

**CALIFORNIA COASTAL COMMISSION**

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March 18, 2015

Marie Jones, Community Development Director  
City of Fort Bragg  
416 N. Franklin Street,  
Fort Bragg, CA 95437

SUBJECT: Mitigated Negative Declaration (MND) and Coastal Development Permit (CDP) Application 8-13 for a new shopping center anchored by a Grocery Outlet at 1250 Del Mar Drive, Fort Bragg, Mendocino County (APNs 018-450-40 and 018-450-41).

Dear Ms. Jones:

Thank you for the opportunity to comment on the above-referenced MND and CDP. We did not receive copies of the public hearing notice, the MND, and the staff report prepared for the Fort Bragg Planning Commission's consideration of the project until January 26, 2015, two days before the Planning Commission hearing. As a result, we were not able to provide comments before the Planning Commission hearing. We understand that the Planning Commission approved the adoption of the MND and denied the CDP, Design Review, Use Permit, and Lot Line Adjustment for the project, and that both decisions have been appealed to the Fort Bragg City Council. We are taking this opportunity to provide comments on the project prior to the City Council hearing for the appeals on March 23, 2015. The Commission itself has not reviewed the project so the following are Commission staff comments.

As noted in the staff report, an action by the City to approve the CDP would be appealable to the Coastal Commission pursuant to PRC sections 30603(a)(1) as the project is located between the first public road and the sea. The grounds for an appeal to the Coastal Commission are limited to an allegation that the approved development does not conform to the standards set forth in the certified Local Coastal Program (LCP) and, as the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The following comments address a few of the concerns we have regarding the project's consistency with the policies of the certified Local Coastal Program (LCP):

**1. Inconsistency with the Alteration of Natural Landforms Policies of the LCP**

Applicable LCP Policies [*emphasis added*]

**Policy CD-1.1** states:

*Visual Resources: Permitted development shall be designed and sited to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance scenic views in visually degraded areas.*

**Policy CD-1.5** states:

*All new development shall be sited and designed to minimize alteration of natural landforms by:*

- 1. Conforming to the natural topography.*
- 2. Preventing substantial grading or reconfiguration of the project site.*
- 3. Minimizing flat building pads on slopes. Building pads on sloping sites shall utilize split level or stepped-pad designs.*
- 4. Requiring that man-made contours mimic the natural contours.*
- 5. Ensuring that graded slopes blend with the existing terrain of the site and surrounding area.*
- 6. Minimizing grading permitted outside of the building footprint.*
- 7. Clustering structures to minimize site disturbance and to minimize development area.*
- 8. Minimizing height and length of cut and fill slopes.*
- 9. Minimizing the height and length of retaining walls.*
- 10. Cut and fill operations may be balanced on-site, where the grading does not substantially alter the existing topography and blends with the surrounding area. Export of cut material may be required to preserve the natural topography.*

Comments

The proposed project involves the partial removal of a hill or knoll, requiring the grading of approximately 20,000 cubic yards of soil and resulting in a cut slope that is rectilinear. To reduce the visual effect of this proposed alteration of a natural landform, proposed Special Condition No. 1 would require that prior to issuance of the building permit, a revised grading plan be approved by the Executive Director that includes revised elevation contours along the knoll to result in a more curvilinear and natural appearance. It is difficult to assess the adequacy of this special condition in protecting visual resources as it does not contain specific, clear requirements. For example, the condition does not specify the degree to which the contours should be made curvilinear.

Regardless of whatever value the condition may have in reducing the visual impact of the proposed partial removal of the hill or knoll, the City's staff report acknowledges that even with the implementation of Special Condition No. 1, the proposed project will continue to result in an alteration of the natural topography and substantial grading, inconsistent with Policy CD-1.5. To overcome this inconsistency with the LCP, the staff

report relies on the conflict resolution policy of the LCP to approve the development. Commission staff agrees that the project as proposed will result in an alteration of the natural topography and substantial grading, inconsistent with Policy CD-1.5. As discussed below, however, Commission staff does not believe that the conflict resolution policy of the LCP can be appropriately applied to this inconsistency with Policy CD-1.5.

## **2. Use of a Conflict Resolution in the Staff Report**

### **Applicable LCP Policies**

**Policy 1-2** states:

*Where policies within the Coastal General Plan overlap or conflict, the policy which is the most protective of coastal resources shall take precedence.*

See also **Policies CD-1.1, CD-1.4, CD-1.5, and CD-2.5** quoted under Subsections 1 above and 3 below.

### **Comments**

The staff report utilizes the conflict resolution policy (Policy 1-2) of the LCP to resolve a purported conflict between various visual resource policies of the LCP. The staff report describes the conflict as follows:

*Portions of Policy CD-1.5 (sub-bullet 1 & 2) would conflict with Policy CD-1.4 and Policy CD-2.5 on this site, as the development of this project on top of the knoll without grading the site would increase the visual impact of the development from Highway 1 as the buildings would have to be built on top of the existing grade. [pg. 10]*

The staff report then recommends the following resolution to the conflict:

*Consistent with Policy 1-2, staff recommends that Policy CD-1.1 and CD-2.5 should take precedence over Policy CD-1.5 sub-bullet 1 & 2, and therefore the project has been sited and designed to “minimize” alteration of natural landforms to the degree possible. The Planning Commission should decide if CD-1.1 and CD-2.5 take precedence over Policy CD 1.5 sub-bullet 1 & 2. [pg. 11]*

Commission staff believes that the LCP’s conflict resolution policy is inappropriately used in these staff report findings as there is inadequate evidence that a conflict truly exists. In order for the City to use conflict resolution, it must establish that the project presents a substantial conflict between two or more LCP policies. The fact that the proposed project is consistent with one LCP policy and inconsistent with another policy does not necessarily result in a conflict.

A project does not present a conflict among LCP policies if there is a feasible alternative that would accomplish the essential purpose of the project without violating any LCP

policy. In this case, there are a number of alternatives that the City's staff report has not explored that could potentially be consistent with all the relevant visual resource policies of the LCP. These alternatives include a smaller-sized development, or a development on top of the knoll with increased visually screening from public vantage points. If there are alternatives available that are consistent with all of the relevant LCP policies, then the proposed project does not create a true conflict among LCP policies.

In addition, denial of the project would not be inconsistent with the LCP and thus does not present a conflict. In order to identify a conflict, the City must find that, although approval of a project would be inconsistent with an LCP policy, the denial of the project based on that inconsistency would result in coastal zone effects that are inconsistent with some other LCP policy. In most cases, denial of a proposal will not lead to any coastal zone effects at all. Instead, it will simply maintain the *status quo*. The only way that denial of a project can have impacts inconsistent with an LCP policy, and therefore the only way that a true conflict can exist, is if: (1) the project will stop some ongoing resource degradation and (2) there is an LCP policy requiring the protection and/or enhancement of the resource being degraded. In this case, there is no ongoing visual resource degradation that the proposed project will stop.

### **3. Consistency with Community Character**

#### **Applicable LCP Mission and Policies [emphasis added]**

Chapter 1 of the Fort Bragg Land Use Plan includes a mission statement:

*The mission of the Coastal General Plan is to preserve and enhance the small town character and natural beauty that make the City a place where people want to live and visit, and to improve the economic diversity of the City to ensure that it has a strong and resilient economy which supports its residents.*

#### **Policy LU (Land Use)-4.1 states:**

*Formula Businesses and Big Box Retail: Regulate the establishment of formula businesses and big box retail to ensure that their location, scale, and appearance do not detract from the economic vitality of established commercial businesses and are consistent with the small town, rural character of Fort Bragg.*

#### **Policy CD-1.4 states:**

*New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent.*

#### **Policy CD-2.5 states:**

*Scenic Views and Resource Areas: Ensure that development does not adversely impact scenic views and resources as seen from a road and other public rights-of-way.*

Comments

In considering whether the proposed shopping center is consistent with the small town, rural character of Fort Bragg consistent with the LCP's Mission Statement and Policy LU-4.1, the staff report provides an analysis of whether the new businesses in the shopping center will detract from commerce in the Central Business District (pgs. 7-9 of the staff report). While this section provides an analysis of how the project will impact the vitality of the Central Business District, it does not address whether the location, scale, and appearance of the proposed development is itself consistent with the small town, rural character of the City. Later in the staff report, in the "Design Review Analysis" section, the report does address whether the design of the proposed development assists in maintaining and enhancing the small-town, coastal, historical, and rural character of the community by stating (on pg. 27):

*This finding can be made as this proposed Hare Creek Center is relatively small with the same total square feet as the Franklin Street strip shopping area. It is much smaller in size than the Boatyard Shopping Center or the Safeway grocery store. As these projects were approved in the past and found to be consistent with the small-town, coastal, historic and rural character of Fort Bragg, it would be consistent to determine that this small shopping center is also consistent with these values and descriptors. Additionally, the project design includes many sustainability features (solar power, stormwater catchment for reuse and aquifer recharge, green walls, use of daylighting, native plants, etc.) which reflect our rural character. The use of the water catchment systems for murals that depict Fort Bragg's cultural, natural and historic traditions (see Mitigation Measure 3 of the MND) is consistent with the purpose of design review.*

This analysis only compares the character of the proposed development to three other shopping centers instead of comparing the proposed development to the overall small town, rural character of the City as required by Policy LU-4.1. The Franklin Street strip shopping center, the Boatyard Shopping Center, and the Safeway grocery store do not alone define the character of Fort Bragg and therefore are an inadequate source of comparison. In addition, just because these other larger shopping centers have been approved in the past does not mean that the currently proposed shopping center is consistent with the small-town, rural character of the City as size is not the only determinate of character and there are other significant differences among the developments. For instance, the currently proposed shopping center is the only one of these four developments located west of Highway One and is arguably more visually prominent from public vantage points. Furthermore, Policy LU-4.1 requires that formula business projects be consistent with the small town rural character of Fort Bragg. This requirement must be met to approve the project despite the past approvals of strip malls

and formula businesses. The findings thus need to specifically address how the proposed development is consistent with a small town, rural character.

Commission staff is also concerned with the proposed location and orientation of Building C. Even with the additional five feet of setback and landscaped buffer required by Mitigation Measure No. 2, this building will be relatively close to the highway in comparison to other buildings along this corridor (41 feet vs. an average of 70 feet from the developed highway), and based on the submitted renderings of the development, will be visually prominent from the highway. In addition, unlike the other two proposed buildings, Building C has not been re-oriented on an east-west axis to reduce its visual bulk from the public right-of-way. Even if there is no space to re-orient Building C, the building could feasibly be relocated in its same orientation to the west side of the parking lot where it would be largely screened from view from Highway 1 by the intervening parking lot landscaping.

#### **4. Reservation of Adequate Water Capacity**

*Applicable LCP Policies [emphasis added]*

**Policy LU-5.2** states:

*Ensure that there are adequate sites for visitor-serving land uses by:*

- a) Maintaining existing areas designated for Highway-Visitor Commercial uses;*
- b) Maintaining the Highway Visitor Commercial land use designation as one allowing primarily recreational and visitor-serving uses; and*
- c) Reserving adequate infrastructure capacity to accommodate existing, authorized, and probable visitor serving uses.*

**Policy PF-1.2** states in part:

*Ensure Adequate Services and Infrastructure for New Development. No permit for development shall be approved unless it can be demonstrated that such development will be served upon completion with adequate services, including but not limited to potable water; wastewater collection, treatment and disposal; storm drainage; fire and emergency medical response; police protection; transportation; schools; and solid waste collection and disposal; as applicable to the proposed development.*

- a. Demonstration of adequate water and sewer facilities shall include evidence that adequate capacity will be available within the system to serve the development and all other known and foreseeable development the system is committed to serving, and that the municipal system will provide such service for the development;*

**Policy PF-1.3** states:

*Ensure Adequate Service Capacity for Priority Uses.*

- a. *New development that increases demand for new services by more than one equivalent dwelling unit (EDU) shall only be permitted in the Coastal Zone if,*
  - *Adequate services do or will exist to serve the proposed development upon completion of the proposed development, and*
  - *Adequate services capacity would be retained to accommodate existing, authorized, and probable priority uses upon completion. Such priority uses include, but are not limited to, coastal dependent industrial (including commercial fishing facilities), visitor serving, and recreational uses in commercial, industrial, parks and recreation, and public facilities districts. Probable priority uses are those that do not require an LCP amendment or zoning variance in the Coastal Zone.*
- b. *Prior to approval of a coastal development permit, the Planning Commission or City Council shall make the finding that these criteria have been met. Such findings shall be based on evidence that adequate service capacity remains to accommodate the existing, authorized, and probable priority uses identified above.*

#### Comments

Based on a water supply analysis completed in 2010 and the estimated water use of projects that have been approved since then, the staff report indicates that only 4.4% of the capacity of the City's water system in a severe drought is available to serve new development. The staff report estimates that the proposed project will require 1,846,916 gallons of water per year from the City's water supply which would increase water use 1% over current use, leaving 3.4% of City water capacity available for other new projects. Policy PF-1.3 requires that adequate water supply be retained to accommodate "existing, authorized, and probable" priority uses. In addition, Policy PF-1.2 requires that new development may only be approved if it can be demonstrated that adequate water capacity will be available within the system to serve the development and all other known and foreseeable development the system is committed to serving. The staff report claims that there is only one probable priority-use project, the Avalon Hotel. According to the staff report, this hotel is the only priority-use project in the permitting pipeline and it will also use approximately 1% of the remaining 3.4% of water serving capacity. The staff report concludes that as there will be adequate water capacity to serve this hotel, the project is consistent with Policy PF-1.3. Commission staff believes that this capacity analysis does not include all foreseeable development and probable priority-use development pursuant to LCP Policies LU-5.2, PF-1.2 and PF-1.3. In particular, early drafts of the Specific Area Plan for the Georgia-Pacific Mill Site include a range of visitor-serving uses including a hotel and recreational facilities that will require water from the City water supply. These draft plans were presented to the Coastal Commission at two public workshops and the Commission emphasized the need to provide such priority uses. The Specific Area Plan will ultimately need to be incorporated into the LCP and must be certified by the Commission as consistent with the Coastal Act, including

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Coastal Act policies that require that adequate services be reserved for visitor serving facilities and other priority uses. In order to truly address the capacity of the system to not only serve priority uses that have begun the permitting process but also to serve foreseeable development in the long-term, the City needs to expand the scope of their analysis beyond the one hotel, and in particular address how adequate water will be reserved for priority uses at the Georgia-Pacific Mill Site.

## **5. Lot Legality**

### **Comments**

The proposed project includes a boundary line adjustment (LLA 3-2014) between parcels 018-450-41 and 018-450-41 that will add 32,586 square feet (0.75 acres) to parcel 018-450-40 (currently 2.42 acres). According to the staff report, the boundary line adjustment is required so that the proposed development will be on one parcel. Concerns have been raised by members of the public over the legality of the subject parcels. If the City has not already done so, please confirm that the subject parcels have been recognized as legal parcels under the Subdivision Map Act and Coastal Act.

Thank you for the opportunity to provide comments. If you have any questions, please don't hesitate to call me at 826-8950 or email me at [Cristin.Kenyon@coastal.ca.gov](mailto:Cristin.Kenyon@coastal.ca.gov).

Sincerely,

/S/ Cristin Kenyon  
CRISTIN KENYON  
North Coast District Program Analyst





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March 18, 2015

Marie Jones  
Community Development Director  
416 North Franklin Street  
Fort Bragg, CA 95437

RE: Hare Creek Center Project Comments (CDP 2013-0008)

Dear Ms. Jones:

This is in response to the Request for Comments on Coastal Development Permit CDP 2013-0008 received by Mendocino County Planning and Building Services (PBS). After reviewing the Staff Report and supporting materials PBS has the following comments.

**Timing and Potential Neighborhood Impacts from Connection to Bay View Avenue.** When would the new access road connecting Bay View Avenue to Ocean View Drive be completed? Would it be completed as part of this project or at some future date? The City of Fort Bragg Staff Report project description states that *"The project would be served by a new access road located on the west edge of the development that would eventually connect to Bay View Avenue to the southwest to Ocean View Drive at the intersection of Ocean View and Harbor Avenue (emphasis added)."* The project description in the Mitigated Negative Declaration states that *"The project would be served by a new access road, proposed for the west edge of the development that would connect Bay View Avenue (CR #439A) to the southwest to Ocean View Drive at the intersection of Ocean View and Harbor Drive."* The Traffic Impact Study Report notes that *"The Project proposes to extend a "New Road" from Ocean View Drive to the project access driveways."*

If the new access road is built as part of this project, will it be gated and used for emergency purposes only, or will it be open for public use at all times? If open for public use, the traffic analysis should include a discussion of the impacts from the connection such as current versus projected trips on Bay View Avenue and Pacific Drive with and without development of the Hare Creek Center, noise impacts to surrounding neighborhoods, identification of road improvements necessary to handle additional neighborhood traffic, measures to reduce impacts from increased traffic for the neighborhood (e.g., traffic calming, signage, etc.), and other impacts associated with increased neighborhood traffic. Alternatives to connecting Bay View Avenue and Ocean View Drive should also be evaluated.

**Potential Groundwater Impacts to Nearby Residents.** The Staff Report notes that the project must also be found consistent with Program OS-2.2.2 (shown below) which is specific to development that might have an impact on aquifers in Todd Point.

*Program OS-2.2.2: Prior to consideration of any new development on the Todd Point aquifer, a project-specific hydrologic design analysis shall be prepared by the project applicant to recommend specific mitigation measures to minimize runoff from the site in order to retain existing levels of groundwater recharge. (Examples of such measures include establishment of retention basins, establishment of percolation chambers, use of permeable paving materials, etc.)*

*If the design analysis concludes that the project will result in a net decrease in groundwater recharge from the project site, then a supplemental hydrologic analysis shall be prepared by the applicant which evaluates cumulative hydrologic impacts. The study shall establish a baseline of aquifer supply to existing residential wells on Todd Point and evaluate cumulative impacts to aquifer recharge from all projected development on Todd Point.*

*If the supplemental hydrologic analysis shows that the cumulative development would adversely impact existing Todd Point wells, then the study shall establish the nexus for new development, both in the City and in the County, to pay its pro rata share of the costs of extending City water service to the affected existing residences.*

*Prior to new development, the City will establish a program that identifies how fees will be collected to extend City water, what existing residences will be served, and when the water service would be extended.*

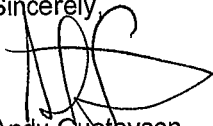
*The cost of preparing the cumulative hydrologic study will be borne by the first application received which triggers this requirement, and all future applicants for new development on Todd Point will be required to reimburse the original applicant their fair share of the hydrologic study.*

The Mitigated Negative Declaration states that "If the proposed project were developed without the proposed rainwater catchment system, bioswales, and permeable paving, it would result in approximately 90% reduction in recharge for the 3 acre site, which would mean a net loss to recharge of about 2.74 acre feet per year. ... However, the architect and civil engineer of the project designed the project to provide maximum recharge through the following techniques: 1) use of rainwater capture for landscape irrigation; 2) use of pervious pavement, bioswales, retention basins and infiltration drains for stormwater capture and infiltration. With these additional water recharge friendly design elements, the project will have a less than significant impact on groundwater recharge (MND pages 29-30)."

Although the groundwater impacts from the proposed development appear to have been addressed through the project design, the analysis of groundwater impacts relies in part on the "Groundwater Recharge and Water Balance Evaluation" report by Nolan Associates. The Nolan Associates report was completed almost twenty years ago and relies on studies conducted even earlier. Given that some of the conditions on which the report is based have changed (e.g., new development) and that new information is now likely available regarding the geology of the area and the Todd Point aquifer specifically, it would seem prudent to require an update to the Nolan Associates report that incorporates new information on existing development and future build-out, new well data, aquifer storage capacity, effect of septic systems on terrace deposits, annual recharge estimates and local variations in recharge.

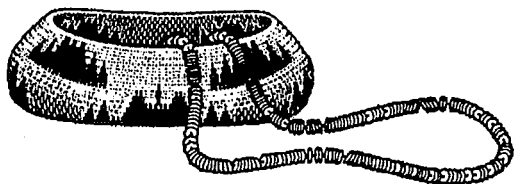
Thank you for the opportunity to provide comments on this important project.

Sincerely,



Andy Gustavson,  
Chief Planner, Planning and Building Services

cc: Steve Dunncliff, PBS Director  
Dan Gjerde, 4<sup>th</sup> District Supervisor



# SHERWOOD VALLEY BAND OF POMO INDIANS

March 18, 2015

Marie Jones, Community Development Director  
City of Fort Bragg  
416 N. Franklin Street  
Fort Bragg CA 95437

RE: Hare Creek Center Proposed Project

Dear Ms. Jones:

This letter is in regards to the above referenced project. As of August 2014, Sherwood Valley Band of Pomo (SVBP) indicated their interest in the Hare Creek Center project and, by this letter, requests continued consultation with the City of Fort Bragg regarding any and all city-, county-, and/or Coastal Commission-based permitting reviews and actions associated with this proposed project.

In August 2014, SVBP submitted a letter to the City of Fort Bragg regarding this project and requested a copy of the archaeological report that had been created for the project area. The requested report was not provided at that time. SVBP submitted a second request in February 2015 and it was immediately provided. Upon reviewing the survey report, and in light of the information contained within it, the Tribe became very alarmed about how the cultural sensitivity of the proposed project area was not taken into consideration during the development of the MND.

The Tribe understands that known archaeological sites have not been recorded within the project area. However, SVBP regards this area as a highly sensitive archaeological/cultural area. And, as such, does not find the surficial nature of the prior survey to be adequate. SVBP strongly recommends that the project area be exposed to sub-surface archaeological testing via the excavation of 50 x 50 cm shovel tests along linear transects. The distance between transects should not exceed 15 meters and the shovel tests should be placed no more than 15 meters apart along each linear transect. Furthermore, STPs need to be excavated to a depth at which cultural sterility can be assured.

Until the necessary sub-surface archaeological testing is conducted, SVBP will oppose all ground disturbance associated with the development of this parcel and will not support the Hare Creek Center project or its permitting.

Lastly, upon completion of the recommended archaeological investigation, the Tribe is requesting that the City of Fort Bragg meet with the Tribal Council to discuss the results.

If you have any questions please contact Misty Cook, SVBP's Cultural Resource Specialist at 707-367-225 or via email at [sherwoodvalleycrm@gmail.com](mailto:sherwoodvalleycrm@gmail.com).

Respectfully,

Michael Fitzgerral  
Tribal Chairman

cc: SVBP Tribal Council  
SVBP Cultural Committee  
Scarlett Carmona, Tribal Administrator  
Tribal Historic Preservation Office