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TO:  
City of Fort Bragg  
City Council  
363 North Main Street  
Fort Bragg, CA 95437

*Via Email and Hand Delivery*

March 20, 2015

Re: Appeal to City Council re Hare Creek Center Project

Dear Mayor Turner and Council Members,

On behalf of Citizens for Appropriate Land Use, Appellants, and numerous concerned Fort Bragg and Mendocino coast citizens, thank you for the opportunity to address the Council regarding the adequacy of the Mitigated Negative Declaration (MND) prepared for the Hare Creek Development Project and the Project's consistency with the standards set forth in the Local Coastal Plan (LCP) and the Coastal Act.

It is my considered legal opinion, having litigated many of these types of cases, the City has several legally compelling reasons to reject the approval of the MND in favor of preparing an Environmental Impact Report (EIR) and to deny the Project approvals – the Coastal Development Permit, Design Review, Use Permit and Lot Line Adjustment.<sup>1</sup> For ease of review the legal foundation for the

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<sup>1</sup> My law practice focuses exclusively on the enforcement of CEQA. I acted as lead counsel for Petitioners in several successful CEQA cases: *Ross Creek Neighbors v. Town of Los Gatos*, (2009) Santa Clara Superior Court Case No. 108-CV-106461 [Petitioners were successful in obtaining injunctive relief, issuance of a writ, and rejection of the Return to the Writ]; *Save San Juan Valley v. Caltrans*, (2010) Contra Costa Superior Court Case No. CU-08-00176; *Healdsburg Citizens for Sustainable Solutions v. City of Healdsburg* (2010) Sonoma County Superior Court Case No. SCV-243748; *Friends of Historic Hangtown v. City of Placerville* (2012) El Dorado County Superior Court Case No. PC-20110145; *Sierra Club v. County Of Sonoma, Sonoma County Board of Supervisors* (2012) Sonoma County Superior Court Case No. SCV 248271; *Healdsburg Citizens for Sustainable Solutions v. City of*

following comments are primarily cited in the footnotes.

The MND is inadequate and incomplete and fails to adequately consider potentially significant impacts to aesthetics, inconsistency with area plans and policies, traffic, hydrology and water, and cumulatively considerable impacts. As the Council is aware, all project approvals must be premised upon adequate environmental review. Considering the wealth of substantive comments received from Appellants, California Department of Fish and Wildlife, County of Mendocino Planning Department, California Coastal Commission and concerned area residents there is a "fair argument" of potentially significant impacts such that the City should require the preparation of an EIR for the Project.<sup>2</sup> Such review will allow for the fair analysis of the Project's impacts and consideration of appropriate mitigation and alternatives. The letters and emails submitted for the January 28, 2015 Planning Commission hearing, the video and minutes of the hearing and Appellants' appeal letter are incorporated here by reference.

In response to the overwhelming number of requests for an EIR to be prepared for the Project, the City attorney noted at the Planning Commission hearing that controversy does not, in and of itself, constitute substantial evidence. While this statement is true, the objections made in this instance clearly rise above mere controversy and abundantly comport with the definition of substantial evidence sufficient to raise a "fair argument" of potentially significant impacts.<sup>3</sup> Citizens

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*Healdsburg* (2012) 206 Cal. App. 4th 988; *Los Gatos Citizens for Responsible Development v. City of San Jose* (2012) Santa Clara Superior Court Case No. 111-CV-209214.

<sup>2</sup> Preparation of an EIR rather than a Mitigated Negative Declaration (MND) is required if there is substantial evidence in the "whole record" of proceedings that supports a "fair argument" that a project "may" have a significant effect on the environment. (Guideline § 15064 (f)(1); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111-112; *Sierra Club v. California Department of Forestry and Fire Protection* (2007) 150 Cal.App.4th 370.) An EIR must be prepared whenever there is substantial evidence that significant effects "may" occur. (Public Resources Code §§ 21082.2(a), 21100, 21151.) "May" means a reasonable possibility. (*League for Protection v. City of Oakland* (1997) 52 Cal.App.4th 896, 904-05; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309.) Courts have repeatedly affirmed that the fair argument standard is a "low threshold test."

<sup>3</sup> First-hand lay perceptions regarding non-technical impacts meet legislative definitions of substantial evidence because they qualify as "facts [and] reasonable assumptions based on facts" under Public Resources Code §§ 21080(e)(1) and 21082.2(c). Such perceptions are distinguishable from "argument, speculation, unsubstantiated opinion or narrative, [and] evidence that is clearly

wish to stress that courts have repeatedly affirmed that the fair argument standard is a low threshold test.

As a prefatory comment, it is important to understand that the testimony of the California Coastal Commission, the California Department of Fish and Wildlife and the County of Mendocino Planning Department is *per se* evidence that the Project is arguably inconsistent with the Local Coastal Plan and the Coastal Act. (Attached as Exhibit A-B.) This fact alone triggers preparation of an EIR. It need not be shown that the Project is in fact inconsistent, only that substantial evidence supports a "fair argument" of the Project's inconsistency. Where there is record evidence of a Project's inconsistency with area plans, as here, this is considered evidence of a significant impact and an EIR must be prepared to consider these important questions in greater detail, regardless of whether the record contains contrary evidence. (*League for Protection v. City of Oakland* (1997) 12 Cal.App.4<sup>th</sup> 896; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 310.) Opinions based on the expertise of planning commissioners, city councilmembers, and other public officials with expertise in land use and planning qualifies as substantial evidence supporting a fair argument. (*Stanislaus Audubon Society v. County of Stanislaus* (1996) 48 Cal.App.4<sup>th</sup> 182; *The Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4<sup>th</sup> 903, 934; *Architectural Heritage Association v. County of Monterey* (2004) 122 Cal.App.4<sup>th</sup> 1095, 1115. [In *County Sanitation District No. 2 v. County of Kern* (2005) 127 Cal.App.4<sup>th</sup> 1544, an EIR was required based on the declarations of agency staff that a proposed project would result in emissions exceeding air pollution thresholds.].) The comments submitted by the California Coastal Commission and the California Department of Fish and Wildlife are also considered expert opinion and triggers preparation of an EIR. A conflict in expert opinion over the significance of an environmental impact normally requires preparation of an EIR. (Guideline §15064(g); *Sierra Club v. CDF* (2007) 150 Cal.App.4<sup>th</sup> 370.)

Furthermore, the MND concedes that the project may result in greenhouse gas impacts that could conflict with the 2012 City of Fort Bragg Climate Action Plan. This constitutes another area of inconsistency with area plans triggering preparation of an EIR. The City of Fort Bragg adopted a Climate Action Plan in 2012. The plan sets greenhouse gas reduction goals, including a 30% reduction in greenhouse gasses for the municipality by 2020, and a 7% reduction goal for the community by 2020. The MND states the Project will result in a net 2.5% increase of the total GHGs produced (138,824 MTCO<sub>2</sub>E) by the Fort Bragg Community.

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inaccurate or erroneous," that do not constitute substantial evidence. (Public Resources Code section 21080(e)(2).)

## Aesthetics

The Project is situated at the gateway to Fort Bragg, is located west of Highway 1 at Highway 20 adjacent to the Pacific Ocean. The MND acknowledges the Project is within a "potential scenic view area" but failed to adequately describe the aesthetic and views impacts of the Project and failed to complete an adequate visual analysis for this crucially important resource. Appellants and numerous commentators confirm scenic views of the ocean may be blocked by the Project. The community members' direct observations and familiarity with the site belie the assertion made by Community Development Director Marie Jones and the MND that only a sliver of the scenic vista is viewable from a mile away. Planning Commissioner Sage Statham admitted the site offers direct views of the ocean and community members attested public ocean views are clearly visible from Highway 1 at the Project site. Before and after photographs confirm the Project may significantly impact scenic coastal vistas. (Attached as Exhibit C.) Commissioner Statham stated that he could clearly see by the photos that were submitted that the ocean is in view from public access points, especially by pedestrians and bicyclists.

The MND claims "the visual quality of the proposed project is similar in character to the other large format retail shopping center in the immediate vicinity." However, as the Coastal Commission pointed out in their March 2015 letter to the City, none of the other shopping centers are located West of Highway 1 and the Project is arguably more prominent due to these circumstances.

Residents Alice and Douglas Chouteau expressed comments shared by numerous community members regarding the Project's obstruction of the ocean view at the gateway to Fort Bragg. "The mall will unquestionably have a substantial negative impact on a scenic vista. Drivers entering Fort Bragg from Highway 20, anticipating a glimpse of the ocean perhaps after a long drive, will be confronted with a large mall façade that gives a first impression of Any Town, USA."

The MND fails to divulge the potentially significant views impacts of the Project and citizens' first hand testimony of views impacts qualifies to support a fair argument of aesthetic impacts.<sup>4</sup>

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<sup>4</sup> **Aesthetics.** A fair argument of aesthetic impacts in both rural and urban settings triggers the preparation of an EIR. *Ocean View Estates Homeowners' Association v. Montecito Water District* (2004) 116 Cal.App.4<sup>th</sup> 396 (EIR required based on subjective views of residents regarding potential aesthetic impacts of reservoir project affecting private views and public hiking trail.); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4<sup>th</sup> 903 (EIR triggered by fair argument of

The renderings in the MND fail to depict any of the retaining walls proposed for the Project and therefore do not adequately consider the Project's potential to impact aesthetic resources in this regard.

## **Hydrology and Water**

In her comment letter on the MND, Angela M. Liebenberg, Environmental Scientist, California Department of Fish and Wildlife explained that the City of Fort Bragg currently provides municipal water from three surface water sources (Noyo River, Newman Gulch, and Waterfall Gulch) which are experiencing low flows due in part to continuing and historic drought conditions. Independent of drought conditions, the City has experienced water-related shortfalls and issues including potential violations of its appropriative water right and failure to notify the Department of Fish and Wildlife as required under section 1602 of the Fish and Game Code (FGC).

Ms. Liebenberg stated that in order to fully address potential impacts to surface water sources, a detailed water budget for the entire project must be performed and a detailed assessment documenting how water will be provided to this project in a manner that does not result in new or continuing violations of the FGC and other related laws and regulations.

Neither the record nor the MND includes the requested information. Without this critical information, the MND must be considered inadequate and incomplete and the conclusion of no impact to hydrology and water cannot be supported.

In addition, County of Mendocino Andy Gustavson, Chief Planner, Planning and Building Services stated in March 2015, that the 1995 Groundwater Recharge and Water Balance Evaluation was conducted almost 20 years ago and relies on studies conducted even earlier than that. Conditions upon which the report are based have changed and new information is available such that the report should be updated to account for existing and future development, new well data, aquifer storage capacity, effect of septic systems on terrace deposits and annual

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aesthetic impacts of urban housing project and its arguable inconsistency with adopted plans.)

- Input from non-experts qualifies as substantial evidence where it is credible and does not purport to embody analysis requiring special training.
- A layperson can credibly relate firsthand perceptions that gridlock routinely occurs on a particular roadway at particular times, or that a project may have significant adverse aesthetic effects.

recharge estimates and local variations in recharge. The conclusion of no impact is unsupported.

Planning Commissioner Teresa Rodriguez also questioned the use of the outdated data. Commissioner Statham stated that water is a big issue and that it appears the City is running out if the City is getting down to such a low capacity. City staff responded that the public's water conservation measures have helped reduce the City's water demand and that the Project's rainwater catchment system effectively reduces Project impacts. However, neither of these reasons controverts the need to submit the information requested by the Department of Fish and Wildlife and to utilize current data in analyzing critical water issues.

Overdraft of the City's water supply is of serious concern to area residents due to the community's reliance on shallow wells in the area. As noted in Appellant's appeal letter, shallow (riparian) wells have not been considered in the MND or in any study prepared for the Project. Pollution of these shallow wells with even the smallest amounts of hydrocarbons and other pollutants from the proposed Project would be devastating for the property owners and the environment.

### **Piece-Meal of Environmental Review**

The record contains evidence that the MND has not reviewed all of the foreseeable activities associated with the Project.

The staff report, MND and traffic report all confirm 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. Yet the analyses fail to consider or account for increased traffic or the expanded development that this road may facilitate. Commentors noted that the new street proposed for the Project could provide the first step in foreseeable expansion activities. CEQA prohibits such piecemealing of environmental review and requires that all phases of a project must be considered together.<sup>5</sup>

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<sup>5</sup> CEQA requires environmental review of the "whole of the action" and prohibits serial review of foreseeable expansions. All phases of a project must be considered so that "environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences." (*Burbank-Glendale Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592; *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-284; *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151; Guideline § 15126.) Therefore, environmental review must include reasonably foreseeable future activities that may become part of the project. (*Laurel Heights Improvement Association v. UC Regents (Laurel Heights I)* (1988) 47 Cal.3d 376 (reasonably foreseeable expansion of research facility must be considered). And

## Growth Inducing Impacts

As noted, the staff report, MND and traffic report all confirm 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 without accounting for increased traffic or development this road may facilitate. Growth-inducing impacts also trigger the need for an EIR. (*Stanislaus Audubon Society Inc. v. County of Stanislaus, supra*, (1995) 33 Cal.App.4<sup>th</sup> 144, 158 [golf course could lead to residential development].)

## Traffic

MND acknowledges that the Project may result in potentially significant traffic impacts.

The analysis found that the project would reduce the level of service at some intersections as shown in Table 17, page 40 of the traffic study. The report identified three intersections that would be impacted by the project such that the level of service would fall either to an LOS C or lower and these include:

1. Westbound driveway (from The Q Restaurant and adjacent businesses) for left, through and right turns at Highway 1. The level of service here would fall from an LOS D to an LOS E (for existing traffic and the project) and to an LOS F (for project plus future development).
  2. Eastbound driveway (from the Cliff House Restaurant and adjacent business) for left, through and right turns at Highway 1. The level of service here would fall from an LOS D to an LOS E (for existing traffic and the project) and to an LOS F (for project plus future development).
  3. Boatyard Drive and Highway 20, left (eastbound) turn onto Boatyard Drive would fall from an LOS D to an LOS E (for existing traffic and the project and for project plus future development).
- Even with Mitigation Measure 15 (installation of a right turn only lane eastbound on Ocean Drive), the impacts of this project on already underperforming driveway/highway intersections may be problematic.

The MND notes "However, both driveways (at The Q Restaurant and the Cliff House) have alternative exits onto the signalized Ocean View Drive/Highway 1 exit, and drivers may choose to use these alternative exits more often, if the

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*Arviv Enterprises v. South Valley Planning Commission* (2000) 101 Cal.App.4<sup>th</sup> 1333, required sequential parts of a housing development project to be assessed as one project and required preparation of an EIR over the objections of the developer.

project is approved and the LOS drops to an LOS of E at these driveway intersections." But when a Project results in direct traffic impacts, as here, mitigation must be proposed on the subject site; mitigation must be certain and enforceable; and placing the burden of mitigating impacts cannot be conferred to another property without first forming a definite plan for this to occur. The impact is therefore not fully mitigated by this proposal and an EIR must be prepared to study this potentially significant impact.

The MND utilized an outdated August 2013 traffic study. Citizens note the traffic study is inadequate and incomplete and does not accurately reflect existing area traffic congestion. The traffic counts relied upon in the traffic study were gathered on just two single days in August. The small sample size is not reflective of actual traffic conditions in the affected area. The former College of the Redwoods (Mendocino College) and the Charter School were closed in August and the traffic generated from these schools was not included in the study. Increased traffic from the Dollar Tree Store to the Boatyard Center was not considered. The proposed Waste Management Transfer Station was not considered. The Georgia-Pacific Mill site will be open to the public as well as the nearly complete Ocean Trail, which will each draw considerable traffic to the area, were not considered in the traffic analysis. Staff stated that August constitutes the City's highest traffic month. While summer traffic may represent the highest general traffic count, it does not reflect the congestion present at peak hours when school is in session. An adequate traffic analysis should include peak hour congestion data when area schools are open. Resident Steven Antler stated "Any evaluation of traffic must include measuring current traffic both in the summer when there is increased visitor congestion and in the winter when the college classes are being held."

Commentors attested the site of the dilapidated Hare Creek Bridge near the Project is already dangerous and congested and that the Project would exacerbate these conditions. Pedestrian and bicycle Health and Safety impacts due to the increased congestion caused by the Project should be analyzed and were not.

The MND is inadequate and incomplete and substantial evidence supports a fair argument of potentially significant impacts such that an EIR must be prepared prior to further consideration of the Project.

### **Consistency with Local Coastal Plan and Coastal Act**

Comments from the California Coastal Commission, the California Department of Fish and Wildlife, the County of Mendocino, along with comments from Planning Commission Members, Appellants, and concerned area residents all

demonstrate the Project is inconsistent with the Local Coastal Plan (LCP) and the Coastal Act in the following respects.

In order to be found consistent with the LCP, the Project must be designed and sited to protect views to and along the ocean and scenic coastal areas; minimize the alteration of natural landforms be visually compatible with the character of the surrounding area and be sited and designed to protect views to and along the ocean and scenic coastal areas.

- According to the Coastal Commission, the Project will result in an alteration of the natural topography and substantial grading, inconsistent with Policy CD-1.5 and that the City has inappropriately applied the LCP's conflict resolution policy to this issue. The Project does not present a conflict with LCP policies if there is a feasible alternative that would accomplish the essential purpose of the project without violating any LCP policy. Here, the City failed to review a "number of alternatives" that could be consistent with all the relevant visual resource policies such as a smaller sized development or different placement of the Project on the site.
- By comparing the size of the Project to other Fort Bragg shopping centers instead of to the overall small town rural character of Fort Bragg, the Coastal Commission stated the City inadequately analyzed whether the Project is consistent with the small town rural character of Fort Bragg pursuant to the LCP's Mission Statement and Policy LU4.1. They noted the currently proposed shopping center is the only one of the shopping centers located west of Highway 1 and is arguably more visually prominent from public vantage points.
- Appellants and numerous concerned area residents attest the Project site provides public coastal views and have submitted photos that show the Project's interference with or substantially obstruction of these views. Appellants stated the project is not "visually compatible with the character of surrounding areas." The site is characterized by beautiful areas of rolling meadows with views of unspoiled and previously undeveloped open land.
- The Coastal Commission stated the City has inadequately documented whether they have reserved adequate water capacity to serve the development and all other known and foreseeable development they are committed to serving pursuant to LCP Policies LU-5.2, PF-1.2 and PF-1.3. Given the fact that the City claims that there is only 4.4% capacity of the City's water system available to serve new development in a drought the City has not shown that it has reserved adequate water capacity. The Coastal Commission believes that this capacity analysis does not include all foreseeable development such as the Georgia-Pacific Mill Site, visitor serving uses, the hotel and recreational facilities that will require water from the City water supply.

As noted, the California Department of Fish and Wildlife requested submittal of the Project's water budget and a plan for how the City will avoid new or continuing violations of the FGC and other related laws and regulations. This information has not been provided.

As noted, the County of Mendocino stated the 1995 water analysis relied upon in the MND was based on an outdated study performed for a different project; the study neglected to use current data and information that is required for adequately assessing the Project's actual impacts to water.

- The Coastal Commission noted that concerns have been raised by the public that the lot line adjustment may not be recognized as legal parcels under the Subdivision Map Act and the Coastal Act. They requested the City submit a justification statement regarding the legality of the parcels.
- The Coastal Commission explained that denial of the project is not inconsistent with the LCP since the project will not stop some ongoing resource degradation and there is no showing that the Project would remediate a condition requiring protection.

Thank you for the opportunity to comment.

Sincerely,



Rachel Mansfield-Howlett

Sent *via* email to:

City of Fort Bragg Council Members:

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Lindy Peters <LPeters2@fortbragg.com>

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Elected Officials:

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Dan Gjerde, 4th District Mendocino County Supervisor  
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California Coastal Commission:

Bob Merrill, California Coastal Commission <bob.merrill@coastal.ca.gov>

Appeal to City Council re Hare Creek Center Project

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March 20, 2015

**CALIFORNIA COASTAL COMMISSION**

NORTH COAST DISTRICT OFFICE  
1385 EIGHTH STREET • SUITE 130  
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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]

**EXHIBIT A**

**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

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

Marie Jones  
City of Fort Bragg  
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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.

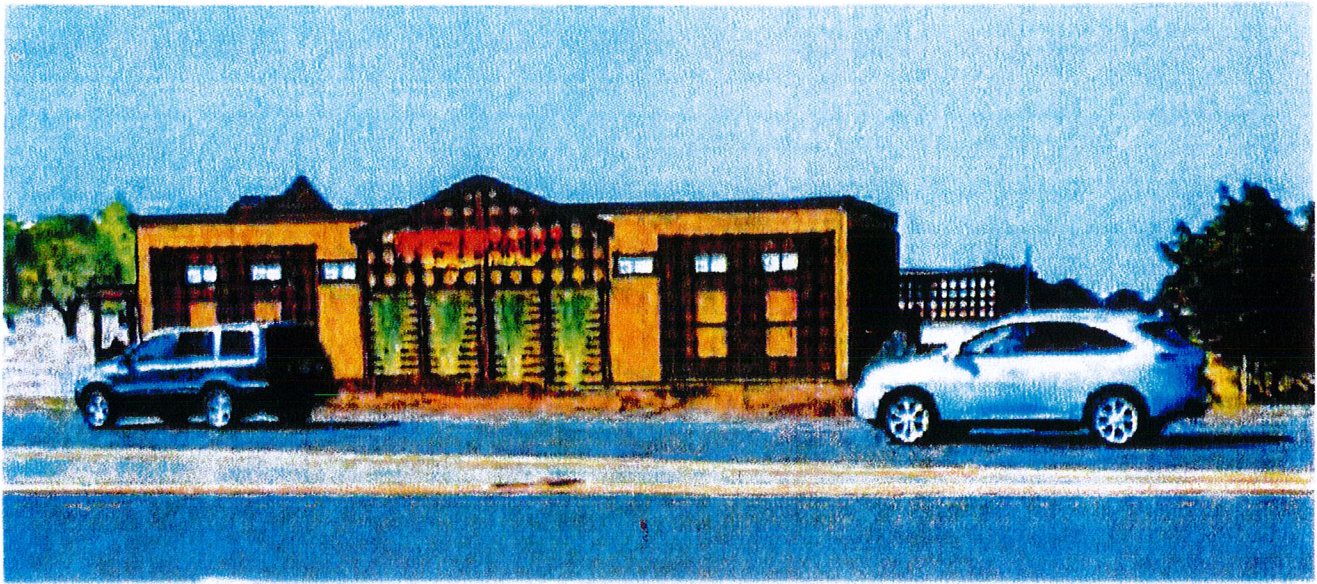
Thank you for the opportunity to provide comments on this important project.

Sincerely,



Andy Gustavson,  
Chief Planner, Planning and Building Services

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



**Figure 3: Photographic Rendering of North Building looking west**



The top photographic rendering is from Figure 3 of the MND looking west at Highway 1. The bottom photograph shows the existing view from the Project site from Highway 1. The story-pole at the right edge of the bottom photograph is located at the northeast corner of Project Building A. Building A would completely obstruct a direct view of the Pacific Ocean from a public right of way.