern:

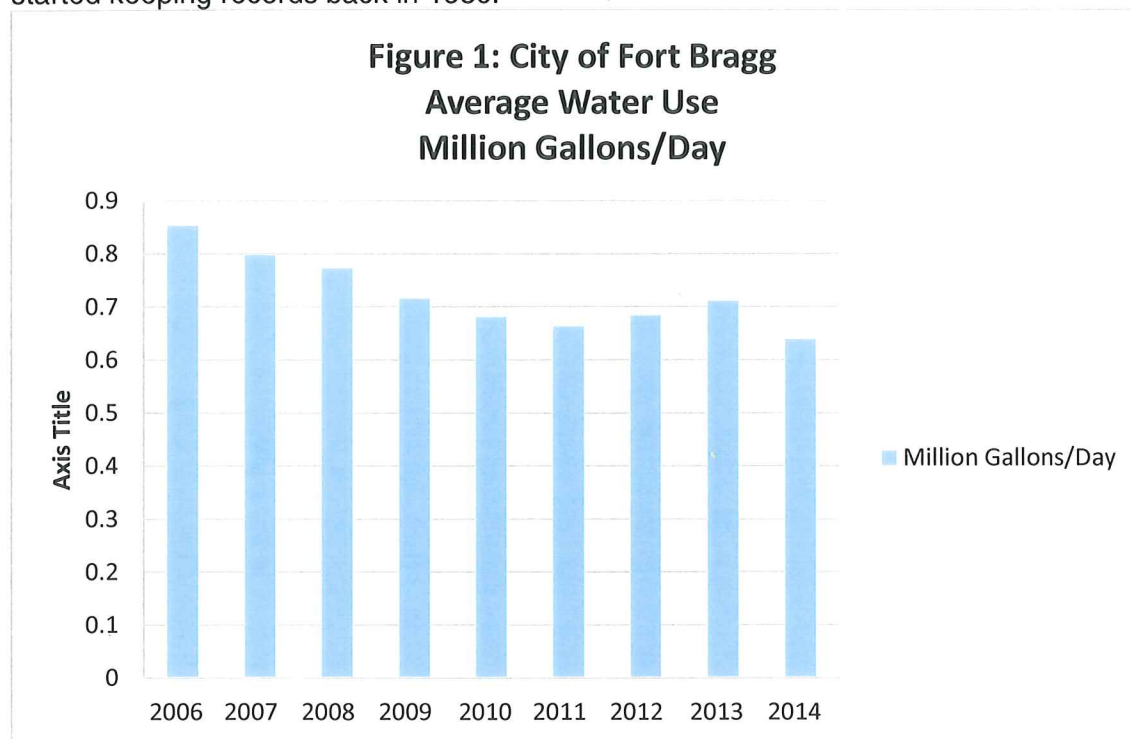
1. *The amount and rate of water diverted from Waterfall Gulch and Newman Gulch in a drought year will not increase due to this project.*

The amount and rate of water diverted under the City's Water License and pre-1914 right for these two diversions will not change (in drought conditions or otherwise) if the project is approved. The amount of diversion under License 12171 has been historically determined by water *availability*, not by water demand. The City currently takes all water that is available from these source streams above the agreed upon bypass flows. Consequently, the amount of diversion is determined by the flows, and will not be increased by new demand from the

proposed development. Thus the proposed project will not increase the rate or amount of water that is diverted from either the Waterfall Gulch or Newman Gulch diversion. As the proposed project will not result in an increase in either the rate or the amount of water diverted from either of these water sources, it follows logically that the proposed project cannot have an impact on the biological community that relies on the Waterfall Gulch and Newman Gulch waters, including Coho salmon and steelhead trout.

2. *The Project may increase the rate and amount of water diverted from the Noyo River, however the increase in water use is well within historic rates of pumping (2007-2014) from the Noyo River (please see Figure 1 below).*

The City has implemented a number of water conservation efforts in recent years which have resulted in a significant decrease in average daily water use. As shown in Figure 1 below, water use has fallen from an average of 798,000 gallons per day in 2007 (the year that was used as the baseline year for water utilization in the City's 2010 water model) to 639,000 gallons per day in 2014. This is a reduction of 159,000 gallons per day. The City's new water rate structure and other conservation strategies (described below) have reduced average daily water use in Fort Bragg by 19% since 2007. In fact 2014 was the lowest water production year since the City started keeping records back in 1980.



This water conservation success has come about through the following measures:

- In 2010, the City installed new automated water meters throughout the City which provide wifi up to the minute water use for each hookup. The City uses this technology to identify water leaks and then notifies customers when such leaks are identified.
- In 2012, the City implemented a new tiered water rate structure for all water users and this dramatically reduced water demand in the City by creating a financial incentive for water conservation.

3. *The Project may increase the rate and amount of water diverted from the Noyo River, however existing terms and conditions of the City's permit for the diversion impose bypass flow and pumping regimen requirements for the protection of salmonid fish populations in the Noyo River and, therefore, no additional mitigation measures are required.*

The City of Fort Bragg currently diverts water from the Noyo River under a permit issued by the State Water Resources Control Board and this project will not alter or change that. Moreover, that permit includes terms and conditions that impose pumping limitations during low flow conditions in order to ensure adequate water for protection of salmonid populations. Indeed the pumping limitations were imposed by the State Water Resources Control Board specifically to protect these important fish populations. The pumping limitations, implemented during low flow conditions, limit the City's pumping from the Noyo River to periods of high tides (+2 feet). The incoming tidal water causes a backup of the freshwater up the estuary and allows the City to pump water without causing harm to the salmonid population. The City's analysis of water availability included a scenario utilizing water flows in the Noyo River in the 1977 drought year and tides for that year to identify water quantities that could be withdrawn from the river during the times when tides would allow pumping and at rates of pumping that are feasible given water flows in the river. The analysis used a checkbook model that included daily water demand and daily water supply given flows on the Noyo River. Thus the City concluded in the Hare Creek Center MND that the City can withdraw the necessary water for the project from the Noyo River without diverting more than it is currently entitled to, and has historically diverted, while conforming to all pumping and bypass flow requirements imposed by the terms and conditions of the City's water right permit for the protection of fish and wildlife. Accordingly, there is no need for any additional mitigation as this project doesn't cause any new impacts.

4. *You have asserted that the City's action would not meet Fish and Game Code requirements because it does not list a Streambed Alteration Agreement pursuant to Fish and Game Code section 1602 as necessary for the project.*

As noted on page 4 of your letter dated January 20th, the CDFW has repeatedly requested that the City enter into an agreement pursuant to Fish and Game Code Section 1602(a) for on-going water diversion from the Noyo River, Waterfall Gulch and Newman Gulch. This is not an appropriate comment to the Hare Creek Center MND. Furthermore, CDFW does not have the legal authority to demand a 1602 streambed alteration permit. This very issue was litigated in Siskiyou County in 2012. CDFW Division 1 demanded that farmers in Siskiyou County enter into 1602 agreements for their water diversions. The Siskiyou County Farm Bureau sued, and on December 24, 2012, the Siskiyou County Superior Court issued an opinion granting declaratory relief for the Siskiyou County Farm Bureau. The Court found that Fish and Game Code section 1602 **"does not require notification for the act of diverting water pursuant to a valid water right where there is no alteration to the bed, bank, or stream."** While CDFW has appealed the ruling, until an appellate court rules otherwise, the trial court decision is valid and binding.

4. *You have asserted that the City's diversion does not comply with Fish and Game Code sections 5937 or 5901.*

Once again, this comment relates solely to the City's existing operations, and is not a valid ground for rejecting the MND for the Hare Creek Center. CDFW's assertion is that the City's existing operations under its licensed and permitted water rights may violate Fish and Game Code sections 5901 and 5937.

Section 5901 states:

Except as otherwise provided in this code, it is unlawful to construct or maintain in any stream . . . any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream.

The proposed project will not result in any such action prohibited by §5901.

Section 5937 states (in pertinent part):

The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam.

The proposed project does not propose to undertake any action prohibited by §5937. Therefore, these code sections are not applicable.

5. Lastly, on page 4 of your letter you note that the Senate has adopted the Water Conservation Act requiring California to achieve a 20 percent reduction in urban per-capita water use by 2020.

Again, this comment relates solely to the City's existing operations, and is not a valid comment on the MND for the Hare Creek Center. In fact, the City has been engaged in intensive water conservation practices and land use practices since well before the adoption of this Act. The following conservation measures are in addition to those mentioned earlier in this letter:

- The City developed its first water conservation plan in 1992.
- Between 1993 and 2006, the City grew in population and business without increasing water use by one gallon. It accomplished this by requiring water retrofits on a 4 to 1 ratio which resulted in the successful retrofitting of more than 70 percent of Fort Bragg residences.
- In 2014, the City received CDBG funding to implement a water conservation program for low-income residents, which provides for a water audit and installation of free water saving devices for our low-income community.
- In 2014, the City completed the CEQA review and permitting for construction of a 45-acre-foot reservoir (Summers Lane Reservoir) to provide the City with additional water storage so that the City has more flexibility in responding to severe drought conditions, such as the 1977 drought. The City plans to construct the reservoir in 2016.
- In 2014, the City adopted an updated General Plan and Land Use and Development Code, including a new Sustainability Element with significant new requirements for water conservation and stormwater catchment and reuse, including a requirement that new development incorporate at least 60% of the credits for water conservation from the USGBC LEED program.

We believe that the City of Fort Bragg is doing more than most communities to save water, and we object strongly to the following language in your letter: "The City of Fort Bragg lacks a comprehensive plan to address water use and water shortages during drought periods," as this statement is not supported by the record.

Additionally, the proposed Hare Creek Center project includes water saving activities such as stormwater catchment tanks for reuse of stormwater for landscaping and installation of low-water use native landscaping. The Hare Creek Center project's increased demand on the City's

water supply (estimated to be 1%) would come from the City's existing, permitted water rights without need to increase those rights and the City's permit to divert from the Noyo River is already subject to terms and conditions protecting fish and wildlife imposed by a State Agency with trustee responsibilities over that resource. As such, the MND concludes that the project "would not have a significant impact on the environment." (Pub. Res. Code, § 21080, subd. (c)) In its comments, CDFW has not provided any evidence that would support a "fair argument" that significant impacts may occur as a result of this project. Rather, CDFW's comments are directed to the City's ongoing operations.

As explained above, the City is not in violation of any of the code sections listed in your letter and we have measures in place that already protect the salmonid populations. We appreciate your interest in this project. If you have any questions, please feel free to contact me at 707-961-1807.

Respectfully,



Marie Jones
Community Development Director

c/c: Linda Ruffing, City Manager
Rafael Mandelman, Assistant City Attorney
Jeanne M. Zolezzi, Special Counsel