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# F12a

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Hearing Date: 1/13/17

## STAFF REPORT: APPEAL SUBSTANTIAL ISSUE

**Appeal No.:** A-1-HUM-16-0101

**Local Government:** County of Humboldt

**Local Decision:** Approval with Conditions

**Applicant:** Dollar General, c/o Cross Development, Attn: Dan Dover

**Appellants:** (1) Dan and Kelly Noga c/o Bradford C. Floyd, Esq.  
(2) Kimberly A. Tays

**Location:** East side of South Broadway, approximately 455 feet north of the intersection of Eich Road and South Broadway, approximately 0.5-mile south of the City of Eureka (APN 305-101-54).

**Project Description:** Develop an approximately 9,100-square-foot commercial building not to exceed 22 feet in height with associated parking for 24 vehicles and landscaping.

**Staff Recommendation:** Substantial Issue

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**Important Hearing Procedure Note:** This is a substantial issue hearing only. The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General, or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally at the discretion of the Chair and limited to three (3) minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local

government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting during which it will take public testimony.

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## **SUMMARY OF STAFF RECOMMENDATION**

The approved project authorizes the development of an approximately 9,100-square-foot commercial building not to exceed 22 feet in height with associated parking for 24 vehicles and landscaping ([Exhibits 1-2](#)). The subject 0.87-acre undeveloped vacant parcel is located approximately 0.5-mile south of the City of Eureka in a commercial zoning district near the base of Humboldt Hill, between Humboldt Hill Road and South Broadway, in Humboldt County.

The Commission received two separate appeals of the project as approved by the County, collectively raising five basic contentions. The appeals were filed by Dan and Kelly Noga c/o Bradford C. Floyd, Esq. ([Exhibit 4](#)) and Kimberly A. Tays ([Exhibit 5](#)). All but one of the appeal contentions relate to the wetland protection policies of the LCP. The applicant's consultant delineated an approximately 150-square-foot isolated wetland on the property. Staff recommends that the Commission find that the appeals raise a substantial issue regarding consistency of the approved project with the natural resources protection policies of the certified LCP.

First, the certified LCP allows only certain uses within wetlands, and it's uncertain whether all the wetlands on the property have been accurately identified. Because the County approval fails to demonstrate that it fully identifies and limits the extent of impermissible encroachment into wetlands, the appeal raises a substantial issue of conformance of the approved development with the wetland protection policies of the LCP. Even if the approved development does not encroach directly into wetlands, the development may encroach into area needed as part of the development setback from wetlands.

Second, though there are alternative site and development configurations that would provide for a larger development setback from the wetland and better protection of the wetland and its habitat values, the County's findings fail to establish that (a) the maximum setback feasible has been provided or that (b) a development setback less than 100 feet or the stringline of adjacent development would preclude development of the site for either the approved use or for another one of the principal uses for which it is designated.

Finally, several LCP provisions require the protection of wetlands and ESHA and require that new development adjacent to wetlands and ESHA shall be sited such that it will not degrade the adjacent habitat area. The County-approved project surrounds the wetland on all sides with new development but fails to demonstrate that the reduced setback distance of 17 feet will be adequate to protect the wetland and its habitat values. Although the approved plans require enhancement of the wetland buffer with the planting of appropriate native species and the protection of the area from human intrusion by requiring the installation of a barrier fence around the buffer area, the approval does not assure that the approved development is sited so that it will not degrade the adjacent habitat area. For example, the findings also do not address the fact that

artificial lights and human-related noise will permeate the wetland from close proximity on all sides, which may degrade the wetland habitat values.

Thus, because the degree of factual support for the County's decision is low, the protection of coastal wetlands is an issue of statewide concern, and there is precedential value to the County's decision with respect to future interpretations of the LCP, staff believes that the appeal contentions raise a substantial issue of conformance of the approved project with the certified LCP. Staff further recommends that if the Commission finds substantial issue, that the Commission continue the de novo hearing to a subsequent date until the applicant provides certain information listed in [Appendix D](#) of the staff report that is necessary for the Commission to determine the consistency of the development with the LCP.

The motion to find substantial issue as is recommended by staff can be found on [Page 5](#).

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## APPENDICES

[Appendix A – Commission's appeal jurisdiction over project](#)

[Appendix B – Substantive file documents](#)

[Appendix C – Relevant policies from the certified LCP](#)

[Appendix D – Information needed for \*de novo\* review of application](#)

## EXHIBITS

[Exhibit 1 – Location maps](#)

[Exhibit 2 – Approved plans](#) (site plan and Wetland Protection Plan)

[Exhibit 3 – Notice of Final Local Action and supplemental findings for CDP approval](#) (includes County findings for approval from September 6, 2016 (first local appeal hearing – item postponed), October 11, 2016 (second local appeal hearing – item again postponed), and November 15, 2016 – local appeal hearing when appeal was denied and CDP approval was upheld with revised conditions)

[Exhibit 4 – Appeal filed by Dan and Kelly Noga](#) (includes copy of wetland delineation report and County findings for approval of CDP from July 7, 2016 Planning Commission hearing)

[Exhibit 5 – Appeal filed by Kimberly Tays](#)



## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission determine and resolve that Appeal No. A-1-HUM-16-0101 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

Staff recommends a **NO** vote on the foregoing motion. Following the staff recommendation by voting no will result in the Commission conducting a *de novo* review of the application, and adoption of the following findings. Passage of this motion via a yes vote, thereby rejecting the staff recommendation, will result in a finding of No Substantial Issue, and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners.

### Resolution:

*The Commission hereby finds that Appeal No. A-1-HUM-16-0101 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

## II. FINDINGS AND DECLARATIONS

### A. APPEAL JURISDICTION AND PROCEDURES

The Coastal Commission effectively certified Humboldt County's local coastal program (LCP) in 1986. After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (CDPs). Pursuant to Coastal Act Section 30603, the County's approval is appealable to the Commission because the approved development is located within 100 feet of a wetland or stream. The Commission's appeal jurisdiction is further discussed in **Appendix A**, which is hereby incorporated by reference. The grounds for an appeal are limited to an allegation that the approved development does not conform to the standards set forth in the certified local coastal program (LCP), which in this case includes the certified Humboldt Bay Area Plan (HBAP) and the certified Coastal Zoning Regulations (CZR).

**The Commission will not take public testimony during this phase of the appeal hearing unless three Commissioners request it.**

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue<sup>1</sup> of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review at the same or subsequent meeting. The Commission will not take public testimony during this phase of the appeal hearing unless three Commissioners request it.

If three Commissioners request it, the Commission will hear arguments and vote on the substantial issue question. Proponents and opponents will have three (3) minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicants, appellants, and persons who made their views known to the local government (or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

Unless it is determined that there is no substantial issue, the Commission will proceed to the *de novo* portion of the appeal hearing and review the merits of the proposed project. The *de novo* phase of the hearing will occur at a future Commission meeting, during which the Commission will take oral and written public testimony.

## **B. LOCAL GOVERNMENT ACTION**

On July 7, 2016, the Humboldt County Planning Commission approved Coastal Development Permit No. CDP 14-033 with special conditions. The approved project authorizes the development of an approximately 9,100-square-foot commercial building not to exceed 22 feet in height with associated parking for 24 vehicles and landscaping (**Exhibits 1-2**). On July 20, 2016, the County Planning Commission's permit approval was appealed to the County Board of Supervisors by Dan and Kelly Noga. On November 15, 2016, the Board of Supervisors denied the appeal and approved the CDP with revised special conditions (**Exhibit 3**).

## **C. FILING OF APPEAL**

The Coastal Commission's North Coast District Office received the County's Notice of Final Local Action (**Exhibit 3**) on November 18, 2016, after the Board of Supervisors denied the local appeal of the permit filed by Dan and Kelly Noga. The Commission's ten working day appeal period began on November 21, 2016 and ran through December 6, 2016. On December 5, 2016, the Commission received two separate appeals of the County's approval from (1) Dan and Kelly Noga c/o Bradford C. Floyd, Esq. (**Exhibit 4**), and (2) Kimberly A. Tays (**Exhibit 5**). Both appeals were filed in a timely manner, within 10 working days of receipt by the Commission of the County's Notice of Final Action.

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<sup>1</sup> The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: (a) the degree of factual and legal support for the local government's decision; (b) the extent and scope of the development as approved or denied by the local government; (c) the significance of the coastal resources affected by the decision; (d) the precedential value of the local government's decision for future interpretations of its LCP; and, (e) whether the appeal raises only local issues, or those of regional or statewide significance.

## **D. ENVIRONMENTAL SETTING**

The subject 0.87-acre undeveloped vacant parcel is located approximately 0.5-mile south of the City of Eureka in a commercial zoning district near the base of Humboldt Hill, between Humboldt Hill Road and South Broadway (APN 305-101-54). The parcel is designated and zoned by the certified LCP for General Commercial (CG) uses with a Coastal Wetlands (W) Combining Zone. The subject site is located at an elevation of approximately 15 feet above mean sea level.

The commercially zoned lot to the south of the subject site is undeveloped, the commercially zoned lot to the north is developed with a retail grocery store, the lot to the east is planned and zoned for multi-family residential use and is developed with a mobile home park, and the lots to the west, across South Broadway, are planned and zoned for commercial uses and are partially developed. Significant expanses of coastal wetlands occur on the undeveloped lands in the surrounding area to the south and west.

According to the applicant's consulting biologist who investigated the site in 2015, the property is vegetated with a mix of ruderal herbs, horticultural introductions, and common native species. Two nonnative grasses – tall fescue (*Festuca arundinacea*) and sweet vernal grass (*Anthoxanthum odoratum*) – dominate much of the eastern portion of the site. The remainder of the site is dominated by the native California blackberry bramble (*Rubus ursinus*), a horticultural rose (*Rosa multiflora* var. *carnea*), and patches of nonnative wild radish (*Raphanus sativus*). The biologist identified a single isolated approximately 150-square-foot seasonal palustrine wetland in the southern portion of the property. Wetland vegetation includes two native species – Hooker's willow (*Salix hookeriana*) and soft rush (*Juncus effusus*) – and the nonnative creeping buttercup (*Ranunculus repens*).

## **E. DESCRIPTION OF APPROVED PROJECT AND PROJECT HISTORY**

The CDP approved by the County (CDP 14-033) authorizes the development of an approximately 9,100-square-foot commercial building not to exceed 22 feet in height with associated parking and landscaping. A total of 24 parking spaces and a loading zone would be provided on site. There is no tree removal proposed and only minimal grading is necessary. The parcel is served by Humboldt Community Services District for water and sewer services.

The subject application originally was listed by the County as “not appealable” to the Coastal Commission when it was referred by the County to the Commission's North Coast District Office for comment in August of 2014. Commission staff provided comments to the County on the CDP application referral on August 28, 2014 with recommendations that (1) given the abundance of coastal wetlands known to occur in the surrounding area and the designation of the “W” combining zone to the property, the County should verify that there are in fact no wetlands within 100 feet of the subject development, which would confirm the project's appealability status; and (2) given the amount of proposed new hardscape in the vicinity of surrounding wetlands and areas prone to flooding, Low Impact Development (LID) techniques should be incorporated into the site design, including, but not limited to, requiring the use of porous pavement, preserving native vegetation on site, and routing roof runoff into vegetated areas on site for biofiltration.

The County originally scheduled the CDP application for administrative approval by the Planning Director in November of 2014. Prior to approval, the County received two timely-submitted comment letters from nearby residents requesting a public hearing on the matter. One of the comment letters (on which Commission staff was copied), from nearby residents Robert and Julie East, noted, among other objections to the project, that the site “can be quite wet and generally grows plants like willows.” The comment letter asked if a wetland investigation had been performed.

The County did not require the applicant to conduct a wetland investigation of the site before scheduling the matter for a public hearing before the Planning Commission on December 4, 2014. Instead, the County relied on general resource mapping information as well as information from a previous subdivision approval involving the property in 2005.<sup>2</sup> The County’s staff report recommending approval of the non-appealable project for the December 4<sup>th</sup> hearing states “Based on County resource maps there do not appear to be any designated sensitive or critical resource habitats on the project site. Although the parcel has a “W” combining zone indicating coastal wetlands areas on the parcel, closer inspection of the site verifies that there are no wet areas actually on the subject parcel. A site visit conducted by County staff indicates the closest wet area is located at the south end of the parcel...to the south of the subject parcel...at least 200 feet from the edge of any wet areas...”

The Planning Commission opened the public hearing on December 4, 2014. During public testimony, the agent representing the adjacent property owners to the north (Dan and Kelly Noga) alleged the existence of multiple easements across the subject property – two alleged easements related to sewer and drainage lines and one alleged prescriptive easement for customer ingress and egress across a paved roadway on a portion of the subject site that leads to the parking lot of the Country Club Market and a grocery and deli located on the adjacent Noga property. The paved roadway is a remnant alignment of the old highway that historically (circa 1920) crossed the site.<sup>3</sup> The oral and written testimony of the adjacent landowner’s agent presented to the Planning Commission alleged that the applicant did not have the legal right to develop the proposed building and parking improvements within the alleged easements as proposed. The Planning Commission continued the hearing to its January 8, 2015 meeting and asked staff to investigate the easement claims prior to the next hearing.

At the January 8, 2015 Planning Commission meeting, planning staff presented evidence demonstrating that the adjacent property owner to the north (Dan and Kelly Noga) had recorded a quitclaim deed in May of 2007 relinquishing rights to the two sewer easements across the subject property to the owner of the subject property at that time (Humboldt Hill Property Partnership, who sold the property to the current owners, Cookman-Meyer Partnership, in 2011). Planning staff also provided an updated title report demonstrating that the subject parcel is not

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<sup>2</sup> In July of 2005, the County approved CDP application CDP-03-68 submitted by Dan Noga for the division of a 1.93-acre parcel into three parcels: (1) the subject 0.87-acre undeveloped parcel; (2) a 0.38-acre parcel to the north of the subject parcel, currently owned by Dan and Kelly Noga and developed with an existing commercial retail market; and (3) a 0.68-acre parcel to the south of the subject parcel that currently is undeveloped but for which a CDP application is pending with Humboldt County for the development of a 7,620-square-foot cabinet manufacturing shop on the parcel.

<sup>3</sup> The historic highway alignment is shown as “abandoned” on the subdivision map involving the subject property approved by the County in 2005 (see above footnote).

encumbered by the alleged easements. Regarding the claim of prescriptive rights for ingress and egress over the paved roadway strip across the northerly portion of the parcel by customers accessing the Country Club Market owned by Noga, County counsel advised the Planning Commission that the matter was outside of the Commission's purview and must be resolved by a judge in civil court.<sup>4</sup> Planning staff noted that should a judge in the future determine that a prescriptive easement for ingress and egress does in fact exist over that area, staff believed it would be possible to reconfigure the proposed parking and site access improvements to avoid easement encroachment. However, County staff presented no alternative site plan demonstrating that this alternative would be feasible. The Planning Commission approved the subject application on January 8, 2015 pursuant to several special conditions.

A timely local appeal of the Planning Commission's approval was filed in January of 2015 for the Board of Supervisors' consideration. The local appeal was filed by Dan and Kelly Noga and raised issues related to traffic volume, development conflicts with the various easements described above, an alleged violation of a non-competitive business agreement between the Noga's and the subject property owner, and impacts of the proposed "chain store" (Dollar General) on Humboldt County businesses. After the appeal was filed but while the appeal period still was open, staff from the California Department of Fish and Wildlife (CDFW) visited the site with County planning staff and identified a palustrine emergent wetland in the southern portion of the property within an area proposed for parking and access improvements. The County informed the applicant of this new information, and the applicant agreed to have the wetland delineated by a qualified biologist and to develop a wetland protection plan for the identified wetland. Rather than bring the appeal to the Board of Supervisors with new information that wasn't considered by the Planning Commission, the County decided to rescind the notice of final action, complete the CEQA process for the project (the County previously had determined the project to be categorically exempt under CEQA), and bring the project back to the Planning Commission for reconsideration. The appellant agreed to withdraw the appeal pending completion of this process.

The applicant hired biological consultant Virginia Dains to delineate the boundaries of the identified wetland on the property. The consultant visited the site in February of 2015 and delineated an approximately 150-square-foot palustrine emergent wetland (described above). The consultant prepared a Wetland Protection Plan (dated as revised in June of 2016) proposing to avoid and protect the wetland from development impacts with a minimum wetland setback of 5 feet. The buffered wetland would be surrounded with proposed new commercial building, parking, and access-related development. After receiving comments from CDFW and Commission staff on the proposed Wetland Protection Plan related to the inadequacy of the wetland setback to protect wetland habitat values, the site plan was revised to increase the setback to an average of 17 feet, with a total buffer area of 1,889 square feet.<sup>5</sup>

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<sup>4</sup> According to the Noga's agent, Bradford Floyd, Esq., the Nogas have since filed a lawsuit for quiet title and promissory estoppel against the subject property owners (Thomas Cookman, Daryl Meyer, and the Cookman-Meyer Partnership) of the subject property in the Humboldt County Superior Court, case no. DR140658. The case is currently pending.

<sup>5</sup> The original Wetland Protection Plan prepared by Virginia Dains, Consulting Biologist dated September 15, 2015 proposed a wetland setback of 5 feet and a total buffer area of 1,150 square feet.

The County scheduled the revised application for the Planning Commission's reconsideration on July 7, 2016. Because some of the proposed development would be located within 100 feet of the identified wetland, the County corrected its previous determination of the application's appealability status to appealable to the Coastal Commission. The Planning Commission approved the CDP with various special conditions on July 7, 2016.

The County received a timely local appeal of the Planning Commission's decision on July 20, 2016. The appeal, again filed by Dan and Kelly Noga, raised contentions similar to those raised in the subject appeal (described below), among others. On November 15, 2016, the Board of Supervisors denied the appeal and approved the CDP with revised special conditions.

The County granted its approval of CDP 14-033 subject to 23 special conditions, including, but not limited to, conditions requiring (1) the on-site construction of 24 non-tandem, independently accessible parking spacing, including one handicap-accessible space and up to six compact spaces; (2) submittal of a drainage plan approved by the County Department of Public Works that incorporates Low Impact Development (LID) techniques and complies with the State Water Board's Phase II Small Municipal Separate Storm Sewer System (MS4) Program; (3) installation of an oil-water filtration system for parking lot drainage prior to the drainage entering the existing storm drain system; (4) submittal of a soils report with erosion and sediment control measures; (5) submittal of a lighting plan that provides for minimizing glare and off-site impacts of light trespass; (6) implementation of all mitigation measures set forth in the Mitigated Negative Declaration adopted for the project, including measures related to (a) protection of the approximately 150-square-foot on-site palustrine wetland, (b) establishment and protection of an approximately 17-foot-wide no-build buffer around the protected wetland, and (c) enhancement of the wetland buffer with native trees and shrubs; (7) monitoring the success of the restoration plantings and maintenance activities for a two years following construction; and (8) the implementation of various additional LID measures required by the LCP, such as (a) restricting the total amount of impervious lot surface to 25% or less, (b) limiting the release rate of storm runoff to adjacent wetlands to not exceed the natural rate of storm runoff for a 50-year storm of 10-minute duration, (c) dissipation of stormwater outfalls, culverts, and gutters, and (d) seeding or planting of bare soils following construction.

## **F. ANALYSIS OF APPELLANTS' APPEAL CONTENTIONS**

The appeals filed by Dan and Kelly Noga and Kimberly Tays are attached as **Exhibits 4 and 5** respectively. Both appeals raise contentions that relate to the natural resources protection policies of the certified land use plan, known as the Humboldt Bay Area Plan (HBAP). Specifically, both appeals contend the following: (1) the County's approval was based upon a faulty wetland delineation that itself was based in part on "habitat previously destroyed by the property owner and applicant..." and which will result in direct impacts to wetlands; (2) the reduced wetland setback of approximately 17 feet and the required mitigation measures will be insufficient to protect the delineated wetland and its habitat values; and (3) there are alternative site development configurations and principal permitted uses that would provide for a larger development setback to conform to LCP wetland buffer and development setback requirements and provide better protection of the wetland and its habitat values. In addition, the Noga appeal contends that a portion of the approved project is on land (a strip of state-relinquished roadway)

that neither the applicant nor the property owner has the appropriate legal interest to be able to undertake the approved development.

As set forth in Section 30603 of the Coastal Act, after certification of its LCP, an appeal of a local government-issued CDP for development located inland of the area between the first public road paralleling the sea is limited to allegations made on the grounds that the approved development does not conform to the standards set forth in the certified LCP. As discussed below, the Commission finds that all of the contentions raised by the appellants present valid grounds for appeal, and four of the contentions raise a substantial issue of conformance of the approved development with the policies of the certified LCP. One contention raises no substantial issue. Each contention is discussed below. The relevant LCP policies are shown in **Appendix C**.

## **1. Contentions Raising a Substantial Issue:**

### **a. Adequacy of the wetland delineation**

Both appeals contend that the County's approval was based upon a faulty wetland delineation, which will result in significant adverse impacts to wetlands. The HBAP uses a similar definition for wetlands as the Coastal Act.

Section 30121 of the Coastal Act defines wetlands as follows:

*"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.*

Chapter 5 of the HBAP, "Definitions," defines wetlands as follows (emphasis added):

*...lands which may be covered periodically or permanently with shallow waters, including salt marshes, freshwater marshes, swamps, mudflats, fens and transitional agricultural lands. The County will use the U.S. Fish and Wildlife Service's Classification of Wetland and Deepwater Habitats of the United States as a guide to wetland identification. In general, lands which meet the classifications definition of subtidal estuarine aquatic beds, estuarine intertidal flats and emergent habitats, and palustrine emergent and non- riparian palustrine shrub-scrub and forested habitats will be considered wetlands.*

In addition, HBAP Chapter 3 Section 3.30-B(1) lists wetlands as a type of environmentally sensitive habitat within the Humboldt Bay Planning Area and states that "Proposed development occurring within areas containing these sensitive habitats shall be subject to conditions and requirements of this chapter." The referenced chapter (Chapter 3 Section 3.30) includes as LCP policies Sections 30240, 30233, and 30231 of the Coastal Act, among others (see **Appendix C** for policy language). In addition, as described above, the subject property includes a "Coastal Wetlands" combining zone, the purpose of which *"...is to establish regulations to provide that*

*any development in coastal wetlands will not degrade the wetland, but will maintain optimum populations of marine or freshwater organisms and, where feasible, will enhance wetland resources” (Coastal Zoning Regulations Section 313-38.1.1).*

The Noga appeal contends that the County’s approval was based upon faulty wetland delineation in part because the delineation was performed over habitat that was previously destroyed by the property owner and applicant. The appeal includes a portion of a deposition transcript of one of the property owners taken in October of 2016 with an admission that the entire property was mowed in 2014, including areas occupied by willows and the area that subsequently was delineated as wetland by the applicant’s biologist. The appeal includes copies of photographs of the property taken by the appellant before and after the mowing to further support this claim. The Tays appeal also contends that unpermitted major vegetation removal (mowing of willows) occurred, based on a site visit by Ms. Tays in July of 2016 when she noted that “roughly half of the site was covered in mature, healthy Hooker willows around 15 feet tall.” There is no record of a CDP being issued by the County for major vegetation removal at the subject site.

The wetland delineation report dated May 6, 2015 describes a site visit by the biological consultant on February 25, 2015, noting that “Field conditions in the late February survey were dry in comparison with regional averages...” The report notes that isolated individuals of native perennial tufted hairgrass, Hooker’s willow, and soft rush (all of which are wetland-oriented species) are found as part of the site’s “overall mosaic of vegetation but do not occur as remnants of natural vegetation.” The report documents the soils mapped for the property as Bayside series, which is classified by the Natural Resources Conservation Service (NRCS) as a hydric soil type.<sup>6</sup> The report notes, however, that:

“The disturbed nature of the project site suggests that significant change in soil conditions have been made since the general soil survey was completed in 1965. The site is also elevated about the floodplains of Buhne Slough. It is located on the south side of Spruce Hill at an elevation of 12-15 feet. Bayside soil may underlie the disturbed ground, though characteristics of this series were not observed on site...”

The report describes the various laws and agencies with regulatory jurisdiction over wetlands, including the Coastal Commission, and provides the definition of wetland included in the Commission’s regulations (Title 14 CCR Sec. 13577(b)(1)):

*...land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each*

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<sup>6</sup> NRCS hydric soils list accessible here: <https://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/use/hydric/>



*year and their location within, or adjacent to, vegetated wetlands or deep-water habitats...*

The report further states the following:

*The Commission's one-parameter definition is similar to the USFWS wetlands classification system, which states that wetlands must have one or more of the following three attributes: (1) At least periodically the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.*

In most respects, the wetland delineation methods utilized on the subject site as described in the report were generally undertaken consistent with wetland delineation guidance published by the U.S. Army Corps of Engineers,<sup>7</sup> which the Commission typically considers to be appropriate methodology for identifying wetlands. The biological consultant investigated and described the site's vegetation, soils, and hydrology for indications of wetland features. The County provided a copy of the wetland delineation report to Commission staff and CDFW staff for review and comment.

Commission staff comments on the wetland delineation emailed to County staff on October 12, 2015 were as follows:

“There are concerns raised by members of the public as to the adequacy of the wetland delineation, that perhaps coastal wetlands extend beyond the boundary of the area delineated on the plans. We encourage you to consider whether or not additional consultation with CDFW is warranted on the wetland issue or perhaps require that the applicant hire a qualified wetland biologist to reassess the boundaries of the wetland.”

CDFW staff reviewed the wetland delineation and did not raise specific issues or concerns with the delineation itself but rather with the reduced wetland setback that was proposed.

However, while the wetland delineation methods utilized were appropriate, detailed data on vegetation, soils, and hydrology were collected only at two sample points – one within the delineated wetland and one within the adjacent upland. Although the Corps' methodology does not specify the minimum number of sample points needed, for delineations conducted in areas less than 5 acres in size the Corps recommends that one or more representative observation points be installed in each community type. The Corps further recommends that in “atypical” or “problem” situations, such as where a site has been altered through unauthorized vegetation removal, aggressive invasive plants (including aggressive upland-oriented species found on the property, such as sweet vernal grass, blackberry, and English ivy), or natural events (e.g., beaver dams), additional efforts should be employed to determine the conditions that occurred prior to the site alteration. These include efforts such as examining the site for identifiable plant remains,

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<sup>7</sup> U.S. Army Corps of Engineers 1987 and 2010, both of which are cited references in the wetland delineation report.

investigating nearby unaltered reference sites with similar soils and hydrologic conditions, and revisiting the site in the next growing season with normal rainfall to reevaluate the vegetation.<sup>8</sup>

At least three atypical or problem situations exist at the site that are not addressed by the County's approval. First, the appellants have submitted evidence that unauthorized vegetation removal occurred prior to the delineation being performed. Second, as indicated above, the delineation report notes the disturbed nature of the project site suggesting that significant changes in soil conditions have been made since the general soil survey of that area was completed in 1965. The delineation report later refers to the presence of nonnative fill material in the soils. Third, there also may have been problems recognizing wetland hydrology due to the delineation being conducted in year 4 of a historic drought. The Corps' guidance describes drought years as another type of "problem" situation that may necessitate additional efforts beyond routine wetland determinations. The wetland delineation report (data forms) noted that "normal circumstances" were not present at the time of the delineation in terms of both site hydrology (drought) and presence of nonnative fill material in the soils, which did not match the mapped soils for the property (Bayside hydric soils).

Given that (1) as defined by the LCP, only one of the three wetland parameters (a preponderance of hydrophytic vegetation, hydric soils, or wetland hydrology) need to be present for an area to be considered wetland; (2) there was evidence that wetland-oriented species (willows, rush, and tufted hairgrass) were found growing scattered across the property as described in the report; and (3) there were atypical conditions on site in terms of vegetation (potential unauthorized removal), soils (presence of nonnative fill material) and hydrology (drought conditions) that potentially could have resulted in biologist oversight of wetland indicators, there is not a high degree of factual support for the County's determination that the project will conform with the wetland protection policies of the certified LCP. As the certified LCP allows only certain uses within wetlands, and it's uncertain whether all the wetlands on the property have been accurately identified, the appeal raises a substantial issue of conformity of the approved development with the wetland protection policies of the LCP, including but not limited to HBAP Section 3.30-B-6(b) and 3.30-B-8, and CZR Section 313-38.1, because the approved development is not an allowable use in wetlands and fails to demonstrate that it fully identifies and limits the extent of impermissible encroachment into wetlands. Even if the approved development does not encroach directly into wetlands, the development may encroach into area needed as part of the development setback from wetlands, raising a substantial issue of conformance with the wetland buffer policies described more fully in the analysis of the other appeal contentions below.

**b. There are alternative site development configurations that would provide for a larger development setback from the wetland and better protection of the wetland and its habitat values**

Both appeals contend that there are alternative site development configurations that would provide for a larger development setback from the wetland and better protection of the wetland and its habitat values. As approved, the development incorporates a 17-foot development setback from the wetland on the property.

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<sup>8</sup> U.S. Army Corps of Engineers 2010.

The certified Land Use Plan limits development within “Wetland Buffer Areas” adjacent to wetlands and prohibits development within “Development Setbacks” from wetlands. The Humboldt County LCP is unique in that it distinguishes between the terms “Wetland Buffer Area,” and “Development Setback.” A wetland buffer area usually encompasses a larger area than the development setback. Development may occur within a wetland buffer area that does not degrade from the wetland or detract from the natural resource value and also meets certain additional requirements. Development is not allowed within the development setback area. In comparison, in other LCPs and in the Commission’s review of projects within its retained jurisdiction, the term “wetland buffer” is often used to refer to an area where no development is allowed in the manner that the Humboldt County LCP uses the term development setback.

Section 3.30-B-6(a) of the HBAP states in part that *No land use or development shall be permitted in areas adjacent to coastal wetlands, called Wetland Buffer Areas, which degrade the wetland or detract from the natural resource value.* The policy goes on to define Wetland Buffer Areas, which in the case of the subject site include *The area between a wetland and the nearest paved road or the 40 foot contour line (as determined from the 7.5’ USGS contour maps), whichever is the shortest distance* (Wetland Buffer Areas also are defined in the same way in Section 313-125.5 of the CZR – see Appendix C).

The subject site is located at an elevation of approximately 15 feet above mean sea level, and paved roads, including Humboldt Hill Road to the east and South Broadway to the west, are closer to the subject wetland than the 40-foot contour line shown on the 7.5’ USGS contour map, which is east of Humboldt Hill Road. Thus, the Wetland Buffer Area on the subject site includes the entirety of the subject property.

Section 3.30-B-6(b) of the HBAP states in part that *New development...shall be sited to retain a setback from the boundary of the wetland sufficient to prevent adverse effects to the wetland's habitat values.* Section 3.30-B-6(c) of the HBAP and Section 313-125.7.1 of the CZR prescribe development setbacks from wetlands within urban areas, such as the subject site, of *...either 100 feet or less than the average setback of existing development immediately adjacent as determined by the “string line method.”* Section 3.30-B-6(c) of the HBAP goes on to state: *That method shall be used which provides development setbacks similar to those occurring on adjacent parcels and adequately protects the wetland.*

Section 313-154 of the CZR defines “string line method of development setback” as follows:

*In a developed area where new construction is generally infilling and is otherwise consistent with the provisions of this ordinance, no part of a proposed new structure, including decks, shall be built closer to a wetland than a line drawn between the most seaward portions of the adjacent structures on adjacent lots.*

Essentially, Section 3.30-B-6(c) of the HBAP and Section 313-125.7.1 of the CZR require that the development setback be either 100 feet, or less than 100 feet if there is existing development closer to the wetland than 100 feet, in which case the setback shall be the average setback of existing development. No matter how the setback is established, the LCP requires that the

setback shall be sufficient to ensure that the wetland and its habitat values are adequately protected.

The County findings do not address what the setback would be if the string line method were applied. Based on review of aerial imagery for the surrounding area as well as mapping of the wetland on the subject site in relation to property boundaries, the parcel to the south is undeveloped. Therefore there is no development the south within 100 feet of the mapped wetland. The parcel to the north, owned by Noga, is developed with a retail market and associated parking located over 100 feet north of the delineated wetland. The parcel to the east is developed with a mobile home park that includes residential structures that appear to be approximately 50 feet from the delineated wetland. South Broadway, which borders the property to the west, is located approximately 80 feet from the delineated wetland (existing development on the property across South Broadway west of the subject site is located over 100 feet from the mapped wetland). Thus, applying the string line method to the residential structures at the mobile home park which are the closest existing structures to the wetland would appear to yield a development setback of approximately 50 feet.

As shown on the approved plans (Exhibit 2), the wetland is located within the southwestern portion of the subject parcel. If a development setback of approximately 50 feet were applied to the wetland, it appears that roughly the northern of 40% to 50% of the property would be outside of the string line development setback and would be available for development.

In approving the development with a 17-foot development setback from the wetland, the County findings do not discuss the alternative of applying a 100-foot setback to the site development plan or a setback based on the string line method consistent with Section 3.30-B-6(c). Instead, the discussion of alternatives in the County findings for approval includes the following:

“The project proposes to develop a parcel that was subdivided for the purposes of future commercial development. The parcel, including the wetland area, has been previously disturbed by the dumping of fill, asphalt scrap, off road vehicle traffic and parking. The proposed project will result in the enhancement and restoration of the degraded wetland and therefore be less environmentally damaging than the "no project" alternative.”

The County does not consider alternative uses or site configurations that may involve smaller development footprints. The site is designated for General Commercial uses, which, as defined in Chapter 4 of the HBAP, include, among other uses, retail sales, retail services, office and professional uses as principal uses. The coastal zoning regulations further provide for a variety of principal uses allowed in the Commercial General zoning district (Section 313-2.2). Thus, if the particular design requirements for the approved Dollar General store call for a size and configuration of building and associated development that does not fit within the area of the site available for development outside of the approximately 50-foot development setback from the wetland on the property, the site may still be developable for other retail stores, retail services, offices, and other principal permitted uses and meet the required approximately 50-foot development setback. Many commercial establishments and office and professional uses do not require a development footprint as large as the approved 9,100-square-foot Dollar General store

and its associated paved parking, access ways, sidewalks, curve that occupy over 10,000 square feet of additional space. As no analysis of alternative uses and development configurations was performed to establish that principally permitted uses could be feasibly developed within the required setback, the appeals raise a substantial issues of whether the approved development conforms with the requirements of Section 3.30-B-6(c) of the HBAP and Section 313-125.7.1 of the CZR that the development setback be either 100 feet, or less than 100 feet if there is existing development closer to the wetland than 100 feet, in which case the setback shall be the average setback of existing development (string line method).

The only instance when the certified LCP allows a development setback from wetlands that is less than 100 feet or a lesser distance established by use of the sting line method (approximately 50 feet in this case) is if development of the approved use and all other principal uses at the site would be precluded, and the reduced setback would not adversely affect the wetland habitat values and would be compatible with the continuance of the wetland. In such cases, the reduced setback must still be the maximum feasible. Section 3.30-B-6(e) of the HBAP allows for a reduction of the prescribed (100-foot or reduced based on string line method) setback in limited cases only (emphasis added):

*In both urban and rural areas, setbacks of less than the distance specified above may be permitted only when the prescribed buffer would prohibit development of the site for principal use for which it is designated. Any such reduction in setback shall still retain the maximum setback feasible, and may require mitigation measures, in addition to those specified below, to ensure new development does not adversely affect the wetland's habitat values.*

In addition, Section 313-125.7.3 of the CZR requires that any reduction of the required setback can only be allowed when it can be demonstrated that a setback of less than the distance specified will not result in significant adverse impacts to the wetland habitat and will be compatible with the continuance of such habitats

As discussed above, the County findings do not include any analysis of alternatives to conclude that the required setback would prohibit development of the site for the principal use. Furthermore, even if it could be shown that no other principal permitted use could be developed at the site within the approximately 50-foot string line development setback, the County findings do not explain that the reduction in the required setback down to 17 feet still retains the maximum setback feasible, as required by HBAP Section 3.30-B-6(e). The County findings approving the reduced setback state in part:

“...Per Section 313-125.7.3 development within the wetland buffer may be sited closer than 100 feet (or the average setback of existing development using the string line method) from the wetland feature. This accommodation may be used if it can be shown that 1) the lesser setback will not result in a significant adverse effect to the wetland habitat and will be compatible with the continuance of such habitat; and 2) additional mitigation measures may be required to ensure that new development does not adversely affect habitat values...”

As previously discussed, the applicant's biologist prepared a Wetland Protection Plan (dated as revised in June of 2016) proposing to avoid and protect the wetland from development impacts with an average wetland setback of approximately 17 feet (for a total setback area of approximately 1,889 square feet around the delineated wetland). The wetland and its protected setback area would be surrounded on all sides with the new commercial building and parking areas. The goals of the wetland protection plan are described in the plan as follows:

"The goals outlined within this plan are to protect the existing wetland during and after development of the site, and to enhance buffer conditions to favor native wetland species. The objective will be to maintain a shaded seasonal wetland with native herb and shrub canopy layers. The wetland will continue to function for groundwater percolation and will retain escape cover with seasonally moist soils, foraging opportunities for seed and fruit eating birds, and nesting opportunities for songbirds."

In reference to the size of the wetland setback area, the plan states (emphasis added):

"The seasonal wetland will be protected by a vegetated buffer 13 times its area with setbacks from the development of 16.49 ft. to the north, 17.03 ft. to the west, and 20.11 ft. to the south. The total buffer area and wetland area is approximately 1,889 sq. ft. (0.04 acres) in extent. The buffer size was determined by the maximum feasible set-aside for avoidance. Biologically the buffer size is mitigated by the minimal size and depth of the wetland, the lack of native plants or biologically significant habitat in its current surroundings, the low susceptibility of the level ground to erosion, and the minimal potential for significant wildlife use in the existing wetland.

"The hydrology of the wetland set-aside will be driven by direct precipitation, some adjacent run-off from sidewalks, and augmented by roof runoff which is channeled from the rear of the building into a vegetated swale and which overflows into the wetland area through curb openings..."

Neither the County findings nor the Wetland Protection Plan discuss the potential impacts to the wetland from the future commercial development, but rather the size of the setback area was determined "by the maximum feasible set-aside for avoidance" by the applicant for the particular project approved by the County. Furthermore, neither the wetland protection plan nor the County findings analyze other development configurations for the approved Dollar General store or other principally permitted development and uses to demonstrate that 17 feet is the maximum feasible setback that can be provided.

Therefore, because the degree of factual support for the County's decision is low, the protection of coastal wetlands is an issue of statewide concern, and there is precedential value to the County's decision with respect to future interpretations of the LCP, the appeal raises a substantial issue of conformity of the approved development with the wetland protection policies of the LCP, including but not limited to HBAP Section 3.30-B-6(b), (c) and (e).

**c. The reduced wetland setback of approximately 17 feet and the required mitigation measures will be insufficient to protect the delineated wetland and its habitat values**

Both appeals contend that the approved reduced setback of approximately 17 feet for new development from the wetland will be insufficient to protect the delineated wetland and its habitat values. Both appeals also contend that mitigation measures required by the permit are in some cases not specific enough, may not be feasible to implement, and will be inadequate to protect wetland habitat values. Both of these contentions relate to Section 3.30-B-6 of the HBAP, and each raises a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP.

As previously discussed, the entirety of the subject property is within the Wetland Buffer Area as defined by the LCP (Section 3.30-B-6(a) of the HBAP and Section 313-125.5 of the CZR). Section 3.30-B-6(f) of the HBAP and Section 313-125.9 of the CZR list various mitigation measures that are required for all new development within the Wetland Buffer Area, including, but not limited to, the following: (1) not more than 25% of the lot surface shall be effectively impervious; (2) the release rate of storm runoff to adjacent wetland shall not exceed the natural rate of storm runoff for a 50 year storm of 10 minute duration; (3) storm water outfalls, culverts, gutters, and the like shall be dissipated; and (4) development and construction shall minimize cut and fill operations and erosion and sedimentation potentials through construction of temporary and permanent sediment basins, seeding or planting bare soil, diversion of runoff away from graded areas and areas heavily used during construction, and, when feasible, avoidance of grading during the rainy season (November through April).

As discussed above, the County granted its approval of CDP 14-033 subject to 23 special conditions, including, but not limited to, conditions requiring (1) submittal of a drainage plan approved by the County Department of Public Works that incorporates Low Impact Development (LID) techniques and complies with the State Water Board's Phase II Small Municipal Separate Storm Sewer System (MS4) Program; (2) submittal of a lighting plan that provides for minimizing glare and off-site impacts of light trespass; (3) implementation of all mitigation measures set forth in the Mitigated Negative Declaration adopted for the project, including measures related to protection of the on-site palustrine wetland, and enhancement of the wetland buffer with native trees and shrubs as described above; and (4) implementation of various additional LID measures required by Section 3.30-B-6(f) of the HBAP, such as (a) restricting the total amount of impervious lot surface to 25% or less, (b) the release rate of storm runoff to adjacent wetlands shall not exceed the natural rate of storm runoff for a 50-year storm of 10-minute duration, (c) stormwater outfalls, culverts, and gutters shall be dissipated, and (d) bare soils shall be seeded or planted following construction.

Although the approved project includes required mitigation measures to avoid the wetland and enhance the wetland buffer area, there is no evidence in the County findings demonstrating (a) that the various mitigation measures required by HBAP Section 3.30-B-6(f) and imposed as a condition of approval of the CDP are feasible to accomplish; and (b) that even with the various measures, the reduced setback distance of 17 feet will be adequate to protect the wetland and its

habitat values as required by the certified LCP, including, but not limited to, HBAP Section 3.30, HBAP Section 3.30-B-6(a), (b), (c), and (e) and CZR Sections 313-38.1 and 312-39.15.

It's not clear that the mitigation measures required by HBAP Section 3.30-B-6(f) and imposed as a condition of approval of the CDP are feasible to implement. For example, Section 3.30-B-6(f)(1) requires that for all new development within Wetland Buffer Areas, not more than 25% of the lot surface shall be effectively impervious. Twenty-five percent of the 0.87-acre (37,897-square-foot) lot equates to an area of approximately 9,474 square feet. Thus, according to the LCP requirements and the condition of approval imposed by the County, not more than 9,474 square feet of the 0.87-acre lot shall be effectively impervious (and approximately 28,423 square feet of the subject lot shall consist of pervious surfaces). The approved site plan shows impervious surfaces, including the approximately 9,100-square-foot building and over 10,000 square feet of asphalt and concrete parking lot, curbs, and sidewalks, covering approximately 80 percent of the subject site. It is highly unlikely that the applicant could achieve the impervious surface standard by using porous pavement everywhere on the subject site except for the building itself. In fact, in the County's October 11, 2016 staff report presented to the Board of Supervisors at the local appeal hearing, in response to Commission staff comments on the project recommending that porous pavement be used to reduce the amount of proposed hardscape, County staff noted that "The applicant has chosen to not include porous pavement in the proposed project due to high cost and poor durability" (see Exhibit 3, page 29). Thus, there is a lack of factual support for the County's approval in requiring the project to conform to standards that appear not to be feasible.

Another example wherein it is not clear whether the mitigation measures required by HBAP Section 3.30-B-6(f) and imposed as a condition of approval of the CDP are feasible to accomplish relates to Section 3.30-B-6(f)(2) which requires that the release rate of storm runoff to adjacent wetlands shall not exceed the natural rate of storm runoff for a 50 year storm of 10 minute duration. Neither the County's findings nor conditions address the ability of the approved site design to meet this standard; rather, the County included a condition requiring that the applicant submit a drainage plan approved by the County Department of Public Works that incorporates Low Impact Development (LID) techniques and complies with the State Water Board's Phase II Small Municipal Separate Storm Sewer System (MS4) Program. The condition does not impose the standard required by Section 3.30-B-6(f)(2) for development within Wetland Buffer Areas as part of the drainage plan condition, but only vaguely states that the drainage plan should incorporate LID techniques. A description, including supporting calculations, of Best Management Practices (BMPs) that have been sized and designed to infiltrate, retain, or treat the minimum amount of stormwater runoff is needed to demonstrate compliance with the LCP policy, and such information appears to be lacking from the County's findings for approval.

Thus, the appeal contention that mitigation measures required within the Wetland Buffer Area are not feasible to successfully implement raises a substantial issue of conformance of the approved project with HBAP Section 3.30-B-6(f) and Section 313-125.9 of the CZR.

Even if the County had made findings that the mitigation measures required by HBAP Section 3.30-B-6(f) and Section 313-125.9 of the CZR for development within Wetland Buffer Areas could be accomplished, the County's approval fails to demonstrate that the reduced setback



distance of 17 feet will be adequate to protect the wetland and its habitat values as is required by the LCP. Various LCP provisions require the projection of wetlands and ESHA and require that new development adjacent to wetlands and ESHA shall be sited such that it will not degrade the adjacent habitat area (e.g., see Coastal Act Section 30240(b) codified in HBAP Section 3.30, HBAP Section 3.30-B-6(a), (b), (c), and (e) and CZR Sections 312-39.15, 313-38.1, and 313-125).

The County-approved project allows for surrounding the wetland on all sides with new development, including the new building and surrounding paved parking areas, curbs, and sidewalks. As previously discussed, the applicant's wetland consultant prepared a wetland protection plan proposing to avoid and protect the wetland from development impacts with an average wetland setback of approximately 17 feet (for a total buffer area of approximately 1,889 square feet around the delineated wetland).

The County findings for approval of the reduced wetland setback as adequate to protect the wetland habitat state the following:

“The 150-square-foot wetland will be buffered by an area 13 times its size. The minimum setback to parking areas is approximately 16 feet. The wetland and buffer area will be separated from foot and vehicular traffic by a permanent post and cable fence. A concrete curb will encircle the wetland buffer to prevent parking area runoff from entering the wetland. During construction, the wetland and buffer will be protected with high visibility fencing and remain undisturbed. After construction, the wetland and buffer will be planted with native, locally sourced species and monitored and maintained to ensure the plantings survive...”

Although the approved plans require enhancement of the wetland buffer with the planting of appropriate native species and the protection of the area from human intrusion by requiring the installation of a barrier fence around the buffer area, the findings do not address the fact that artificial lights and human-related noise will permeate the wetland from close proximity on all sides. Artificial night lighting can have a variety of significant direct and cumulative effects on flora and fauna, including disruption of light-dark photosynthesis cycles and circadian rhythms, disruption of foraging behaviors and increased risks of predation, and inference with vision and migratory orientation. These impacts can result in reductions in biological productivity, reduce the population of otherwise threatened, endangered, or rare species, elevate incidences of collisions between birds and structures, or cause large numbers of arthropods to fixate on the lighting source attraction to the point of fatal exhaustion, negatively affecting their populations and reproductive success, as well as the food web they support. Although the County's approval includes a condition requiring submittal of a lighting plan that addresses the amount of light to be used, minimizes glare and off-site impacts of light trespass, and provides for energy conservation by reducing the amount of light during non-business hours, there is no requirement that the lighting plan be designed to minimize light intrusion into the wetland and its associated buffer. Also, no evidence has been presented demonstrating that a 17-foot-wide buffer is sufficient to protect the wetland habitat values from the minimum amount of lighting required by the project for safety, security, and facility advertising (signage).

Thus, because the degree of factual support for the County's decision is low, the protection of coastal wetlands is an issue of statewide concern, and there is precedential value to the County's decision with respect to future interpretations of the LCP, the appeal contention that the reduced setback distance of 17 feet will be adequate to protect the wetland and its habitat values raises a substantial issue of conformance of the approved project with the certified LCP, including, but not limited to, HBAP Section 3.30, HBAP Section 3.30-B-6(a), (b), (c), and (e) and CZR Sections 312-39.15, 313-38.1, and 313-125.

## **2. Contentions Raising NO Substantial Issue:**

### **a. Legal interest in subject property**

As previously discussed, the Noga appeal contends that a portion of the approved project is on land (a strip of state-relinquished roadway) for which neither the applicant nor the property owner holds sufficient legal interest to be able to undertake the approved development. The appeal contends that the Noga's and customers of the Country Club Market on the Noga property north of the subject property have accrued prescriptive rights of ingress and egress across the strip of state-relinquished roadway on the subject property. The appeal does not allege inconsistencies of the County's approval with the public access policies of the Coastal Act, including Section 30211, which states that *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.* The strip of state-relinquished roadway on the subject property does not provide access to the sea, and the subject property is not located along or near a sandy beach. The subject property is well inland of the first through public road paralleling the sea.

Section 30601.5 of the Coastal Act requires the following (emphasis added):

*Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the commission shall not require the holder or owner of any superior interest in the property to join the applicant as coapplicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as coapplicant. In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.*

Section 312-5 of the County's certified Coastal Zoning Regulations (CZR), which addresses the requirements for the filing of permit applications, also requires demonstration of the applicant's legal interest in the property where development is proposed. Section 312-5.2.1 of the CZR reads in part as follows:

*5.2.1 Applications for permits and variances shall be filed with the Community Development Services Department on forms provided by the Department and*

*completed by the applicant...The application shall include all of the following information:*

...

*5.2.1.2 A legal description of the applicant's interest in all the property upon which work is to be performed.*

*5.2.1.3 A dated signature by the property owner, or owners, authorizing the processing of the application, and, if desired by the property owner, an authorization for a representative to bind the property owner in matters concerning the application...*

As discussed above in the Project History finding, there is evidence in the local record (e.g, a quitclaim deed and updated title report) demonstrating that the parcel is not encumbered by the alleged easements. The evidence demonstrates that the adjacent property owner to the north (Dan and Kelly Noga) recorded a quitclaim deed in May of 2007 relinquishing rights to the two sewer easements across the subject property to the owner of the subject property at that time (Humboldt Hill Property Partnership, who sold the property to the current owners, Cookman-Meyer Partnership, in 2011). An updated title report demonstrates that the subject parcel is not encumbered by the alleged easements. Although there is historical use of the subject parcel along the old highway strip to access the Noga's property, there is no deeded access over the subject property for the benefit of the Noga's property.

Further, when Mr. Noga obtained a permit from the County to subdivide the subject property and the two adjacent properties into the current lot configuration,<sup>9</sup> neither the final parcel map nor the approved development plan for the subject lot depicted or included any requirement for the maintenance of the alleged ingress/egress right-of-way easement across the subject property either for general public use or to serve the market on the northerly parcel still owned by Mr. Noga. The alleged easement is not one of the approved ingress and egress routes adopted in connection with the final subdivision map and imposed as a result of the Development Plan that was a required condition of approval of the CDP for the subdivision.

Finally, no evidence has been presented that a court has determined to date that a public prescriptive right for ingress and egress over the old highway exists. The use of the old highway is not essential for access to the Country Club market; instead, customer access is available to the market directly off of South Broadway as well as off of Humboldt Hill Road. As mentioned above, the Noga's have filed a lawsuit for quiet title and promissory estoppel against the subject property owners, which currently is pending in Humboldt County Superior Court. Should a judge in the future determine that a prescriptive easement for customer ingress and egress is, in fact, valid, the County determined that the primary drive aisle in the approved parking lot plan would

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<sup>9</sup> In July of 2005, the County approved CDP application CDP-03-68 submitted by Dan Noga for the division of a 1.93-acre parcel into three parcels: (1) the subject 0.87-acre undeveloped parcel; (2) a 0.38-acre parcel to the north of the subject parcel, currently owned by Dan and Kelly Noga and developed with an existing commercial retail market; and (3) a 0.68-acre parcel to the south of the subject parcel that currently is undeveloped but for which a CDP application is pending with Humboldt County for the development of a 7,620-square-foot cabinet manufacturing shop on the parcel.

generally serve the purpose of maintaining the prescriptive ingress/egress rights while also providing access to the new commercial development on the subject property. In that case a parking exception would be required to allow for a reduction in the total number of parking spaces required, just as a parking exception was requested by the applicant and granted by the County for the approved project to provide for the protection of the wetland and associated buffer while still maintaining sufficient on-site parking to serve the commercial development.

Therefore, there is a high degree of legal and factual support for the County's decision that the development as approved is consistent with the CZR requirements that applications include evidence of the applicant's legal interest in all the property upon which work is to be performed. In addition, there is no precedential value to the County's decision with respect to future interpretations of the LCP. Moreover, this issue is a local issue unique to the local area that does not raise an issue of statewide significance. As such the Commission finds that the contention discussed above does not raise a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP.

## **G. CONCLUSION**

The County's decisions that (a) a larger development setback than 17 feet would prohibit development of the site for the principal use for which it is designated, (b) that the maximum setback feasible has been provided; and (c) the 17-foot wetland setback will be adequate to protect the wetland are not factually or legally supported. Further, the County did not consider alternative site designs that would allow for the development of the site for a principally permitted use while still maximizing the wetland setback as required by HBAP Section 3.30-B-6(e). The County inappropriately relied on Section 3.30-B-6(e) of the HBAP to allow for a reduction of the prescribed (100-foot) setback without making the required findings that requiring the prescribed setback would prohibit the development of the site for its principal use. In addition, the County's findings did not demonstrate that the various LID measures required by 3.30-B-6(f) of the HBAP for development within Wetland Buffer Areas would be feasible to implement or that the measures would be sufficient to protect the wetland and its habitat values. As the protection of wetlands is an issue of statewide significance, and there is precedential value to the County's decision with respect to future interpretations of the LCP, the Commission finds that the contentions discussed above raise a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP.

## **H. INFORMATION NEEDED FOR DE NOVO REVIEW OF APPLICATION**

Section 30621 of the Coastal Act instructs the Commission to provide for a *de novo* hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the *de novo* hearing to a subsequent date. The *de novo* portion of the appeal hearing must be continued because the Commission does not have sufficient information to determine what, if any, development can be approved, consistent with the certified LCP.

Given that the project the Commission will be considering *de novo* has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request additional information from the applicant needed to ultimately determine if

the project can be found to be consistent with the certified LCP. **Appendix D** contains a discussion of the information needed to evaluate the development.

Without the information discussed in Appendix D, the Commission cannot reach a final determination concerning the consistency of the project with the ESHA protection policies of the LCP, and the project's consistency with Coastal Act Section 30010. Therefore, before the Commission can act on the proposed project de novo, the applicant must submit all of the above-identified information.

## **APPENDIX A**

### **COMMISSION’S APPEAL JURISDICTION OVER THE PROJECT**

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs (Coastal Act Section 30603). Section 30603 states that an action taken by a local government on a CDP application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within 100 feet of any wetland or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the “principal permitted use” under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified LCP and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act, because portions of the approved development are located within 100 feet of a wetland. The applicant’s consultant delineated an approximately 150-square-foot seasonal palustrine wetland in the southern portion of the property. The approved development would be located as close as 17 feet from the delineated wetland. As the approved development is located within 100 feet of a wetland, the subject development is appealable to the Commission pursuant to Section 30603(a)(2) of the Coastal Act.

The Coastal Commission’s North Coast District Office received the County’s Notice of Final Local Action (**Exhibit 3**) on November 18, 2016, after the Board of Supervisors denied the local appeal of the permit filed by Dan and Kelly Noga. The Commission’s ten working day appeal period began on November 21, 2016 and ran through December 6, 2016. On December 5, 2016, the Commission received two separate appeals of the County’s approval from (1) Dan and Kelly Noga c/o Bradford C. Floyd, Esq. (Exhibit 4), and (2) Kimberly A. Tays (**Exhibit 5**). Both appeals were filed in a timely manner, within 10 working days of receipt by the Commission of the County’s Notice of Final Action.

**APPENDIX B**  
**SUBSTANTIVE FILE DOCUMENTS**

Humboldt County Local Coastal Program (Humboldt Bay Area Plan and Coastal Zoning Regulations)

Appeal File No. A-1-HUM-16-0101, including local record for Humboldt County Coastal Development Permit No. CDP 14-033

Humboldt County CDP-03-68 (Noga) approved July 2005 for the division of a 1.93-acre parcel into three parcels: (1) the subject 0.87-acre undeveloped parcel; (2) a 0.38-acre parcel to the north of the subject parcel, currently owned by Dan and Kelly Noga and developed with an existing commercial retail market; and (3) a 0.68-acre parcel to the south of the subject parcel.

Natural Resources Conservation Service List of Hydric Soils accessible at:

<https://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/use/hydric/>

Wetland Training Institute, Inc. 1995. Field Guide for Wetland Delineation; 1987 Corps of Engineers Manual, Glenwood, NM. WTI 02-1 143 pp.

U.S. Army Corps of Engineers. January 1987. Corps of Engineers Wetland Delineation Manual. Technical Report Y-87-1. Environmental Laboratory, Vicksburg, MS.

U.S. Army Corps of Engineers. May 2010. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0). U.S. Army Engineer Research and Development Center, Environmental Laboratory, Vicksburg, MS.

## **Appendix C**

### **EXCERPTS FROM THE HUMBOLDT COUNTY CERTIFIED LCP**

#### **Relevant Policies from the Humboldt Bay Area Plan (LUP)**

Note: Emphasis added

#### *3.30 NATURAL RESOURCE PROTECTION POLICIES AND STANDARDS*

*\*\*\*<sup>10</sup> 30240. (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

*\*\*\* 30233. (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland; provided, however, that in no event shall the size of the wetland area used for such boating facility, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, be greater than 25 percent of the total wetland area to be restored.*
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities.*
- (5) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*

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<sup>10</sup> The policies designated with three asterisks are Coastal Act policies that have been incorporated into the LCP as LCP policies.



- (6) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (7) *Restoration purposes.*
- (8) *Nature study, aquaculture, or similar resource-dependent activities.*

*(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge soils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable longshore current systems.*

*(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetlands or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.*

#### A. *PLANNED USES*

...

*All of the wetlands identified within the Humboldt Bay Planning Area (see Section 3.30B below for wetland identification policies) have been designated Agriculture Exclusive, Coastal Dependent Industrial, Natural Resources, or Resource Dependent land use. The areas designated "Resource Dependent," although most of them are existing wetlands, are areas potentially suitable for development (see Section of Industrial policies) due to their proximity to existing industrial land uses. Such development shall only occur if it is the least environmentally damaging alternative, and in accordance with mitigation policies outlines in Section 30607.1 of the Coastal Act (see above \*\*\*). Such identified locations include: an area between the PG&E power plant and Highway 101, several areas in the Spruce Point/South Broadway area, two areas just north and south of Fields Landing. These areas are also suitable as potential wetland restoration sites because their fragmented nature and impacts from nearby land uses threaten their continued viability as wetlands. In particular, the Spruce Point/South Broadway wetlands deserve study as a degraded wetland area that can best be restored by consolidation of wetland areas and upland areas in separate locations, so orderly development of this area can proceed.*

...

#### B. *DEVELOPMENT POLICIES*

*Wetlands and farmed wetlands in the Humboldt Bay Planning Area have been mapped according to information presented from four different sources: (1) U.S. Fish and Wildlife Service Wetland Maps, (2) habitat maps prepared for the U.S. Army Corps "Humboldt Bay Wetlands Review and Baylands analysis," (3) the California Department of Fish and Game's "The Natural Resources of Humboldt Bay", (4) farmed wetland maps as prepared by the California Coastal Commission, and (5) field checking by Local Coastal Program staff.*

...

1. *Identification of Environmentally Sensitive Habitats*

- a. Environmentally sensitive habitats within the Humboldt Bay Planning Area shall include:
  - (1) Wetlands and estuaries, including Humboldt Bay and the mouth of the Mad River.
  - (2) Vegetated dunes along the North Spit to the Mad River and along the South Spit.
  - (3) Rivers, creeks, gulches, sloughs and associated riparian habitats, including Mad River Slough, Ryan Slough, Eureka Slough, Freshwater Slough, Liscom Slough, Fay Slough, Elk River, Salmon Creek, and other streams.
  - (4) Critical habitats for rare and endangered species listed on state or federal lists.
- b. Proposed development occurring within areas containing these sensitive habitats shall be subject to conditions and requirements of this chapter. Should an area proposed for development appear, upon examination of the maps to be within or contain the indicated habitat, but upon field inspection is found not to contain the indicated habitat, then the development is exempt from requirements of the section. As an interim measure for habitat areas not currently identified on the maps, information obtained during the CEQA review process will be used by the County in reviewing applications for coastal development permits. The review of these sensitive habitat areas and the identification of appropriate land uses and/or mitigation measures shall be in cooperation with the Department of Fish and Game. The County shall review requests to amend the Environmentally Sensitive Habitat Maps in terms of the entire plan proposal and supporting policies. Accommodation of new resource information on the Environmentally Sensitive Habitat Maps may also require amendments to the certified land use plan and zoning.
  - (1) Wetland areas shall be identified according to the Coastal Act's definitions of wetlands (see Chapter 5 definitions). Transitional agricultural lands shall be identified as diked former tidal marshes and clearly defined tidal sloughs now farmed.
- c. *Where there is dispute over the boundary or location of an environmentally sensitive habitat, the following information may be requested of the applicant:*
  - (1) *a base map delineating topographic lines, adjacent roads, location of dikes, levees, flood control channels and tide gates*
  - (2) *vegetation map*
  - (3) *soils map*

*Review of this information shall be in cooperation with the Department of Fish and Game and the County's determination shall be based upon specific factual findings as to whether an area is or is not an environmentally sensitive habitat area based on the criteria and definitions above.*

....

## 5. Wetland Restoration

- a. *Wetland Restoration Study Areas – The County has identified several areas that qualify as potential wetland restoration areas; these areas are shown on the Resource Protection Maps (pages 3-138 through 3-147). Their designations as “wetland restoration study areas” are not intended to indicate that agriculture is an undesirable use in these locations, but that use as a restoration site is feasible. For the South Bay areas so designated, restoration is anticipated, consistent with the Humboldt Bay National Wildlife Management Plan. For the Mad River Slough and Freshwater Creek/Eureka Slough areas, the designation is used to indicate opportunities for wetland restoration, particularly as mitigation sites. For the Spruce Point/South Broadway area, the designation is used to indicate that the site merits investigation as a degraded wetland as discussed in Subsection b. “Degraded Wetlands,” below.*

*It should be noted that wetland restoration opportunities are not limited to the identified Wetland Restoration Study Areas; under Section 3.30B(2), wetland restoration is allowed in any farmed wetland. There are about 6,000 acres of farmed wetland in the planning area, so opportunities for restoration are quite extensive.*

*Wetland restoration projects should take place only when there is a willing seller, and where the project will not interfere with adjacent agricultural operations.*

*In wetland restoration projects not specifically required by Section 30607.1 of the Coastal Act, it is the policy of the County to encourage “mitigation banking” to facilitate projects permitted under Section 30233 of the Coastal Act.*

...

## 6. Wetland Buffer

- a. *No land use or development shall be permitted in areas adjacent to coastal wetlands, called Wetland Buffer Areas, which degrade the wetland or detract from the natural resource value.* Wetland Buffer Areas shall be defined as:
  - (1) *The area between a wetland and the nearest paved road or the 40 foot contour line (as determined from the 7.5' USGS contour maps), whichever is the shortest distance, or*
  - (2) *250 feet from the wetland, where the nearest paved road or 40 foot contour exceed this distance.*
  - (3) *Transitional Agricultural lands designated Agriculture Exclusive shall be excluded from the wetland buffer.*

- b. New development, except for
  - (1) development permitted in 3.30 B2, 3, and 4;
  - (2) wells in rural areas; and
  - (3) new fencing, so long as it would not impede the natural drainage,  
shall be sited to retain a setback from the boundary of the wetland sufficient to  
prevent adverse effects to the wetland's habitat values.
- c. Within an Urban Limit Line, the setback shall be either 100 feet or less than  
the average setback of existing development immediately adjacent as  
determined by the "string line method". That method shall be used which  
provides development setbacks similar to those occurring on adjacent parcels  
and adequately protects the wetland.
- d. Outside an Urban Limit Line, the setback shall be between 100 and 200 feet,  
depending upon the size and sensitivity of the wetland, drainage boundaries,  
vegetation, adjacent uses, and the potential impacts of the project on the  
wetland habitat values. The precise width of the setback shall be sufficient to  
prevent significant effects to the wetland.
- e. In both urban and rural areas, setbacks of less than the distance specified  
above may be permitted only when the prescribed buffer would prohibit  
development of the site for principal use for which it is designated. Any such  
reduction in setback shall still retain the maximum setback feasible, and may  
require mitigation measures, in addition to those specified below, to ensure  
new development does not adversely affect the wetland's habitat values.
- f. All new development within the wetland buffer shall include the following  
mitigation measures:
  - (1) Not more than 25% of the lot surface shall be effectively impervious.
  - (2) The release rate of storm runoff to adjacent wetland shall not exceed the  
natural rate of storm runoff for a 50 year storm of 10 minute duration.
  - (3) Storm water outfalls, culverts, gutters, and the like shall be dissipated.
  - (4) Septic systems or alternative waste disposal systems must meet standards of  
the Humboldt-Del Norte Health Department and the Regional Water  
Quality Control Board.
  - (5) Areas disturbed during construction, grading, etc., within 100 feet of the  
mean high water line, shall be restored to original contours and sufficiently  
and promptly replanted with vegetation naturally occurring in the  
immediate area.
  - (6) Development and construction shall minimize cut and fill operations and  
erosion and sedimentation potentials through construction of temporary  
and permanent sediment basins, seeding or planting bare soil, diversion of  
runoff away from graded areas and areas heavily used during construction.

and, when feasible, avoidance of grading during the rainy season (November through April).

- g. The County shall request the Department of Fish and Game to review plans for development within 200 feet of the boundary of the wetland.

....

#### 8. Coastal Streams, Riparian Vegetation and Marine Resources

\*\*\* 30230. Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

\*\*\* 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

....

## CHAPTER 5

### DEFINITIONS

....

“WETLANDS” – lands which may be covered periodically or permanently with shallow waters, including salt marshes, freshwater marshes, swamps, mudflats, fens and transitional agricultural lands. The County will use the U.S. Fish and Wildlife Service’s Classification of Wetland and Deepwater Habitats of the United States as a guide to wetland identification. In general, lands which meet the classifications definition of subtidal estuarine aquatic beds, estuarine intertidal flats and emergent habitats, and palustrine emergent and non- riparian palustrine shrub-scrub and forested habitats will be considered wetlands.

## Relevant Standards of the Coastal Zoning Regulations (IP)

Emphasis added

<b>313-2.2</b>		<b>CG: COMMERCIAL GENERAL</b>	
<b>Use Type</b>		<b>Principal Permitted Use</b>	
Civic Use Types		<u>Minor Utilities</u>	
		<u>Essential Services</u>	
		<u>Administrative</u>	
		<u>Non-Assembly Cultural</u>	
Commercial Use Types		<u>Retail Sales</u>	
		<u>Retail Services</u>	
		<u>Automotive, Sales, Service and Repair</u>	
		<u>Office and Professional Service</u>	
Industrial Use Types*		<u>Cottage Industry; subject to the Cottage Industry Regulations</u>	
<b>Use Type</b>		<b>Conditionally Permitted Use</b>	
Residential Use Types		Caretaker's Residence	
Civic Use Types		Community Assembly	
		Health Care Services	
		Extensive Impact Civic Use	
		Oil and Gas Pipelines; subject to Oil & Gas Pipelines Regulations	
		Major Electrical Distribution Lines; subject to Electrical Distribution Lines Regulations	
Commercial Use Types		Minor Generation and Distribution Facilities	
		Heavy Commercial	
		Warehousing Storage and Distribution	
		Transient Habitation	
Industrial Use Type*		Research/Light Industrial	
Natural Resource Use Type		Coastal Access Facilities	
Use Types Not Listed in This Table**		Any use not specifically enumerated in this Division, if it is similar to and compatible with the uses permitted in the CG zone.	

...

171.1 **Administrative.** *The Administrative Use Type includes the uses performed by public, public non-profit, parochial, and public utility administrative offices.*

...

171.3 **Cultural, Non-Assembly.** *The Non-Assembly Cultural Use Type includes the activities typically performed by the following institutions:*

171.3.1 *Public, parochial, and private non-profit museums and art galleries and similar organizations;*

171.3.2 *Public, parochial, and private non-profit libraries and observatories and similar institutions.*

...

**171.5 Essential Services.** *The Essential Services Use Type includes uses which are necessary to support principal development. Typical Essential Services uses include:*

171.5.1 *Fire and police stations;*

171.5.2 *Ambulance services;*

171.5.3 *Post offices, excluding major processing centers;*

171.5.4 *Dumpster sites, solid waste transfer stations, and road maintenance yards;*

171.5.5 *Community wells, water storage tanks, and associated water treatment facilities.*

171.5.6 *Public, parochial and private day-care centers, family day care centers, nursery schools, elementary, junior high, and high schools.*

171.5.7 *Public and parochial parks, playgrounds and playing fields.*

...

**171.12 Utilities, Minor.** *The Minor Utilities Use Type includes the erection, construction, alteration or maintenance of private wells and on-site sewage disposal system, gas, electric and water.*

...

**172.1 Automotive Sales, Service and Repair.** *The Automotive Sales, Service and Repair Use Type includes the sales from the premises of motor vehicles, accessory parts and supplies, and the provision of services generally required in the operation and maintenance of motor vehicles; the major repair or painting of motor vehicles, including body work and installation of major accessories, as well as the washing and polishing of motor vehicles. Auto sales from the premises are also included.*

...

**172.8 Office and Professional Services.** *The Office and Professional Services Use Type includes administrative activities of private, profit-oriented administrative firms; radio and television broadcasting stations and offices; medical, dental and related services; professional, consultative, and financial services.*

...

**172.12 Retail Sales.** *The Retail Sales Use Type includes the rental or sale, from the premises, of various consumer goods including food, household goods, business supplies, small equipment, agricultural supplies, and parts and accessories, and incidental storage activities.*

**172.13 Retail Service.** *The Retail Service Use Type includes the provision of services other than those classified as Civic Uses, including personal service, business service, eating and drinking establishments, automobile gas or filling station, minor automotive repair, group assembly for entertainment or athletic events, animal care and treatment, and undertaking services.*

...

### 312-17.3 SUPPLEMENTAL FINDINGS

*In addition to the required findings for all permits and variances, the Hearing Officer may approve or conditionally approve an application for a Special Permit, Use Permit, Coastal Development Permit, or Planned Unit Development Permit only if the supplemental findings, as applicable, are made.*

*Those findings that apply throughout the County, within and outside of the coastal zone, are listed in Sections 312-18 through 312-29 (County-Wide). Those findings that are only applicable within the County's coastal zone are listed in Sections 312-30 through 312-49 (Coastal Zone).*

...

#### 312-39 SUPPLEMENTAL COASTAL RESOURCE PROTECTION IMPACT FINDINGS

...

#### 39.14 COASTAL WETLANDS

##### 39.14.1 All wetlands, with the exception of Pocket Marshes

39.14.1.1 *There is no less environmentally damaging feasible alternative;*

39.14.1.2 *The best mitigation measures feasible have been provided to minimize adverse environmental effects; and*

39.14.1.3 *The required mitigation will maintain or enhance the functional capacity of the wetland or estuary.*

#### 39.15 COASTAL WETLAND BUFFERS.

39.15.1 *Development will be sited and designed to prevent impacts which would significantly degrade wetland habitat areas, and shall be compatible with the continuance of such habitat areas; and*

39.15.2 *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms shall be maintained, and where feasible, restored.*

...

#### 313-38.1 W: COASTAL WETLAND AREAS

38.1.1 *Purpose. The purpose of these provisions is to establish regulations to provide that any development in coastal wetlands will not degrade the wetland, but will maintain optimum populations of marine or freshwater organisms and, where feasible, will enhance wetland resources.*

38.1.2 *Applicability of the Wetland Area Regulations. These Wetland Area Regulations shall apply to lands containing wetlands designated "W" on the Zoning Maps, and shall also apply to unmapped wetlands. These regulations shall not apply to lands designated "T - Transitional Agricultural Lands," which are subject to the Coastal Transitional Agricultural Lands Regulations.*

38.1.3 *Modifications Imposed by the Wetland Area Regulations. These regulations shall apply in addition to regulations imposed by the principal zone, development regulations, and other Special Area Combining Zone regulations. Wherever the provisions of these regulations conflict with or are inconsistent in application with any other regulation, the regulation most protective of wetland resources shall apply. Development requiring mitigation is also subject to supplemental application and review requirements in Chapter 2 of these regulations.*



38.1.4 *Consultation with Department of Fish and Game. The County shall request the California Department of Fish and Game to review development plans proposed within wetlands, and to respond within ten (10) working days of the referral.*

38.1.5 *Diking, Filling and Dredging. Permitted diking, filling and dredging shall be limited to the following developments:*

38.1.5.1 *Wetland restoration;*

38.1.5.2 *Hunting blinds and similar minor facilities;*

38.1.5.3 *In open coastal waters, other than wetlands, including estuaries, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide access and recreation opportunities.*

38.1.5.4 *In wetland areas only, entrance channels for new or expanded boating facilities.*

38.1.5.5 *Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*

38.1.5.6 *Access facilities consistent with the access inventory development recommendations of the Coastal Land Use Plans;*

38.1.5.7 *Aquaculture; however, upland support facilities that are not coastal-dependent shall not be located within designated Wetland Areas.*

38.1.5.8 *Coastal-Dependent Industrial Use Types subject to the Coastal-Dependent Industrial Development Regulations at Section 313-45.1.*

...

38.1.8 *Required Findings. The diking, filling, and dredging of wetlands shall be permitted only if the applicable Resource Protection Impact Findings in Chapter 2, Procedures, are made.*

38.1.9 *Required Mitigation.*

...

38.1.9.2 *If the project involves diking or filling of a wetland, required minimum mitigation measures shall include the following:*

38.1.9.2.1 *Either acquisition of equivalent areas of equal or greater biological productivity or opening up equivalent areas to tidal action.*

38.1.9.2.1.1 *A restoration plan shall be prepared, pursuant to the Wetland Restoration Plan Procedures in Chapter 2, Procedures, of these regulations, which includes provisions for purchase and restoration of an equivalent area of equal or greater biological productivity.*

38.1.9.2.1.2 *The mitigation site shall be purchased before the dike or fill development may proceed.*

38.1.9.2.1.3 *The site shall be protected permanently through the dedication of the land to a public agency capable of managing the resource or through open space easements or similar restrictions.*

38.1.9.2.1.4 *The restoration plan shall provide for appropriate public access to the restoration site.*

38.1.9.2.2 *Where no appropriate restoration sites are available, an in-lieu fee shall be required and paid to an appropriate public agency, which fee shall be of*

*sufficient value for the purchase and restoration of an area of equivalent productive value or equivalent surface area.*

*38.1.9.3 Mitigation measures shall not be required for temporary or short-term fill or diking, if a bond or other evidence of financial responsibility is provided to assure that restoration will be accomplished in the shortest feasible time. For the purposes of this section, "short-term" generally means that the fill or dikes would be removed immediately upon completion of the construction of the project necessitating the short-term fill or diking.*

...

### 313-64.1 VEGETATION REMOVAL, MAJOR

*64.1.1 Purpose. The purpose of these provisions is to: (1) preserve and protect major vegetation within the County Coastal Zone that directly and indirectly prevents soil erosion, landslide and flood hazard; (2) reduce runoff, provide windbreaks or provide protection to adjacent trees from irreparable wind damage; and (3) protect property values and the local economy by maintaining the visual quality of the County, while respecting and recognizing individual rights to develop, maintain, and enjoy private property to the fullest possible extent.*

*64.1.2 Major Vegetation Removal Permitted With a Special Permit in All Zones as an Accessory Use. Major vegetation removal may be permitted with a Special Permit in all zones, as an accessory use associated with a specified principal or conditionally permitted use. Major vegetation removal may be permitted with a Special Permit in conjunction with or prior to the establishment of a principal or conditionally permitted use.*

*64.1.3 Applicability. These regulations shall apply to major vegetation removal as defined in this section, within the Humboldt County Coastal Zone, except that the following development shall be exempt:*

*64.1.3.1 Timber management and timber harvesting activities regulated by the California Department of Forestry and the Board of Forestry, and forest improvement activities carried out under the Forest Incentives Program (FIP), Agricultural Conservation Program (ACP), or California Forest Improvement Program (Cal FIP);*

*64.1.3.2 Major vegetation removal necessary to carry out activities authorized by: (1) an approved building permit, Coastal Development Permit, Use Permit, or Special Permit; or (2) satisfying improvement requirements of an approved subdivision;*

*64.1.3.3 Major vegetation removal subject to the Coastal Streams and Riparian Corridor regulations; and*

*64.1.3.4 Major vegetation removal associated with general agriculture, in zones where the General Agriculture use type is a principal permitted use, except where the Director determines that pursuant to subsection 313-64.1.4.3., that the major vegetation removal may result in a significant environmental impact.*

64.1.4 Definition of Major Vegetation Removal. For purposes of this section major vegetation removal shall be defined to include one or more of the following:

64.1.4.1 The removal of one or more trees with a circumference of thirty-eight inches (38") or more measured at four and one-half feet (4½') vertically above the ground;

64.1.4.2 The removal of trees within a total aggregate contiguous or non-contiguous area or areas exceeding 6,000 square feet, measured as the total of the area(s) located directly beneath the tree canopy; or

64.1.4.3 The Director may determine that a proposal to remove woody vegetation constitutes major vegetation removal if the Director finds that it may result in a significant environmental impact pursuant to this section. In making a finding that the proposed major vegetation removal may result in a significant environmental impact, the Director shall review the proposal and determine if any of the following conditions exist or are proposed:

64.1.4.3.1 The major vegetation removal involves the use of heavy equipment;

64.1.4.3.2 The major vegetation removal:

64.1.4.3.2.1 is proposed on either a steep slope (15% or greater), or on a slope designated on the Geological Map of the General Plan with slope stability index of "2" - moderate instability, or "3" - high instability; and

64.1.4.3.2.2 may result in soil erosion or landslide;

64.1.4.3.3 The major vegetation removal is located within or adjacent to an environmentally sensitive habitat as identified in the applicable coastal area plan; or

64.1.4.4 The major vegetation removal may result in significant exposure of adjacent trees to wind damage.

64.1.5 Appeal of the Director's Determination of Major Vegetation Removal. Appeals may be filed pursuant to the appeal procedures in Chapter 2, Section 312-13.

...

### 313-125 WETLAND BUFFER AREAS

125.1 Purpose. The purpose of these regulations is to ensure that any development permitted in lands adjacent to coastal wetlands will not degrade the wetland and detract from its natural resource value, and will incorporate such features into the development site design without significant impact.

125.2 Application of the Coastal Wetland Buffer Area Regulations. These regulations shall apply in the Coastal Zone to lands identified as meeting the definition for Wetland Buffer Areas in subsection 313-125.5, on a case-by-case basis, in accordance with the setback provisions of subsection 313-125.7.

125.3 Modifications Imposed by the Coastal Wetland Buffer Area Regulations. These regulations shall be in addition to regulations imposed by the principal zone development

*regulations, Special Area Combining Zone regulations, and other general regulations. Wherever the provisions of these regulations conflict with or are inconsistent in application with any other regulation, the most restrictive regulations most protective of wetland resources shall apply.*

*125.4 Consultation with Department of Fish and Game. The County shall request the California Department of Fish and Game to review development plans proposed within coastal wetland buffer areas, and to recommend, within ten (10) working days of the request, measures to mitigate disturbance of habitats.*

*125.5 Definitions. Wetland buffer areas shall be defined as:*

*125.5.1 The area between a wetland and the nearest paved road or the forty (40) foot contour line (as determined from the 7.5-minute USGS contour maps), whichever is the shortest distance; or*

*125.5.2 250 feet from the wetland, where the nearest paved road or forty foot (40') contour exceed this distance.*

*125.5.3 Transitional Agricultural Lands zoned AE are excluded from the wetland buffer.*

*125.6 Development Permitted Within Coastal Wetland Buffer Areas. The following uses and developments may be permitted anywhere within Coastal Wetland Buffer Areas:*

*125.6.1 Uses permitted in the NR - Natural Resources Zone;*

*125.6.2 Uses permitted in the Transitional Agricultural Land Regulations;*

*125.6.3 Uses permitted in the Coastal Wetland Regulations; and*

*125.6.4 Wells in rural areas.*

*125.7 Development Permitted Within Coastal Wetland Buffer Areas with Supplemental Setback. Developments not listed as permitted uses within subsection 313-125.6 may be permitted if they maintain the following setbacks from the boundary of the wetland:*

*125.7.1 Within an urban limit line: the setback from the boundaries of the wetland shall be either 100 feet or the average setback of existing development immediately adjacent as determined by the "stringline method" as described in the definitions in this Chapter, Section C: Index of Definitions of Language and Legal Terms.*

*125.7.2 Outside an urban limit line: The setback shall be between 100 and 200 feet, depending upon the size and sensitivity of the wetland, drainage boundaries, vegetation, adjacent uses, and the potential impacts of the project on the wetland habitat values. The precise width of the setback shall be sufficient to prevent significant effects to the wetland.*

*125.7.3 Reduction of Required Setback: In both urban and rural areas, setbacks of less than the distance specified in this section may be permitted only when:*

*125.7.3.1 The applicant for the proposed development demonstrates, to the satisfaction of the County, that a setback of less than the distance specified will not result in significant adverse impacts to the wetland habitat and will be compatible with the continuance of such habitats.*

125.7.3.2 Any such reduction in development setback may require mitigation measures, in addition to those specified below, to ensure new development does not adversely affect the wetland habitat values.

125.8 Required Findings. Development within Coastal Wetland Buffer Areas shall be permitted only if the applicable Resource Protection Impact Findings in Chapter 2, Procedures, Supplemental Findings (312-39.15), are made.

125.9 Required Mitigation. All development permitted within wetland buffer areas shall be required to include the following mitigation measures:

125.9.1 Coverage of the lot or parcel with impervious surfaces shall not exceed twenty-five percent (25%) of the total lot area;

125.9.2 The release rate of stormwater runoff to adjacent wetlands shall not exceed the natural rate of stormwater runoff for a 50-year storm of 10-minute duration;

125.9.3 Stormwater outfalls, culverts, gutters, and the like, shall be dissipated, and where feasible, screened;

125.9.4 Areas disturbed during construction, grading, etc., within 100 feet of the boundary of the wetland shall be restored to original contours and sufficiently and promptly replanted with vegetation naturally occurring in the immediate area;

125.9.5 Development and construction shall minimize cut-and-fill operations and erosion and sedimentation potential through construction of temporary and permanent sediment basins, seeding or planting bare soil, diversion of runoff away from grading areas and areas heavily used during construction, and, when feasible, avoidance of grading during the rainy season (November through April).

...

#### 313-154 DEFINITIONS (S)

...

Setback, Stringline Method of Development: In a developed area where new construction is generally infilling and is otherwise consistent with the provisions of this ordinance, no part of a proposed new structure, including decks, shall be built closer to a wetland than a line drawn between the most seaward portions of the adjacent structures on adjacent lots.

...

#### 313-158 DEFINITIONS (W)

*Wetlands: Lands within the County Coastal Zone that may be covered periodically or permanently with shallow waters, including salt marshes, freshwater marshes, swamps, mudflats, fens, and transitional agricultural lands. The County will use the U.S. Fish and Wildlife Service's Classification of Wetland and Deepwater Habitats of the United States as a guide to wetland identification. In general, lands which meet the classification's definition of subtidal estuarine aquatic beds, estuarine intertidal flats and emergent habitats, and palustrine emergent and non-riparian palustrine shrub-scrub and forested habitats will be considered wetlands.*

...

*Wetland, Boundary of: Either:*

- A. The boundary between land with predominately hydrophytic plant cover and land with predominantly mesophytic or xerophytic plant cover;*
- B. The boundary between soil that is predominately hydric and soil that is predominately nonhydric;*
- C. In the case of wetlands without vegetation or soils; the boundary between land that is flooded or saturated at some time of the growing season during years of normal precipitation and land that is not; or*
- D. The boundary between wetland and riparian habitats.*
- E. Areas with drained or filled hydric soils which are no longer capable of supporting hydrophytes are not considered wetlands, unless such areas were drained or filled in violation of this Code, or other local, State or Federal law.*

*Wetland Buffer Area: (See, Section 313-125, Wetland Buffer Areas.)*

...

*Wetland, Functional Capacity: The ability of the wetland or estuary to be self-sustaining and to maintain species diversity.*

...

## **APPENDIX D**

### **INFORMATION NEEDED FOR DE NOVO REVIEW OF APPLICATION**

Section 30621 of the Coastal Act instructs the Commission to provide for a *de novo* hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the *de novo* hearing to a subsequent date. The *de novo* portion of the appeal hearing must be continued because the Commission does not have sufficient information to determine what, if any, development can be approved, consistent with the certified LCP.

Given that the project the Commission will be considering *de novo* has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request additional information from the applicant needed to ultimately determine if the project can be found to be consistent with the certified LCP. Following is a list of the information needed to evaluate the development.

1. Supplemental wetland delineation. Because atypical conditions in soils, vegetation, and hydrology may have occurred at the time of the wetland delineation in February 2015, an additional evaluation of the site's soils, vegetation, and hydrology is needed to verify the wetland delineation boundary and ensure that all on-site wetlands are accurately delineated. The supplemental delineation should be conducted in accordance with the Army Corps of Engineers Guidance (Corps 1987 and 2010) by a qualified wetland delineator. Documentation of wetland vegetation indicator status should follow the most recent version of the National Wetland Plant List. Jurisdictional wetland determinations within the coastal zone should apply the Coastal Act definition of wetlands, as further defined by Section 13577 of the Commission's regulations. The wetland delineation should explain in detail and depict on a map that is drawn to scale the type and extent of coastal wetlands on the property. The supplemental evaluation should include additional sample points than the two originally conducted and should further evaluate any atypical conditions on the site according to the Corps' guidelines for evaluating problem areas.
2. Development setback determination. HBAP Section 3.30-B-6(c) requires that in urban areas, the development setback shall be either 100 feet or the average setback of existing development immediately adjacent as determined by the "string line method." The policy further states that *that method shall be used which provides development setbacks similar to those occurring on adjacent parcels and adequately protects the wetland.* The Commission needs (a) an analysis under HBAP Section 3.30-B-6(c) of what the development setback would be for the development using the "string line method," and (b) a plot plan of the site depicting both the 100-foot development setback and the string line development setback.
3. Alternatives analyses. The County, in its findings for approval of the project, relied on Section 3.30-B-6(e) to approve a reduced setback. This section allows for a relaxation in the prescribed setback distance only when needed to provide for lot development for its principal use. Based on the minimum area needed by Dollar General to construct a retail store and the necessary on-site parking, the County approved a development setback of only 17 feet. In

utilizing this section to approve a reduced setback, the County did not evaluate alternative site development configurations for the approved store and all other principal permitted uses that could be permitted on the site and that would provide for either the 100-foot development setback and the string line development setback. The Commission needs to receive an alternatives analysis that evaluates the feasibility of developing the site for its principal permitted uses (per Section 313-2.2 of the Coastal Zoning Regulations) while still maintaining the maximum wetland setback required by the certified LCP [HBAP Section 3.30-B-6(c) and/or Section 3.30-B-6(e), if applicable).

If the alternatives analysis described above demonstrates that both the approved use and all other principal uses would be precluded if the 100-foot and stringline-determined development setbacks were used and the setback must be reduced to ensure the site may be developed for a designated principal use of the site pursuant to HBAP Section 3.30-B-6(e), the Commission needs to receive an additional alternatives analysis that evaluates different development configurations for the approved use and all other principal uses to determine the maximum feasible setback that can be provided at the site that will (i) protect the wetland from surrounding development, including new commercial development on the subject property, and (ii) ensure that new development does not degrade the wetland habitat values. A qualified biologist should complete the necessary wetland setback evaluation.

4. Low impact development (LID) and drainage plans for development within the Wetland Buffer Area. The LCP (Section 3.30-B-6(f)) requires the implementation of various LID mitigation measures for development within areas around wetlands called Wetland Buffer Areas. On the subject site, the entirety of the property outside of the delineated wetland is considered the Wetland Buffer Area per Section 3.30-B-6(a) of the HBAP. The required mitigation measures include, but are not limited to, the following: (1) not more than 25% of the lot surface shall be effectively impervious; (2) the release rate of storm runoff to adjacent wetland shall not exceed the natural rate of storm runoff for a 50 year storm of 10 minute duration; (3) storm water outfalls, culverts, gutters, and the like shall be dissipated; and (4) development and construction shall minimize cut and fill operations and erosion and sedimentation potentials through construction of temporary and permanent sediment basins, seeding or planting bare soil, diversion of runoff away from graded areas and areas heavily used during construction, and, when feasible, avoidance of grading during the rainy season. An LID plan is needed for proposed development within the Wetland Buffer Area [as defined by HBAP Section 3.30-B-6(a)] that includes (a) supporting calculations and plans demonstrating that not more than 25% of the lot surface will be effectively impervious; (b) a description of LID strategies for post-development water quality protection, including, but not limited to, runoff control and treatment; (c) a site plan drawn to scale showing the property boundaries, building footprint, runoff flow directions, relevant drainage features, structural Best Management Practices (BMPs), impervious surfaces, permeable pavements, and landscaped areas; (d) a description of the BMPs that will be implemented and the LID approach to stormwater management that will be used, including a schedule for installation or implementation of all post-development BMPs; (e) a description and schedule for the ongoing management of all post-development BMPs (including operation, maintenance, inspection, and training) that may be necessary to perform for the life of the development, if required for the BMPs to function properly; (f) supporting calculations demonstrating that



proposed BMPs have been sized and designed to infiltrate, retain, or treat, at a minimum, the runoff produced by the 50-year storm event of 10-minute duration; (g) plans showing storm water outfalls, culverts, gutters, etc. affixed with energy dissipation devices; and (h) a list of measures and BMPs proposed to be undertaken during construction to minimize erosion and sediment discharge, minimize discharge of construction-related pollutants, and minimize other impacts associated with construction activities.

5. Updated exterior lighting plans. The LCP requires that development within Wetland Buffer Areas, which includes the entirety of the subject site, shall not degrade adjacent wetlands or detract from their natural resource value. The project approved by the County includes a condition requiring submittal of a Lighting Plan that addresses the amount of light to be used, which minimizes glare and off-site impacts of light trespass, and which provides for energy conservation by reducing the amount of light during non-business hours while maintaining adequate illumination for security. The original proposed lighting plan provided to the Commission with the local record was produced in 2014, prior to the discovery of the on-site coastal wetland. The Commission needs to understand if and how the amount and intensity of proposed exterior lighting for the commercial development, including parking lot lighting, security lighting, lighting from the interior of the building through windows facing the wetland, and outdoor illuminated signage, may affect the wetland. Artificial night lighting can have a variety of significant direct and cumulative effects on flora and fauna, including disruption of light-dark photosynthesis cycles and circadian rhythms, disruption of foraging behaviors and increased risks of predation, and interference with vision and migratory orientation. These impacts can result in reductions in biological productivity, reduce the population of otherwise threatened, endangered, or rare species, elevate incidences of collisions between birds and structures, or cause large numbers of arthropods to fixate on the lighting source attraction to the point of fatal exhaustion, negatively affecting their populations and reproductive success, as well as the food web they support. Therefore, the applicant must submit updated exterior lighting plans that address where new lighting will be placed, proposed lighting intensity, and other standards. Proposed new lighting should be sited and designed to prevent impacts that would significantly degrade adjacent wetlands.
6. Landscaping plan: A condition of approval imposed by the County was submittal of a landscaping plan. The Commission needs to understand the type and amount of landscaping proposed and therefore needs to receive a preliminary landscaping plan for the subject site that proposes the use of native and/or non-invasive species.
7. Legal interest in subject property. Section 30601.5 of the Coastal Act requires:

*Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the commission shall not require the holder or owner of any superior interest in the property to join the applicant as coapplicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as coapplicant. In addition,*

*prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.*

To satisfy the requirements of Section 30601.5, the Commission needs to receive evidence that either (i) all property owners where development is proposed have given the applicant permission to develop the property as proposed (e.g., submittal of a lease providing for such use), or (ii) evidence that all the property owners have joined as co-applicants for the proposed development. The property owners may choose to join onto the CDP application as a co-applicant, which would completely satisfy all of the requirements of Section 30601.5. In addition, if any of the property owners have not joined as co-applicants for the development, evidence must be submitted that they have been made aware of the CDP application and have been invited to join as co-applicants.

Finally, if the Commission approves the project de novo, prior to permit issuance, we will need to receive, for all property owners, evidence that the property owner has given the applicant permission to undertake the development as conditioned by the Commission. To satisfy this requirement, we need to receive a formal agreement in writing between the applicant and property owner clearly demonstrating that the property owner agrees that the applicant may undertake development on their respective properties pursuant to CDP A-1-HUM-16-0101 and as conditioned by the Commission.

8. Information on extent and location of major vegetation removal that has occurred on the subject lot since the lot was created. Provide information on the type and amount of major vegetation removal that has occurred on the subject property.

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Without the above information, the Commission cannot reach a final determination concerning the consistency of the project with the natural resources protection policies of the LCP. Therefore, before the Commission can act on the proposed project de novo, the applicant must submit all of the above-identified information.



Exhibit No. 1  
A-1-HUM-16-0101  
LOCATION MAPS  
Page 1 of 5

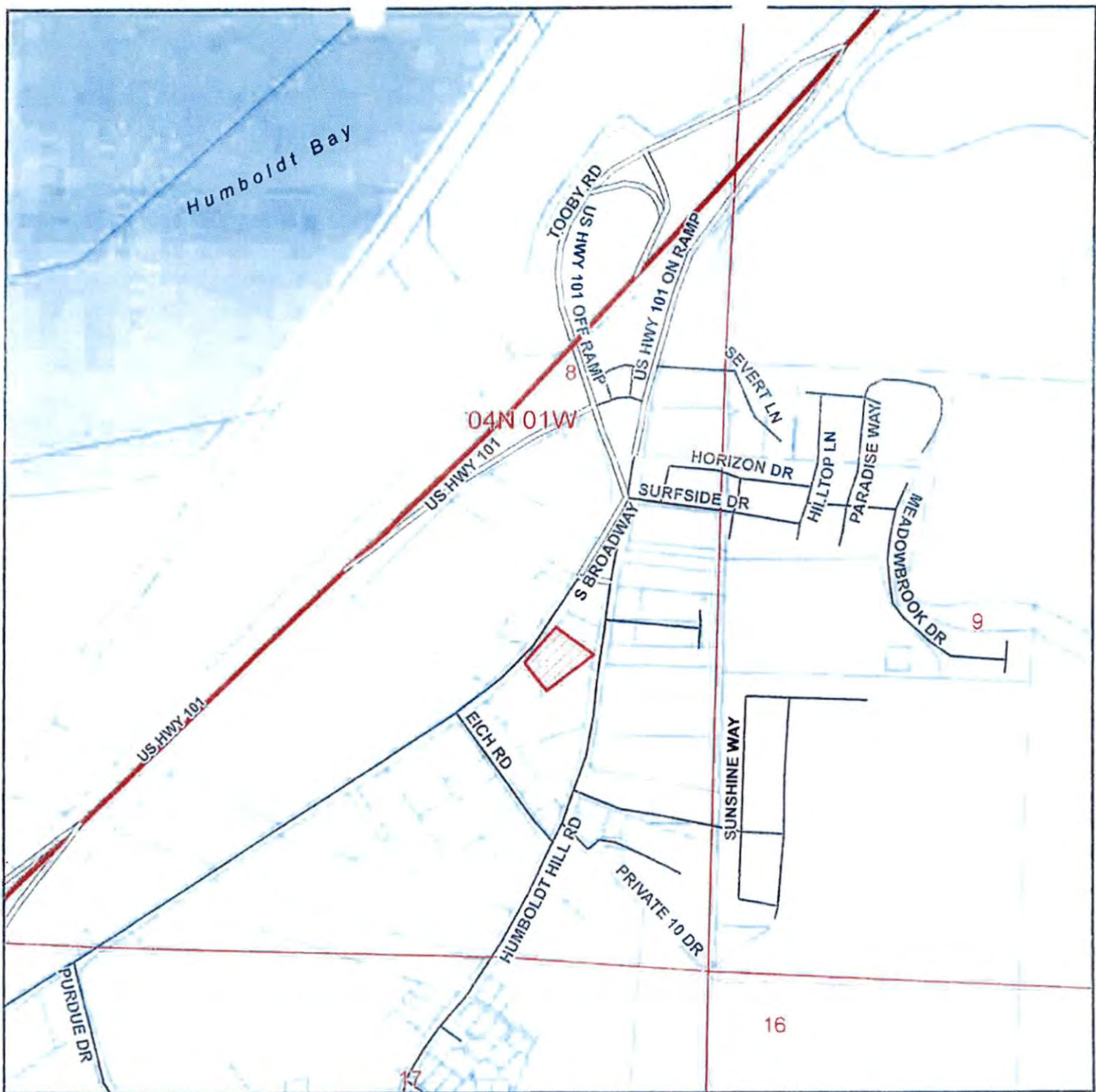
**California Coastal Commission  
Coastal Zone Boundary**

- Coastal Zone Boundary
- Major Roads
- County Boundary
- Local, State, and Federal Park Lands

**Map 1: Del Norte and  
Humboldt Counties**

Scale 1: 600,000  
1 inch equals approximately 9.5 miles or 15.3 km  
Sources: California Coastal Commission. Hillshade and USGS 60 m DEMs provided by GreenInfo Network.  
NOTE: The Coastal Zone Boundary shown on this map is a generalized depiction of the boundary adopted by the California legislature in 1976. It is not intended to be used as a basis for precise boundary determinations.





# LOCATION MAP

PROPOSED DOLLAR GENERAL  
COASTAL DEVELOPMENT PERMIT  
HUMBOLDT HILL AREA

CDP-14-033

APN: 305-101-054

T04N R01W S08 HB&M (Fields Landing)

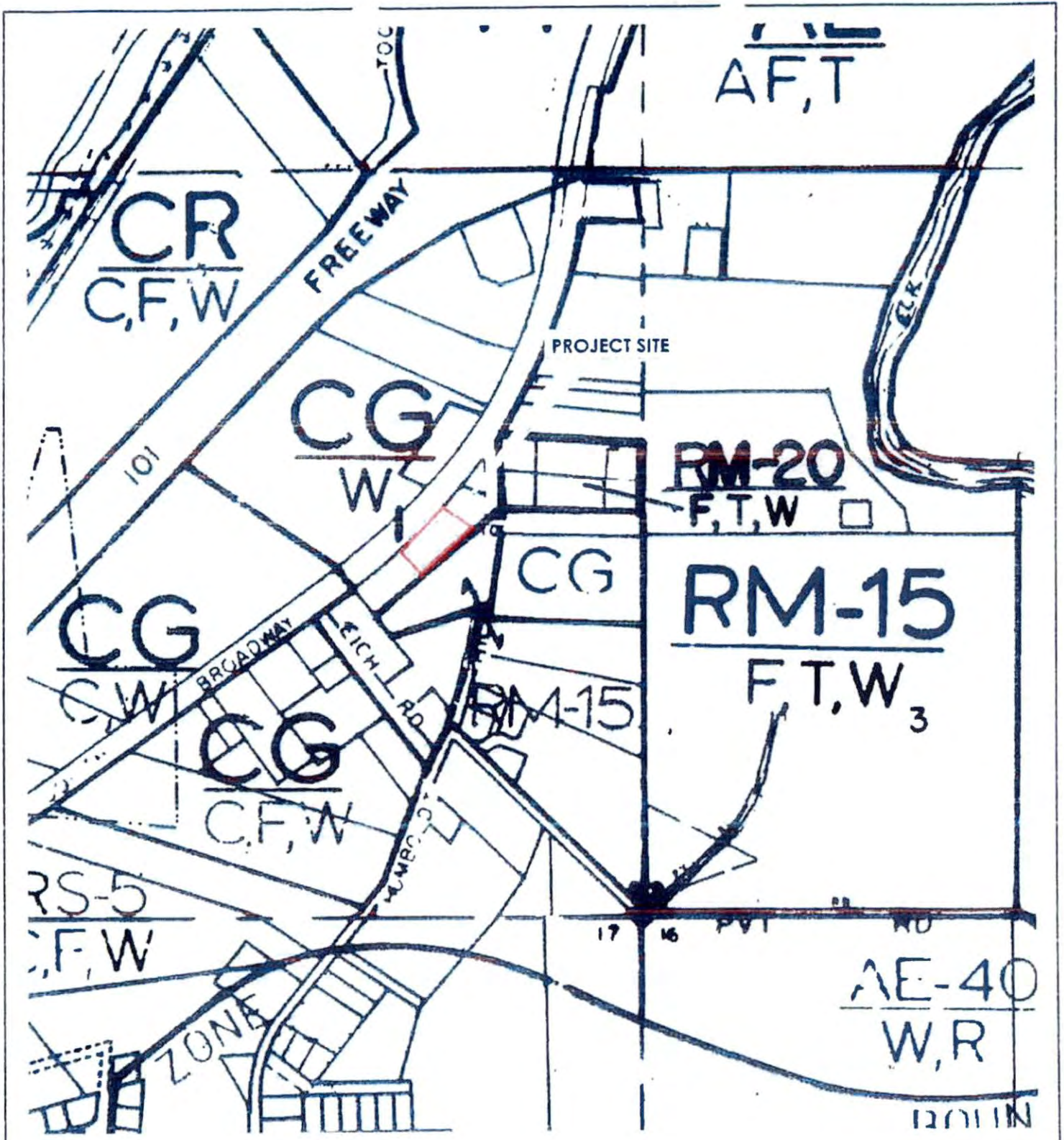
Project Area = 

This map is intended for display purposes and should not be used for precise measurement or navigation. Data has not been completely checked for accuracy.

Exhibit No. 1  
A-1-HUM-16-0101  
LOCATION MAPS  
Page 2 of 5

0 250 500 750 Feet





# ZONING MAP

PROPOSED DOLLAR GENERAL  
COASTAL DEVELOPMENT PERMIT  
HUMBOLDT HILL AREA  
CDP-14-033

APN: 305-101-054

T04N R01W S08 HB&M (Fields Landing)

Exhibit No. 1  
A-1-HUM-16-0101  
LOCATION MAPS  
Page 3 of 5

PROJECT AREA =

MAP NOT TO SCALE

CDP 14-033 Dollar General

July 7, 2016

Page 8



First time was prepared for assignment purposes only. The University is assured for the completion of the job. Admission process was not directly into local government or business site development.

305-10

PM442 of PM Bk 4, Pg 55  
 PM450 of PM Bk 4, Pg 73  
 RS, Bk 11 of surveys, Pg 30  
 RS, Bk 13 of surveys, Pg 155  
 RS, Bk 22 of surveys, Pg 48  
 RS, Bk 29 of surveys, Pgs 140-142  
 RS, Bk 30 of surveys, Pg 112  
 RS, Bk 31 of surveys, Pg 29  
 RS, Bk 31 of surveys, Pg 34  
 PM2634 of PM Bk 23, Pgs 138-139  
 RS, Bk 61 of surveys, Pg 16  
 PM3439 of PM Bk 33, Pgs 73-74

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NOTE - Assessor's Block Numbers Shown in Ellipses  
Assessor's Parcel Numbers Shown in Circles

Assessor's Map Bk 305, Pg 10  
County of Humboldt, CA.

50 100 200

(4) 201 22 201

PROJECT SITE =

# PROPOSED DOLLAR GENERAL COASTAL DEVELOPMENT PERMIT HUMBOLDT HILL AREA

APN: 305-101-054  
T04N R01W S08 HB&M (Fields Landing)

**Exhibit No. 1**  
**A-1-HUM-16-0101**  
**LOCATION MAPS**  
**Page 4 of 5**

MAP NOT TO SCALE





# AERIAL MAP

## PROPOSED DOLLAR GENERAL COASTAL DEVELOPMENT PERMIT HUMBOLDT HILL AREA

CDP-14-033

APN: 305-101-054

T04N R01W S08 HB&M (Fields Landing)

Project Area = 

This map is intended for display purposes and should not be used for precise measurement or navigation. Data has not been completely checked for accuracy.

Exhibit No. 1  
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LOCATION MAPS  
Page 5 of 5

0 250 500 Feet







**Wetland Protection Plan**  
**Cross Development Site**  
**5707 South Broadway (Humboldt Hill) Eureka, CA**

**Prepared for:**

**Cross Development LLC**  
**5317 Inverrary Drive**  
**Plano, TX 75093**



**Prepared by:**

**Virginia Dains**  
**Consulting Biologist**  
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**Auburn, CA 95602**  
**viriniadains@gmail.com**  
**530-888-9180**

**Revised June 05, 2016**

**Exhibit No. 2**  
**A-1-HUM-16-0101**  
**APPROVED PLANS**  
**Page 2 of 9**

## Project Description, Goals, and Objectives

The purpose of this Wetland Protection Plan is to detail the means by which a single seasonal wetland of approximately 150 square feet in extent will be retained on an 0.87 acre parcel that is being considered for commercial development (Figure 1). The parcel is found within the coastal zone as defined by the CCC and is under the administrative jurisdiction of the City of Eureka's Local Coastal Program. The proposed site is found in the Humboldt Hill area of Eureka, CA. Mapping of this wetland was conducted according to the guidelines of the US Army Corps of Engineers wetland delineation manual and supplements (USACE 1987 and 2010) and the California Coastal Commission (CCC 1994). A delineation report was submitted to Humboldt County for documentation and Eureka field office of the Corps of Engineers for verification (Dains 2015).

The goals outlined within this plan are to protect the existing wetland during and after development of the site, and to enhance buffer conditions to favor native wetland species. The objective will be to maintain a shaded seasonal wetland with native herb and shrub canopy layers. The wetland will continue to function for groundwater percolation and will retain escape cover with seasonally moist soils, foraging opportunities for seed and fruit eating birds, and nesting opportunities for songbirds.

## Existing Site Conditions

The parcel is highly disturbed by the dumping of fill, asphalt scrap, off road vehicle traffic and parking. Vegetation consists of a mix of ruderal herbs, horticultural introductions, and common native species. Tall fescue (*Festuca arundinacea*) and sweet vernal grass (*Anthoxanthum odoratum*), two introduced grasses, dominate much of the eastern portion of the site. Extensive patches of wild radish (*Raphanus sativus*) and mats of California blackberry (*Rubus ursinus*) and the horticultural multiflora rose (*Rosa multiflora* var. *carnea*) cover the remainder of the site. Isolated individuals of native perennial tufted hairgrass (*Deschampsia cespitosa*), Hooker's willow (*Salix hookeriana*), and soft rush (*Juncus effusus*) are found as part of the overall mosaic of vegetation but do not occur as remnants of natural vegetation. Several horticultural species including grape hyacinth, daffodil, cultivated iris, cotoneaster, Spanish heather, pampas grass, English ivy, Freesia, and Amaryllis are found on the site as escapes from cultivation and are representative of the disturbed nature of the vegetation.

The basin of the wetland depression is largely unvegetated, but the sides and rim of the basin support hydrophytic herbs and shrubs primarily Hooker's willow (*Salix hookeriana*), soft rush (*Juncus effusus*), and the invasive creeping buttercup (*Ranunculus repens*). Uplands surrounding the wetland are dominated by facultative upland (FACU) species including introduced sweet vernal grass (*Anthoxanthum odoratum*), and mats of California blackberry (*Rubus ursinus*) and invasive multiflora rose (*Rosa multiflora*).

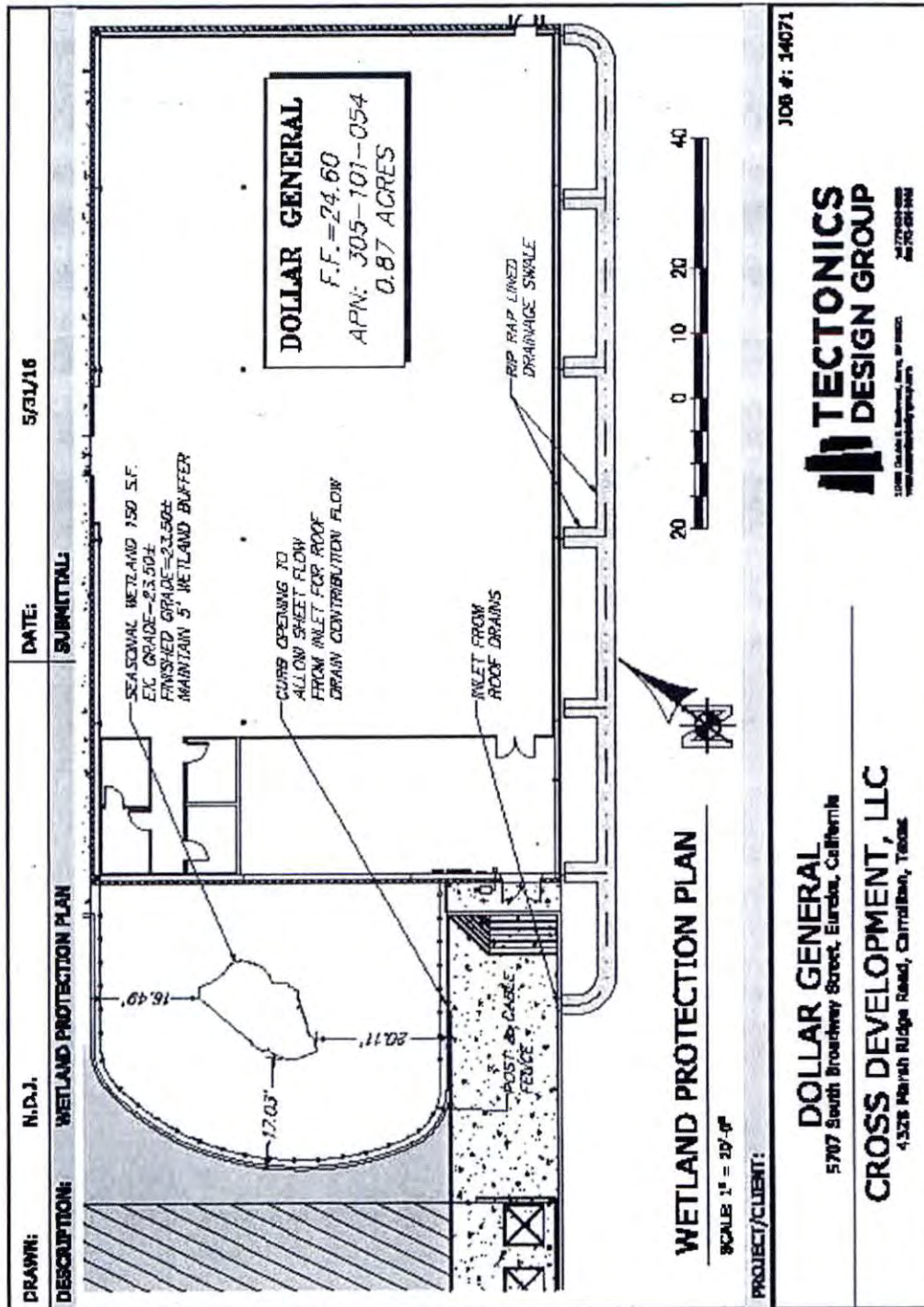


Figure 1 Wetland Protection Area

### Site Protection

A revegetation biologist or ecologist will be responsible for the protection and enhancement of the wetland and its buffer.

The seasonal wetland will be protected by a vegetated buffer 13 times its area with setbacks from the development of 16.49 ft. to the north, 17.03 ft. to the west, and 20.11 ft. to the south. The total buffer area and wetland area is approximately 1,889 sq. ft. (0.04 acres) in extent. The buffer size was determined by the maximum feasible set-aside for avoidance. Biologically the buffer size is mitigated by the minimal size and depth of the wetland, the lack of native plants or biologically significant habitat in its current surroundings, the low susceptibility of the level ground to erosion, and the minimal potential for significant wildlife use in the existing wetland.

The hydrology of the wetland set-aside will be driven by direct precipitation, some adjacent run-off from sidewalks, and augmented by roof runoff which is channeled from the rear of the building into a vegetated swale and which overflows into the wetland area through curb openings (figure 1).

Prior to construction the wetland and its buffer will be identified and protected with high visibility rope and posts. Grading plans shall identify this area as Sensitive Habitat. The land surface elevation of the wetland and its upland boundary will remain undisturbed. Small topographic changes in the buffer area will be made to maintain internal drainage towards the wetland. A biological monitor will visit the site during construction to ensure the protection measures are effective.

After construction the wetland and its buffer will be separated from foot and vehicle traffic areas by a simple post and cable fence as well as a concrete curb to prevent runoff from the parking area entering the wetland.

### Site Preparation

After grading and construction of the developed area is complete, the wetland and its buffer area will be weeded and prepared for replanting. Some native species will be retained. Hookers willow adjacent to the wetland along with bog Rush (*Juncus effusus*) will remain. Other native species that may be present in or adjacent to the wetland will be incorporated in the revegetation plan as they are encountered. Native California blackberry will be removed from the buffer since this species is found in direct association with multiflora rose, an invasive species, and can quickly overgrow restoration plantings. Some earthwork within the buffer may be required to refine contours within the watershed before planting.

### Implementation

Restoration of the buffer area shall begin concurrently with the completion of construction.

Plant species appropriate for buffer protection and enhancement of the seasonal wetland are listed in Table 1. Other natives may be used at the discretion of the biologist in charge. A planting plan is shown in Figure 2.

All planting material will be locally obtained and inspected for health and viability before being introduced to the site. One- or five-gallon shrubs will be obtained depending on the quality and availability. Bare root stock or small container plants of herbaceous species such as bog rush, tufted hair grass, or California aster will be planted during the fall prior to the rainy season. Some native plant material may be rescued from on-site and held in temporary nurseries on-site to be transplanted into the buffer area after construction. Soil amendments will be avoided unless specific conditions, such as sand, dense clay, or rubble are encountered in the planting area. Fertilizers are more likely to encourage the establishment of weedy introduced species than benefit native transplants. A 6-8 inch woodchip mulch may be used to limit weeds around container plantings.

Timing of planting should coincide with fall and winter rains. If construction is not completed before the rainy season and restoration is postponed to the spring or summer, irrigation will be prescribed on a twice monthly basis. The entire wetland area will be soaked to ensure establishment of revegetation stock. No permanent or temporary irrigation will be installed.

Table 1 Native Plants for Buffer Enhancement

Growth Form	Function	Species	Wetland Rating*	Planting Density	Count
Trees/large Shrubs	Cover, deciduous insect forage	Hookers willow <i>Salix hookeriana</i>	FACW	Present on site/conserved	1+
Trees/large Shrubs	Cover, Evergreen, Attracts birds	Wax-myrtle <i>(Morella californica)</i>	FAC	10 ft. centers	3-5
Shrubs	Flowers attract hummingbirds, fruits provide additional forage	Red-flowering Currant <i>(Ribes sanguineum)</i>	FAC	8 ft centers	3-5
Perennial Herbs	Low cover, green mulch	Tufted hairgrass <i>(Deschampsia cespitosa)</i>	FACW	1 ft. centers	1,500
Perennial Herbs	Surface shade	Bog rush <i>(Juncus effusus)</i>	FACW	2' centers present on site	3-5
Perennial Herb/sub-shrub	Insect forage, attracts birds and pollinators	Riverbank lupine <i>(Lupinus rivularis)</i>	FACW	1.5 ft. centers	5-7
Perennial Herb/sub-shrub	Insect forage, attracts birds and pollinators	California aster <i>(Aster chilensis)</i>	FAC	1.5 ft centers	5-7

\*Wetland Indicator Status Codes (Lichvar 2012)

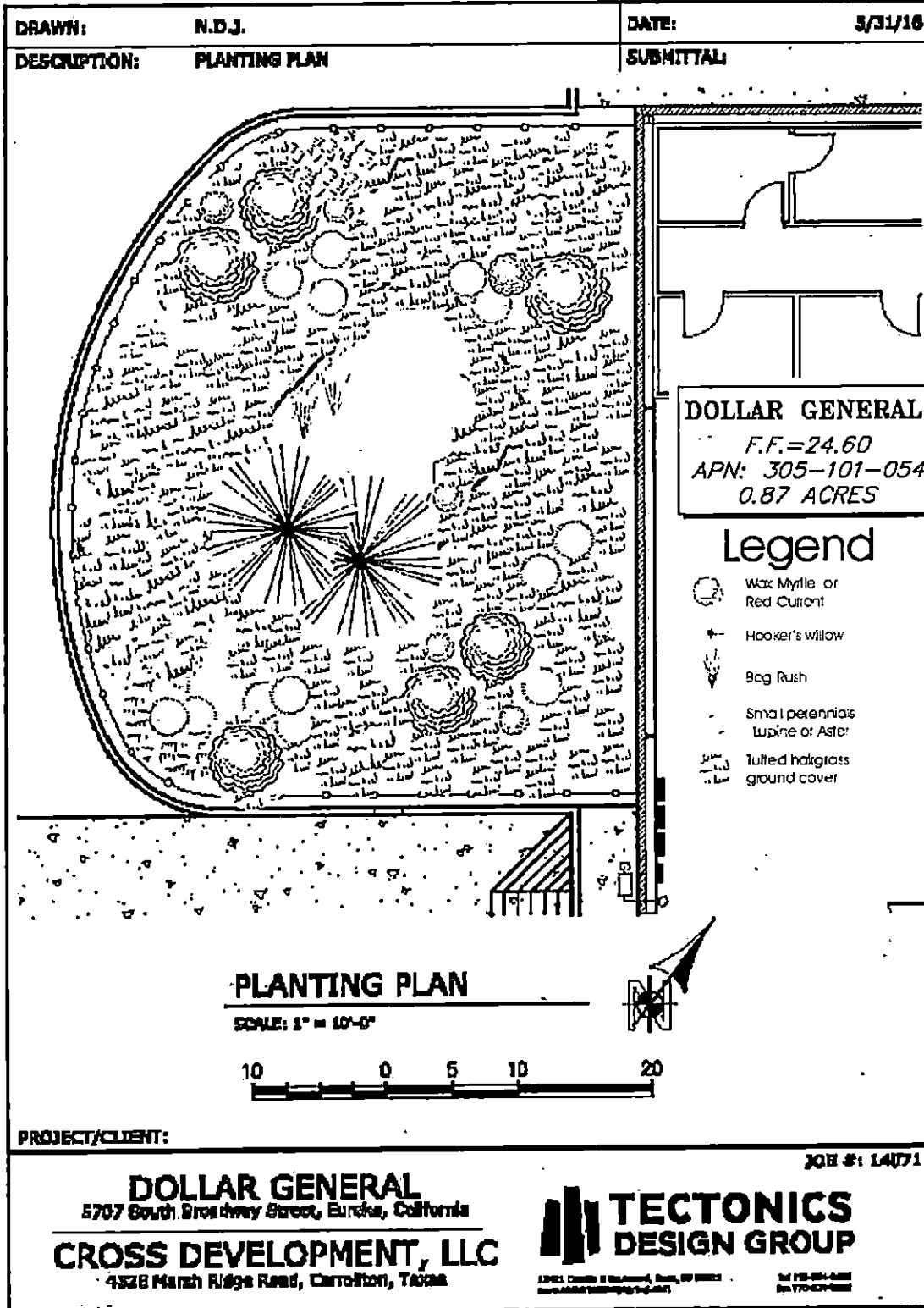


Figure 2 Planting Plan

## **Maintenance Plan**

Short term maintenance for two growing seasons will be the responsibility of the revegetation/restoration contractor. Maintenance will include: weeding, assessing the need for dry season irrigation of plantings, survivorship and replanting as needed to develop a perennial ground cover of native species.

Long term maintenance will be the responsibility of the project proponent or their responsible party. Long term maintenance will be folded into the general maintenance requirements for other landscaping on the site. These will include routine weed and litter removal, and maintenance of the protective fencing.

## **Summary**

The goal of protecting on-site a small seasonal wetland with the objective of maintaining shaded seasonally wet habitat is described in this document. Means for protection prior to, during and after construction are given. Habitat improvements through installation of native shrubs and perennial herbs are planned. The timeline for this project is concurrent with the construction of the commercial development. Two year monitoring of restoration plantings with the goals of developing perennial ground cover is described and long term maintenance.

## References

CCC 1994 Procedural Guidance for the Review of Wetland Projects in California's Coastal Zone. State of California, California Coastal Commission, June 15, 1994. Accessed online: <http://www.coastal.ca.gov/wetrev/wetttitle.html>

Dains, Virginia 2015 Preliminary Wetland Delineation Cross Development Site 5707 South Broadway (Humboldt Hill) Eureka, CA Prepared for: Cross Development LLC, 5317 Inverrary Drive, Plano, TX 75093. Prepared by: Virginia Dains, Consulting Biologist, 3371 Ayres Holmes Road, Auburn, CA 95602. June 6, 2016

Lichvar, R.W. 2012. *The National Wetland Plant List*. ERDC/CRREL TR-12-11. Hanover, NH: U.S. Army Corps

USACE. 1987. "Corps of Engineers Wetland Delineation Manual." Technical Report Y-87-1, U.S. Army Corps of Engineers Waterways Experiment Station, Vicksburg, Miss.

USACE 2010. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys and Coast Region (Version 2.0) ERDC/EL TR-10-3 May 2010 U.S. Army Engineer Research and Development Center Environmental, Vicksburg, Miss.





PLANNING AND BUILDING DEPARTMENT  
**COUNTY OF HUMBOLDT**  
CURRENT PLANNING DIVISION

3015 H Street, Eureka, CA 95501  
Phone (707) 445-7541 • Fax (707) 268-3792  
<http://www.humboldt.gov/156>

**RECEIVED**

**NOV 18 2016**

**CALIFORNIA  
COASTAL COMMISSION  
NORTH COAST DISTRICT**

California Coastal Commission  
1385 8th Street, Ste 130  
Arcata, CA 95521

**Notice of Final Action Taken**

**Date:** 11/17/2016 **Appealable Status** Appealable

**Applicant:** Dan Dover  
c/o Dollar General  
Cross Development  
5317 Inverrary Drive  
Plano, TX 75093

**Assessor Parcel Number:** 305-101-054

**Apps Number:** 9329

**Permit:** CDP 14-033

**Contact:** Karen Meynell – 268-3731

**Description**

The proposed project is a Coastal Development Permit to construct a commercial building on a 0.87 acre parcel that is currently vacant. The commercial use of the approximately 9,300 square foot building will be for a retail store which is principally permitted in the Commercial General zoning district. A 150 square foot seasonal isolated wetland was identified near the middle of the parcel. A Special Permit is required to reduce the wetland setback in order to develop the parcel for commercial purposes and to allow for a parking exception that would reduce the number of required parking spaces due to the level of anticipated use. The height of the structure ranges from approximately 22 feet at the front of the store to 15 feet at the rear. The hours of operation will be 8 am to 10 pm, seven days a week. The store will operate with three (3) full time employees approximately 95% of the time. Occasionally there will be up to a maximum of five (5) employees. A dedicated loading space is included in the project proposal. There is no tree removal proposed and only minimal grading is necessary. The parcel is served by Humboldt Community Services District for water and sewer services.

**Action Taken**

Following a noticed Public Hearing the County of Humboldt Board of Supervisors approved the referenced application on November 15, 2016

**Effective Date**

Coastal Development Permit CDP 14-033 will become effective at the end of the California Coastal Commission appeal period and will expire 12 months from the effective date.

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA**  
**Certified copy of portion of proceedings; Meeting on November 15, 2016**

RESOLUTION NO. \_\_\_\_-\_\_\_\_

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT DENYING THE APPEAL AND APPROVING  
THE DOLLAR GENERAL PROJECT FILE #305-101-054; CASE # CDP-14-033AA AND SP-14-049AA

**WHEREAS, Dan Dover** of Cross Development submitted an application and evidence on behalf of Dollar General in support of approving a Coastal Development Permit and Special Permit for a commercial retail store; and

**WHEREAS,** the Planning and Building Department – Planning Division has reviewed the submitted application and evidence and has referred the application and evidence to involved reviewing agencies for site inspections, comments and recommendations; and

**WHEREAS,** the Planning Division, the lead agency, has prepared a Mitigated Negative Declaration for the subject proposal in accordance with the California Environmental Quality Act (CEQA); and

**WHEREAS,** the Planning Commission staff report includes evidence in support of making all of the required findings for approving CDP-14-033 and SP-14-049; and

**WHEREAS,** the Planning Commission held a public hearing on July 7, 2016 during which they considered the Mitigated Negative Declaration and received staff reports, accepted public comment, and deliberated on the proposed project;

**WHEREAS,** the Planning Commission, in conformance with Sections 15090 and 15091 of the State CEQA Guidelines, (a) reviewed and found that the Mitigated Negative Declaration in Attachment C has been completed in compliance with CEQA and reflects the Lead Agency's independent judgment and analysis; (b) it has reviewed and considered the information contained in the Mitigated Negative Declaration for the project; and (c) the proposed project, as conditioned and mitigated, will not have a significant effect on the environment;

**WHEREAS,** The Planning Commission made the findings in the Planning Division staff report for Case Nos.: CDP-14-033 and SP-14-049 based on the submitted evidence;

**WHEREAS,** The Planning Commission conditionally approved the Coastal Development Permit and Special Permit as recommended in the Planning Division staff report for Case Nos.: CDP-14-033 and SP-14-049; File No. APN: 305-101-054;

**WHEREAS,** On July 20, 2016, the Planning Commission approval was appealed by Dan and Kelly Noga;

**WHEREAS,** the Board of Supervisors originally scheduled the matter for hearing on September 6, 2016, continued the hearing to October 11, 2016, and opened and continued the public hearing to November 15, 2016 at which time the Board held a public hearing on the project and considered the issues of appeal and staff recommendations;

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA**  
**Certified copy of portion of proceedings; Meeting on November 15, 2016**

**NOW, THEREFORE**, be it resolved, determined, and ordered by the Board of Supervisors that:

1. The Board of Supervisors denies the appeal in full, adopts the Mitigated Negative Declaration (Attachment C to the December 6, 2016 Board Staff Report) and adopts this resolution and the findings and approves the Dollar General Application (Case Nos.: CDP-14-033 and SP-14-049; File No. APN: 305-101-054) with the incorporation of the expanded discussion of the Wetland Buffer provisions as set forth in Attachment B, subject to the conditions of approval, including the addition of Condition of Approval #23 in Exhibit A hereto.

DATED: November 15, 2016

\_\_\_\_\_  
MARK LOVELACE, Chair  
Humboldt County Board of Supervisors

Adopted on motion by Supervisor  
and the following vote:

, seconded by Supervisor

AYES: Supervisors:  
NOES: Supervisors:  
ABSENT: Supervisors:  
ABSTAIN: Supervisors:

STATE OF CALIFORNIA     )  
County of Humboldt     )

I, Kathy Hayes, Clerk of the Board of Supervisors of the County of Humboldt, State of California do hereby certify the foregoing to be a full, true, and correct copy of the original made in the above-titled matter by said Board of Supervisors at a meeting held in Eureka, California as the same now appears of record in my office.

In Witness Whereof, I have hereunto set  
my hand and affixed the Seal of said  
Board of Supervisors.

KATHY HAYES  
Clerk of the Board of Supervisors of  
the County of Humboldt, State of California

**EXHIBIT A**

**Revised Conditions of Approval**



### CONDITIONS OF APPROVAL

Approval of the Coastal Development and Special Permit is conditioned upon the following terms and requirements which must be fulfilled before a building permit may be issued or use initiated.

1. The applicant shall apply for and obtain an encroachment permit for the commercial driveway. The permit will require the driveway entrance to be surfaced with asphalt concrete or Portland cement concrete. The driveway shall intersect the County road at a 90 degree angle. The driveway grade shall not exceed 2% in the first 20 feet.
2. Applicant will be required to construct a commercial ADA driveway apron; remove the unused driveway drop curb (constructed at the time of the subdivision) and replace with CalTrans Type A2-6 curb and gutter, and construct a 5 foot wide Portland cement concrete sidewalk along the frontage of the lot.
3. The encroachment permit will also include connecting the parking lot drainage into the existing storm drain system within South Broadway. An oil-water filtration system is required prior to discharge into the County storm drain. Per the Development plan the applicant shall prepare shop drawings of the oil-water filtration system and storm water diversion structure for approval. (See also COA #14).
4. The applicant shall comply with the Subdivision's conditions of approval and requirements of the Development Plan for PMS-03-19, on file with the Planning and Building Department, which includes, but is not limited to, construction of a storm water detention system. This system is to be reviewed and inspected by the Department of Public Works (DPW). A fee will be charged by DPW for this review. A copy of the detention construction plan and maintenance plan must be attached and made part of the issuance of any development permit for the lot. (See also COA #14).
5. A total of twenty-four (24) non-tandem, independently accessible parking spaces, including one (1) handicap accessible space, shall be constructed on-site prior to occupancy or before a "final" is issued for the Building Permit. The location of all on-site parking spaces shall appear on the final Building Division Plot Plan. Up to six (6) of the parking spaces may be designated as compact. Compact parking spaces shall be visibly marked with signs and shall be clustered in one section of the parking area. **This requirement shall be clearly identified on the plot plan for building permit.** All parking spaces and access shall be improved with a surface of asphalt or Portland cement and shall be maintained for the life of the project.
6. The project by Code must include a loading space of not less than ten (10) feet wide, sixty (60) feet long and shall contain at least fourteen (14) feet of clearance, or an exception shall be secured in accordance with Section 313-109.1.5.2. Deliveries shall take place during business hours.
7. Site visibility must be maintained at the driveway entrance and at the corners of the lot in conformance with County Code.
8. Applicant shall be responsible to correct any involved drainage problems at the intersection of driveway and the County maintained roadway to the satisfaction of the Department of Public Works, Land Use Division. (See also COA #14).

9. Applicant shall pave, sign and stripe the parking lot.
10. Water and sewer service are available upon payment of applicable fees to Humboldt Community Services District. Water and sewer services shall not be located in a driveway area.
11. Hours of construction activity shall be limited to Monday through Friday from 8:00 am to 6:00 pm, Saturday from 9:00 am to 5:00 pm with no construction activity on Sunday.
12. During construction of the building the applicant shall:
  - a. use dust control techniques when excavating to minimize dust problems on adjacent parcels;
  - b. re-vegetate all disturbed areas prior to winter rain; and
  - c. take all precautions necessary to avoid the encroachment of dirt or debris on adjacent properties.

The plot plan submitted for the Building Permit shall indicate that all ground bared during construction shall be landscaped and/or seeded and mulched prior to October 1st.

13. The applicant shall submit a landscaping plan subject to the review and approval of the Planning Director. All landscaping shall be installed and have its maintenance system in working order prior to occupancy issuance.
14. The applicant shall submit a Drainage Plan for approval by the Department of Public Works that incorporates Low Impact Development techniques into the project design in a manner complementary to the requirements of COA #3 (oil-water filtration) and COA #4 (storm water detention). The Drainage Plan shall comply with the standards of a Regulated Project under the State Water Board's Phase II Small Municipal Separate Storm Sewer System (MS4) Program. Areas identified as treatment areas shall be maintained for the life of the project. The purpose of these combined measures is to maximize the retention of storm water on site such that pollutant-laden runoff from the proposed new parking lot and other impermeable surfaces does not degrade surrounding coastal wetlands and waters.
15. The applicant shall implement all Mitigation Measures set forth in the Mitigated Negative Declaration.
16. The applicant shall submit a soils report with erosion and sediment control measures for review by the Building Inspection Division. Engineered construction plans will be required.
17. The applicant shall submit a Lighting Plan for the project for approval by the Planning and Building Department. The plan shall address the amount of light to be used, minimize glare and off-site impacts of light trespass, and provide for energy conservation by reducing the amount of light during non-business hours while maintaining adequate illumination for security.
18. Signs shall conform to Section 313-87 of the zoning regulations and the County's sight visibility ordinance. A signage plan shall be submitted with the application for Building Permit.



19. **Within five (5) days of the effective date of the approval of this permit**, the applicant shall submit a check to the Planning Division payable to the Humboldt County Recorder in the amount of \$2,260.25. Pursuant to Section 711.4 of the Fish and Game Code, the amount includes the Department of Fish and Wildlife (DFW) fee plus a \$50 document handling fee. This fee is effective through December 31, 2016 at such time the fee will be adjusted pursuant to Section 713 of the Fish and Game Code. Alternatively, the applicant may contact DFW by phone at (916) 651-0603 or through the DFW website at [www.wildlife.ca.gov](http://www.wildlife.ca.gov) for a determination stating the project will have *no effect* on fish and wildlife. If DFW concurs, a form will be provided exempting the project from the \$2,210.25 fee payment requirement. In this instance, only a copy of the DFW form and the \$50.00 handling fee is required.
20. This project is required to pay for permit processing on a time and material basis as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors. Any and all outstanding Planning fees to cover the processing of the project shall be paid to the Humboldt County Planning Division, 3015 "H" Street, Eureka.
21. A review fee for Conformance with Conditions as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors (currently \$95.00) shall be paid to the Humboldt County Planning Division, 3015 "H" Street, Eureka. This fee is a deposit, and if actual review costs exceed this amount, additional fees will be billed at the County's current burdened hourly rate.
22. The applicant shall submit to the Planning Director annual follow-up reports prepared by a qualified biologist that verifies whether or not: a) the mitigations recommended in the Wetland Protection Plan dated June 5, 2016, prepared by Virginia Dains, Consulting Biologist were adhered to, and b) to assess the success of the restoration plantings and maintenance activities (invasive plant and litter removal and fence maintenance). Surveys shall be conducted for two (2) consecutive years after construction. The report shall prescribe any additional measures required to insure full compliance with the Wetland Protection Plan. A written contract for services and cost estimate for this monitoring work shall be provided to the Department prior to initiation of work. A performance bond may be required by the Planning Director.
23. The following mitigation measures shall apply in addition to those specified in the environmental document.
1. Not more than 25% of the lot surface shall be effectively impervious.
  2. The release rate of storm runoff to adjacent wetlands shall not exceed the natural rate of storm runoff for a 50 year storm of 10 minute duration.
  3. Storm water outfalls, culverts, gutters and the like shall be dissipated.
  4. Septic systems or alternative waste disposal systems must meet standards of the Humboldt -Del Norte Health Department and the Regional Water Quality Control Board.
  5. Areas disturbed during construction, grading, etc., within 100 feet of the mean high water line, shall be restored to original contours and sufficiently and promptly replanted with vegetation naturally occurring in the immediate area. Not applicable.
  6. Development and construction shall minimize cut and fill operations and erosion and sedimentation potentials through construction of temporary and permanent sediment basins, seeding or planting bare soil, diversion of runoff away from graded areas and areas heavily used during construction, and, when feasible, avoidance of grading during the rainy season (November through April).

**On-going Requirements/Development Restrictions which Must be Satisfied for the Life of the Project:**

1. The project shall be developed and conducted in accordance with the Project Description, Plan of Operations, Project Site Plan (May 2016) and Wetland Protection Plan (Dains, June 5, 2016). Changes other than Minor Deviations to the Plot Plan as provided by Section 312-11.1 shall require a modification of this permit.
2. A six (6) foot high solid wood fence shall be installed at the time of development between the residential and commercial use and be maintained for the life of the development.
3. All new and existing outdoor lighting shall be compatible with the existing setting and directed within the property boundaries. Illuminated signs shall be turned off within one (1) hour of close of business.
4. New utilities shall be installed underground, when feasible.
5. Landscaping shall be maintained for the life of the development in conformance with the approved landscaping plan.

**Informational Notes**

1. If cultural resources are encountered during construction activities, the contractor on site shall cease all work in the immediate area and within a 50 foot buffer of the discovery location. A qualified archaeologist as well as the appropriate Tribal Historic Preservation Officer(s) are to be contacted to evaluate the discovery and, in consultation with the applicant and lead agency, develop a treatment plan in any instance where significant impacts cannot be avoided.

The Native American Heritage Commission (NAHC) can provide information regarding the appropriate Tribal point(s) of contact for a specific area; the NAHC can be reached at 916-653-4082. Prehistoric materials may include obsidian or chert flakes, tools, locally darkened midden soils, groundstone artifacts, shellfish or faunal remains, and human burials. If human remains are found, California Health and Safety Code 7050.5 requires that the County Coroner be contacted immediately at 707-445-7242. If the Coroner determines the remains to be Native American, the NAHC will then be contacted by the Coroner to determine appropriate treatment of the remains pursuant to PRC 5097.98. Violators shall be prosecuted in accordance with PRC Section 5097.99.

The applicant is responsible for ensuring compliance with this condition.

2. Gates are not permitted on County right of way for public roads without authorization of the Board of Supervisors. Gates must not create a traffic hazard and must provide an appropriate turnaround in front of the gate (set back approximately 25 feet from the road). Existing gates shall be evaluated for conformance.
3. The applicant is responsible for receiving all necessary permits and/or approvals from other state and local agencies.
4. The Coastal Development Permit and Special Permit shall expire and become null and void at the expiration of one (1) year after all appeal periods have lapsed (see "Effective Date");



except where construction under a valid building permit or use in reliance on the permit has commenced prior to such anniversary date. The period within which construction or use must be commenced may be extended as provided by Section 312-11.3 of the Humboldt County Code.

5. New Development Requires a Permit. Any new development as defined by Section 313-139.6 of the Humboldt County Code (H.C.C.) shall require a Coastal Development Permit and Special Permit or permit modification, except for Minor Deviations from the Plot Plan as provided under Section 312-11.1 of the Zoning Regulations.



## COUNTY OF HUMBOLDT

AGENDA ITEM NO.

Hearing Date: November 15, 2016

To: Board of Supervisors

From: Kevin R. Hamblin, Interim Director, Planning and Building Department *EH*

Subject:

Appeal of Planning Commission Approval of the Dollar General Coastal Development and Special Permit  
Case Number CDP-14-033AA, SP-14-049AA  
Assessor Parcel Number 305-101-054  
Humboldt Hill area

### RECOMMENDATIONS:

That the Board of Supervisors:

1. Open the public hearing and receive the staff report and public comment.
2. Based on the findings in the staff report and testimony received about the project, deny the appeal, uphold the Planning Commission's approval of the project, making the findings in Resolution 16-\_\_\_\_ (Attachment A) for the Dollar General Coastal Development and Special Permit application subject to the modified conditions of approval in Exhibit A to Attachment A.
3. Direct the Clerk of the Board to give notice of the decision to the appellant, the project applicant, the agent and any other interested party.
4. Close the public hearing.

Prepared by \_\_\_\_\_  
Karen Meynell, Planner

CAO Approval *Cheryl Dillingham*

#### REVIEW:

Auditor \_\_\_\_\_ County Counsel *ME*

Human Resources \_\_\_\_\_ Other \_\_\_\_\_

#### TYPE OF ITEM:

\_\_\_\_ Consent  
\_\_\_\_ Departmental  
☒ Public Hearing  
\_\_\_\_ Other \_\_\_\_\_

#### PREVIOUS ACTION/REFERRAL:

Board Order No. L-2; L-3

Meeting of: 9/6/2016; 10/11/2016

#### BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor  
Seconded by Supervisor

Ayes  
Nays  
Abstain  
Absent

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Kathy Hayes, Clerk of the Board

Exhibit No. 3

A-1-HUM-16-0101

NOTICE OF FINAL LOCAL ACTION

Page 10 of 42

**SOURCE OF FUNDING:** Fees submitted by the appellant are deposited into Planning and Building Department Current Planning Revenue Account 1100-277-608000. Any costs incurred by this appeal that exceed the applicant's appeal fee will be covered by the Current Planning Division's FY 2015-16 General Fund Allocation.

**DISCUSSION:**

This staff report is supplemental to the staff report for the Dollar General Appeal originally scheduled for September 6, 2016 and continued to October 11, 2016. At that meeting, because Dollar General's representative was not able to attend due to illness the Board agreed to open and continue the public hearing on this matter to November 15, 2016.

The Supplemental Report includes an expanded discussion of conformance with the Wetland Buffer provisions in Section 3.30B.6.f of the Humboldt Bay Area Plan (HBAP) along with revised Condition of Approval #23 which incorporates these required mitigations into the project approval. These documents along with an updated Resolution are included as attachments to this report.

Refer to the Board Reports from September 6 and October 11 for a full discussion of the appeal.

**FINANCIAL IMPACT:** There may be an effect on the General Fund. The appellant has paid in full the appeal fee associated with this appeal. Any costs incurred by this appeal that exceed the applicant's appeal fee will be covered by the Current Planning Division's FY 2016-17 General Fund Allocation.

**OTHER AGENCY INVOLVEMENT:** The project was referred to the applicable referral agencies for comments and recommendations. The Draft Mitigated Negative Declaration was circulated to State agencies pursuant to the California Environmental Quality Act.

**ALTERNATIVES TO STAFF RECOMMENDATIONS:** The Board of Supervisors can uphold the appeal and deny the project. This alternative should be implemented if the Board is unable to make all of the required findings. Planning Division staff has found that the required findings can be made. Consequently, staff does not recommend further consideration of this alternative.

**ATTACHMENTS:**

The referenced materials have been previously provided to the Clerk of the Board and are available for public review.

Attachment A	Updated Resolution
	Exhibit A - Revised Conditions of Approval
Attachment B	Expanded discussion of Wetland Buffer provisions

**ATTACHMENT A**  
**Updated Resolution**



**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA**  
**Certified copy of portion of proceedings; Meeting on November 15, 2016**

RESOLUTION No. \_\_\_\_-\_\_\_\_

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT DENYING THE APPEAL AND AFFIRMING  
THE DECISION OF THE PLANNING COMMISSION ON THE DOLLAR GENERAL PROJECT FILE #305-101-054; CASE #  
CDP-14-033AA AND SP-14-049AA

**WHEREAS, Dan Dover** of Cross Development submitted an application and evidence on behalf of Dollar General in support of approving a Coastal Development Permit and Special Permit for a commercial retail store; and

**WHEREAS,** the Planning and Building Department – Planning Division has reviewed the submitted application and evidence and has referred the application and evidence to involved reviewing agencies for site inspections, comments and recommendations; and

**WHEREAS,** the Planning Division, the lead agency, has prepared a Mitigated Negative Declaration for the subject proposal in accordance with the California Environmental Quality Act (CEQA); and

**WHEREAS,** the Planning Commission staff report includes evidence in support of making all of the required findings for approving CDP-14-033 and SP-14-049; and

**WHEREAS,** the Planning Commission held a public hearing on July 7, 2016 during which they considered the Mitigated Negative Declaration and received staff reports, accepted public comment, and deliberated on the proposed project;

**WHEREAS,** the Planning Commission, in conformance with Sections 15090 and 15091 of the State CEQA Guidelines, (a) reviewed and found that the Mitigated Negative Declaration in Attachment C has been completed in compliance with CEQA and reflects the Lead Agency's independent judgment and analysis; (b) it has reviewed and considered the information contained in the Mitigated Negative Declaration for the project; and (c) the proposed project, as conditioned and mitigated, will not have a significant effect on the environment;

**WHEREAS,** The Planning Commission made the findings in the Planning Division staff report for Case Nos.: CDP-14-033 and SP-14-049 based on the submitted evidence;

**WHEREAS,** The Planning Commission conditionally approved the Coastal Development Permit and Special Permit as recommended in the Planning Division staff report for Case Nos.: CDP-14-033 and SP-14-049; File No. APN: 305-101-054;

**WHEREAS,** On July 20, 2016, the Planning Commission approval was appealed by Dan and Kelly Noga;

**WHEREAS,** the Board of Supervisors originally scheduled the matter for hearing on September 6, 2016, continued the hearing to October 11, 2016, and opened and continued the public hearing to November 15, 2016 at which time the Board held a public hearing on the project and considered the issues of appeal and staff recommendations;

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA**  
**Certified copy of portion of proceedings; Meeting on November 15, 2016**

**NOW, THEREFORE,** be it resolved, determined, and ordered by the Board of Supervisors that:

1. The Board of Supervisors denies the appeal in full, upholds the Planning Commission approval of the project, adopts the Mitigated Negative Declaration (Attachment C to the December 6, 2016 Board Staff Report) and adopts the Planning Commission's findings and approves the Dollar General Application (Case Nos.: CDP-14-033 and SP-14-049; File No. APN: 305-101-054) with the incorporation of the expanded discussion of the Wetland Buffer provisions as set forth in Attachment B, subject to the conditions of approval, including the addition of Condition of Approval #23 in Exhibit A hereto.

DATED: November 15, 2016

\_\_\_\_\_  
MARK LOVELACE, Chair  
Humboldt County Board of Supervisors

Adopted on motion by Supervisor  
and the following vote:

, seconded by Supervisor

AYES:            Supervisors:  
NOES:           Supervisors:  
ABSENT:        Supervisors:  
ABSTAIN:       Supervisors:

STATE OF CALIFORNIA    )  
County of Humboldt      )

I, Kathy Hayes, Clerk of the Board of Supervisors of the County of Humboldt, State of California do hereby certify the foregoing to be a full, true, and correct copy of the original made in the above-titled matter by said Board of Supervisors at a meeting held in Eureka, California as the same now appears of record in my office.

In Witness Whereof, I have hereunto set  
my hand and affixed the Seal of said  
Board of Supervisors.

KATHY HAYES  
Clerk of the Board of Supervisors of  
the County of Humboldt, State of California

**EXHIBIT A**

**Revised Conditions of Approval**

**ATTACHMENT B**

**Expanded Discussion of Wetland Buffer Provisions**



<p>Biological Resource §3400 - §3604 (FP) §3.30 (HBAP)</p>	<p>Protect designated sensitive and critical resource habitats.</p>	<p>A site visit by Department of Fish and Wildlife identified a small isolated wetland near the middle of the parcel. The applicant engaged the services of a biologist who submitted a Preliminary Wetland Delineation (Dains, May 6, 2015) followed by a Wetland Protection Plan (Dains, September 15, 2015). The Wetland Delineation identified the wetland as a 150 square foot seasonal isolated wetland occurring on disturbed ground. Section 3.30.B.6.e of the HBAP allows for the relaxation of the 100 foot wetland buffer setback provided the reduction is necessary to allow development of the parcel with the principally permitted use and the maximum feasible setback is maintained sufficient to protect the wetland's habitat values. The Wetland Protection Plan details measures to implement to ensure the protection and rehabilitation of the wetland area. The 150 square foot wetland will be buffered by an area 13 times its size. The minimum setback to parking areas is approximately 16 feet. The wetland and buffer area will be separated from foot and vehicular traffic by a permanent post and cable fence. A concrete curb will encircle the wetland buffer to prevent parking area runoff from entering the wetland. During construction the wetland and buffer will be protected with high visibility fencing and remain undisturbed. After construction the wetland and buffer will be planted with native, locally sourced species and monitored and maintained to ensure the plantings survive.</p> <p><u>The HBAP requires that when development occurs within the wetland buffer, the project shall be subject to the mitigation measures set forth in section 3.30B.6.f(1) through (6) inclusive, as applicable. These measures will be part of the final development plan for the project (see Page 9 of this staff report, Condition of Approval #23 for full text of this provision). The measures will be satisfied as follows: (1) no more than 25% impervious surfaces – the applicant will meet this standard through limiting hardscape and through use of pervious paving and/or other suitable surfacing materials; (2) release of storm water runoff – runoff will be redirected away from the wetland feature through drainage plan and through incorporation of Low Impact Development features (Condition of Approval #3, 14, 15); (3) dissipation of outfalls, culverts and gutters – drainage plan and to comply with MS4 and on-site detention (Conditions of Approval #3, 4, 8, 14); (4) sewage disposal to meet Basin Plan requirements – the development will be served by Humboldt Community Services District; (5) disturbance within 100 feet of mean high water line – not applicable; and (6) minimize cut and fill, address sediment and revegetate all disturbed areas – the project will use best management practices to control erosion and sediment from construction activities and includes landscaping plan (Condition of Approval -#12, 13, 16).</u></p> <p>The project is conditioned with standard erosion and sediment controls, an oil-water separator, and LID techniques for natural storm water detention. Therefore, minimal impacts to biological resources and/or sensitive or critical habitats resources are expected.</p>
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313-87.3 Signs and Nameplates	In commercial zones signs shall not exceed 300 square feet in the aggregate and shall not be divided into more than six single-faced or double-faced signs.	The project proposes two signs. The first is a double-sided pole mounted sign of approximately 70.7 square feet per side (141.4 square feet total). The height of the pole mounted sign is 21 feet. This sign is proposed to be illuminated. The second sign will be mounted on the building and be approximately 150 square feet and illuminated. Together the signs total 291.5 square feet.
313-38.1 W: Coastal Wetland Areas	<u>The purpose of these provisions is to establish regulations to provide that any development in coastal wetlands will not degrade the wetland, but will maintain optimum populations of marine or freshwater organisms and, where feasible, will enhance wetland resources.</u>	<u>The project proposes the protection, revegetation and restoration of the wetland by implementing the mitigation measures in the environmental document and Section 3.30B6 Wetland Buffers of Humboldt Bay Area Plan and adhering to the Wetland Protection Plan developed for the project.</u>  <u>These measures, when implemented, will enhance the wetland resources.</u>
<b>313-125 WETLAND BUFFER AREAS</b>		
313-125.8 Required Findings	<u>Development within Coastal Wetland Buffer Areas shall be permitted only if the applicable Resource Protection Impact Findings in Chapter 2, Procedures, Supplemental Findings (312-39.15), are made.</u>	<u>As described and depicted on the plot plan, a degraded seasonal wetland (approximate 150 square feet) lies in the southwest portion of the property. By definition, a buffer from this wetland feature extends to South Broadway and the adjoining property lines. Per Section 313-125.7.3 development within the wetland buffer may be sited closer than 100 feet (or the average setback of existing development using the string line method) from the wetland feature. This accommodation may be used if it can be shown that 1) the lesser setback will not result in a significant adverse effect to the wetland habitat and will be compatible with the continuance of such habitat; and 2) additional mitigation measures may be required to ensure that new development does not adversely affect habitat values. The two findings are addressed in the Dains reports (refer to discussion in Section 1 HBAP consistency (above)) and in the Supplemental Findings for Coastal Wetland Buffers 312-39.15 below.</u>
<b>312-39 SUPPLEMENTAL COASTAL RESOURCE PROTECTION IMPACT FINDINGS</b>		
<b>312-39.14 Coastal Wetlands</b>		
<u>There is no less environmentally damaging feasible alternative</u>	<u>The project proposes to develop a parcel that was subdivided for the purposes of future commercial</u>	



	development. The parcel, including the wetland area, has been previously disturbed by the dumping of fill, asphalt scrap, off road vehicle traffic and parking. The proposed project will result in the enhancement and restoration of the degraded wetland and therefore be less environmentally damaging than the "no project" alternative.
<u>The best mitigation measures feasible have been provided to minimize adverse environmental effects</u>	Project mitigation proposed should enhance and restore the wetland to a higher functioning wetland feature. The objective will be to maintain a seasonal wetland with native herb and shrub canopy layers. The wetland will function for groundwater percolation and will retain escape cover with seasonally moist soils. It will provide foraging opportunities for seed and fruit eating birds and nesting opportunities for songbirds.
<u>The required mitigation will maintain or enhance the functional capacity of the wetland or estuary</u>	No development within the wetland is proposed. The mitigation measures imposed on the project will effectively enhance the functionality of the wetland.
<b><u>312-39.15 Coastal Wetland Buffers</u></b>	
<u>Development will be sited and designed to prevent impacts which would significantly degrade wetland habitat areas, and shall be compatible with the continuance of such habitat areas</u>	<u>The project includes a number of mitigation measures designed to prevent impacts to the wetland. These include clearly delineating the limits of the wetland to prevent construction activities or other intrusion in the area. During construction the wetland area will be protected with high visibility fencing and remain undisturbed. After construction, the wetland area will be separated from foot and vehicular traffic by a permanent post and cable fence and planted with native, locally sourced species and monitored and maintained to ensure the plantings survive. These measures will prevent impacts to the area and enhance the habitat value of the wetland.</u>
<u>The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms shall be maintained, and where feasible, restored.</u>	<u>No development within the wetland is proposed. Project mitigation proposed should enhance and protect the wetland onsite.</u>

RECEIVED  
BOARD OF SUPERVISORS

OCT 28 2016

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**FLOYD LAW FIRM**

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Eureka, California 95501  
Telephone: (707) 445-9754  
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E-mail: [befloyd@floydlawfirm.net](mailto:befloyd@floydlawfirm.net)

Attorneys:

Bradford C Floyd  
Carlton D. Floyd

 **COPY**

October 27, 2016

Humboldt County Board of Supervisors  
825 Fifth Street, Room  
Eureka, CA 95501

**Re: Dollar General - Eich Road, Humboldt Hill area;  
Coastal Development Permit, Special Permit  
Application Number 9329, Case Number CDP-14-033/ SP-14-049**

Dear Supervisors:

As you may recall from previous correspondence dated August 25, 2016, I represent Dan and Kelly Noga, the owners of property adjacent to the proposed development of the Dollar General store, which is the subject of this agenda item. The Nogas are the owners of the Country Club Market located at 5667 S. Broadway and the vacant land which is situated between the Country Club Market and the site for the proposed Dollar General store. In the August 25 correspondence I set forth in detail our objections to the issuance of a special permit. Since that time, I have learned of additional reasons why the Board of Supervisors should grant the Nogas' appeal in this matter and deny the special permit requested by applicant, or, in the alternative, send this matter back to the Planning Commission for reconsideration.

The Humboldt Bay Area Plan of the Humboldt County Local Coastal Program ("HBAP") addresses, among other things, wetlands, such as the wetlands identified on the lot Cross Development/Dollar General is seeking a special permit on. For your convenience in reviewing the code sections of the HBAP that apply, I have enclosed the Cover Page of the HBAP and the applicable code sections, namely, Chapter 3.30.B.6, pages 47-48.

Specifically, HBAP 3.30.B.6 addresses Wetland Buffer Areas. HBAP 3.30.B.6 restricts all land use or development in areas adjacent to coastal wetlands in the Wetland Buffer Areas<sup>1</sup>. The Wetland Buffer Areas require a setback of between 100-200 feet from the identified wetland, if the new development is outside an urban limit line. (HBAP 3.30.B.6.d.)

HBAP 3.30.B.6.e provides a variance for setbacks of less than 100-200 feet in both urban and rural areas when the prescribed buffer would prohibit development of the site for principle use for which it was designated. However, if a variance of the Wetland Buffer Areas less than 100 feet is allowed by County, then two additional conditions are imposed by the HBAP. First, the reduction in the setback shall still retain the maximum setback feasible; second, the mitigation measures set forth in HBAP 3.30.B.6.f, as well as any additional measures the County may impose, "shall" be included. These mandatory mitigation measures are set forth verbatim below:

---

<sup>1</sup>Wetland Buffer Area is defined in HBAP 3.30.B.6.a.



- f. (1) Not more than 25% of the lot surface shall be effectively impervious.  
(2) The release rate of storm runoff to adjacent wetlands shall not exceed the natural rate of storm runoff for a 50 year storm of 10 minute duration.  
(3) Storm water outfalls, culverts, gutters, and the like shall be dissipated.  
(4) Septic systems or alternative waste disposal systems must meet standards of the Humboldt-Del Norte Health Department and the Regional Water Quality Control Board.  
(5) Areas disturbed during construction, grading, etc., within 100 feet of the mean high water line, shall be restored to original contours and sufficiently and promptly replanted with vegetation naturally occurring in the immediate area.  
(6) Development and construction shall minimize cut and fill operations and erosion and sedimentation potentials through construction of temporary and permanent sediment basins, sediment basins, seeding or planting bare soil, diversion of runoff away from graded areas and areas heavily used during construction, and, when feasible, avoidance of grading during the rainy season (November through April).

The issuance of the special permit to the applicant clearly violates HBAP 3.30.B.6.e, and f. For instance, the lot size of the subject lot is only .87 acres or 37,897 square feet. The building alone is 9,300 square feet which is over 24% of the lot size. The sidewalk and curb along the front of the building are 920 square feet. When the square footage of the building, sidewalk and curb are added together (10,220 square feet) this equals 27% of the lot size—a clear violation of HBAP 3.30.B.6.e, and f.(1). But it gets worse. When the square footage of parking lot, roadside curbs, gutters and the loading zone (all of which include surfaces effectively impervious to water) are added in, then over 80% of the parcel size would have impervious surfaces.

The permit approved by the Commission allows for a 16-foot setback from identified and designated wetland on the subject parcel for new development. Since new development will occur in the 100-200 foot wetland buffer “Not more than 25% of the lot surface shall be effectively impervious” (HBAP 3.30.B.6.f.1)—in fact over 80% of the lot surface would be effectively impervious.

In addition, nothing in the special permit approved by the Commission addresses the other mitigation measures that “shall” be included if new development is going to take place in the wetland buffer. (HBAP 3.30.B.6.f.(2)-(6).) These mitigation measures likewise need to be addressed before a special permit is issued involving new development in a wetland buffer.

Based upon the foregoing, Mr. and Mrs. Noga respectfully request the Board deny the special permit approved in this matter by the Planning Commission. In the alternative, the Board could send this matter back to the Commission requiring it address the mandatory mitigation measures outlined in HBAP 3.30.B.6.f. (1)-(6). These mitigation measures make it impossible for Cross Development/Dollar General to develop this property.

Respectfully submitted,



Bradford C Floyd

BCF/gme  
Enclosure

HUMBOLDT COUNTY GENERAL PLAN

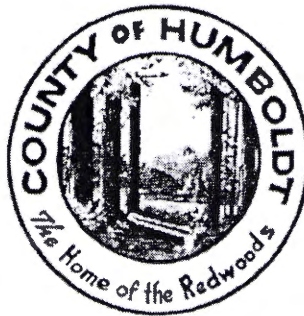
Volume II

HUMBOLDT BAY AREA PLAN

of the

Humboldt County

Local Coastal Program



December 2014



- (2) Mitigation of dune hollows outside of dune habitats (at the King Salmon - Spruce Point and Elk River wetland restoration areas) shall provide for restoration of at least equal or greater biological productivity and, at a minimum, shall provide for two acres of restored wetlands for every acre of dune hollow filled.
- (3) Fill of dune hollows for development permitted by Coastal Act Section 30233 shall be mitigated as outlined above.

6. Wetland Buffer

- a. No land use or development shall be permitted in areas adjacent to coastal wetlands, called Wetland Buffer Areas, which degrade the wetland or detract from the natural resource value. Wetland Buffer Areas shall be defined as:
  - (1) The area between a wetland and the nearest paved road, or the 40 foot contour line (as determined from the 7.5' USGS contour maps), whichever is the shortest distance, or,
  - (2) 250 feet from the wetland, where the nearest paved road or 40 foot contour exceed this distance, or
  - (3) Transitional Agricultural lands designated Agriculture Exclusive shall be excluded from the wetland buffer.
- b. New development, except for:
  - (1) development permitted in 3.30B2,3, and 4
  - (2) wells in rural areas; and
  - (3) new fencing, so long as it would not impede the natural drainage shall be sited to retain a setback from the boundary of the wetland sufficient to prevent adverse effects to the wetland's habitat values.
- c. within an urban limit line, the setback shall be either 100 feet or the average setback of existing development immediately adjacent as determined by the "string line method." That method shall be used which provides development setbacks similar to those occurring on adjacent parcels and adequately protects the wetland.
- d. Outside an urban limit line, the setback shall be between 100 and 200 feet, depending upon the size and sensitivity of the wetland, drainage boundaries, vegetation, adjacent uses, and the potential impacts of the project on the wet habitat values. The precise width of the setback shall be sufficient to prevent significant effects to the wetland.
- e. In both urban and rural areas, setbacks of less than the distance specified above may be permitted only when the prescribed buffer would prohibit development of the site for principle use for which it is designated. Any such reduction in setback shall still retain the maximum setback feasible, and may require mitigation measures, in addition to those specified below, to ensure new development does not adversely affect the wetland's habitat values.
- f. All new development within the wetland buffer shall include the following mitigation measures:
  - (1) Not more than 25% of the lot surface shall be effectively impervious.
  - (2) The release rate of storm runoff to adjacent wetlands shall not exceed the natural rate of storm runoff for a 50 year storm of 10 minute duration.

- (3) Storm water outfalls, culverts, gutters, and the like shall be dissipated.
- (4) Septic systems or alternative waste disposal systems must meet standards of the Humboldt-Del Norte Health Department and the Regional Water Quality Control Board.
- (5) Areas disturbed during construction, grading, etc., within 100 feet of the mean high water line, shall be restored to original contours and sufficiently and promptly replanted with vegetation naturally occurring in the immediate area.
- (6) Development and construction shall minimize cut and fill operations and erosion and sedimentation potentials through construction of temporary and permanent sediment basins, sediment basins, seeding or planting bare soil, diversion of runoff away from graded areas and areas heavily used during construction, and, when feasible, avoidance of grading during the rainy season (November through April).
- g. The County shall request the Department of Fish and Game to review plans for development within 200 feet of the boundary of the wetland.

#### 7. Road Construction Within Watersheds Containing Wetlands

Road construction within watersheds containing wetlands, as identified on the sensitive habitat maps, other than for timber harvest purposes (road construction controls for this activity are currently regulated by the California Department of Forestry in Timber Harvest Plans), shall employ suitable techniques and measures necessary to prevent erosion and minimize surface runoff. This shall include, but is not limited to:

- a. Limiting soil exposure time and disturbed area;
- b. Minimizing uninterrupted slope length through surface roughening and serrated slopes;
- c. Temporary slope stabilization if grading operations occur during wet weather months (October through May) including, mulches, nettings, chemical and natural binders, rip-rap, etc.;
- d. Immediate vegetative plantings of disturbed slopes at finished grades;
- e. Control of runoff through controlled water and drainage systems with dissipated discharges and receiving stream bank protection;
- f. Diversion of runoff away from graded areas and areas traveled during project development;
- g. Temporary and permanent sediment control through use of dikes, filter berms, and sediment basins.

#### 8. Coastal Streams, Riparian Vegetation And Marine Resources

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Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Use of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

\*\*\*

- 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means,





## COUNTY OF HUMBOLDT

AGENDA ITEM NO.

**L-3**

Hearing Date: October 11, 2016  
To: Board of Supervisors  
From: Robert S. Wall, Interim Director, Planning and Building Department **RSW**  
Subject: Continued Agenda Item  
Appeal of Planning Commission Approval of the Dollar General Coastal Development and Special Permit  
Case Number CDP-14-033AA, SP-14-049AA  
Assessor Parcel Number 305-101-054  
Humboldt Hill area

### RECOMMENDATIONS:

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony and argument by the appellant and applicant, and public comment.
2. Based on the findings in the staff report and testimony received about the project, deny the appeal, uphold the Planning Commission's approval of the project, making the findings in Resolution 16-\_\_\_\_ (Attachment E) for the Dollar General Coastal Development and Special Permit application subject to the conditions of approval.
3. Direct the Clerk of the Board to give notice of the decision to the appellant, the project applicant, the agent and any other interested party.
4. Close the public hearing.

Prepared by \_\_\_\_\_  
Karen Meynell, Planner

CAO Approval

*Cheryl Dillingham*

#### REVIEW:

Auditor \_\_\_\_\_ County Counsel *ME* Human Resources \_\_\_\_\_ Other \_\_\_\_\_

#### TYPE OF ITEM:

\_\_\_\_ Consent  
\_\_\_\_ Departmental  
☒ Public Hearing  
\_\_\_\_ Other \_\_\_\_\_

#### PREVIOUS ACTION/REFERRAL:

Board Order No. L-2

Meeting of: 9/6/16

#### BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor  
Seconded by Supervisor

Ayes  
Nays  
Abstain  
Absent

**SEE ACTION SUMMARY**

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Kathy Hayes, Clerk of the Board

**Exhibit No. 3**

**A-1-HUM-16-0101**

**NOTICE OF FINAL LOCAL ACTION**

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**SOURCE OF FUNDING:** Fees submitted by the appellant are deposited into Planning and Building Department Current Planning Revenue Account 1100-277-608000. Any costs incurred by this appeal that exceed the applicant's appeal fee will be covered by the Current Planning Division's FY 2015-16 General Fund Allocation.

## **DISCUSSION:**

### ***Project Description***

The matter for consideration by the Board is an appeal (Attachment A) of the Planning Commission's July 7, 2016 approval (Attachment B) of the Coastal Development and Special Permit application by Dollar General for the construction of a new retail variety store.

### ***Summary***

The project includes construction of a commercial building on a 0.87 acre parcel that is currently vacant. The commercial use of the approximately 9,300 square foot building will be for a retail store which is principally permitted in the Commercial General zoning district. A 150 square foot isolated wetland was identified near the middle of the parcel. A Special Permit is required to reduce the wetland setback in order to develop the parcel for commercial purposes and to allow for a parking exception that would reduce the number of required parking spaces due to the level of anticipated use. The height of the structure ranges from approximately 22 feet at the front of the store to 15 feet at the rear. The hours of operation will be 8 am to 10 pm, seven days a week. The store will operate with three (3) full time employees approximately 95% of the time. Occasionally there will be up to a maximum of five (5) employees. A dedicated loading space is included in the project proposal. There is no tree removal proposed and only minimal grading is necessary. The parcel is served by Humboldt Community Services District for water and sewer services.

### ***Basis of Appeal***

The basis of the appeal is set forth in the appeal letter and attachment submitted by Bradford C. Floyd of the Floyd Law Firm on behalf of his clients, Dan and Kelly Noga, which was received by the Planning and Building Department – Planning Division on July 20, 2016 (Attachment A). This appeal was timely filed in accordance with County Code.

### ***Planning Commission Decision***

On July 7, 2016, the Planning Commission approved the project by adopting Resolution No. 16-20, with a 3-2 vote after review of the staff report and supplemental information and after consideration of public testimony.

### ***Staff Recommendation***

Planning staff recommends that the Board deny the appeal, uphold the Planning Commission decision and approve the project subject to the recommended conditions.

### ***Staff Discussion on the Issues on Appeal***

According to the June 24, 2016 letter by Floyd Law Firm the appellant opposes the proposed project for the following reasons. Staff's response to each item immediately follows each issue.

1. **Increase of traffic on South Broadway and Humboldt Hill Road.** Staff Analysis: Any increase in traffic on roadways adjacent to the proposed project will be insignificant. The

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location of the variety store will reduce the distance Humboldt Hill area residents need to travel to shop. The store is located on South Broadway, the old State Highway which is sufficiently improved to accommodate additional vehicles. Providing the Humboldt Hill population with a variety store in the neighborhood will reduce the amount of vehicle trips entering the highways to visit the next nearest store within the city limits of Eureka.

2. **School bus stop located nearby.** Staff Analysis: The parcel is planned and zoned for commercial development. The proposed development should not interfere with students loading and unloading school buses.
3. **Alleged right-of-way for ingress and egress for the Nogas' properties.** Staff Analysis: Although there is historical use of the subject parcel to access the Nogas' properties, there is no deeded access over the subject property for the benefit of the Nogas' properties. The parking lot for the proposed Dollar General has a curb to prevent customers from entering the Nogas' properties from the parking lot. Furthermore, the easement shown in Exhibit E of the appellants submittal was relinquished through Quitclaim Deed, Instrument No. 2007-16498-4 of Humboldt county Official Records on May 30, 2007 (Attachment D).
4. **Utility easements.** Staff Analysis: The Preliminary Title Report dated December 19, 2014 provides evidence the alleged utility easements do not exist.
5. **Agreement between Nogas and Cookman-Meyer Partnership that neither party would develop their respective property to be in competition with the other's business.** Staff Analysis: The claim that this agreement is binding on a successor in interest's future development is a matter to be settled in a civil court and is not under the authority of the Board of Supervisors. This agreement does not fall within the findings for approval of a Coastal Development Permit pursuant to Humboldt County Code Section 312-17.
6. **The subject property has substantial wetlands and wetland-related species over the majority of the property.** Staff Analysis: The applicant submitted a Preliminary Wetland Delineation (Dains, May 6, 2015) followed by a Wetland Protection Plan (Dains, September 15, 2015). The Wetland Delineation identifies a 150 square foot wetland as a seasonal isolated wetland occurring on disturbed ground. The Wetland Delineation does not identify additional wetland areas on the parcel. The Wetland Protection Plan describes measures to implement to ensure the protection and rehabilitation of the wetland area. There is no other wetland delineation that contradicts the submitted report.
7. **The subject property is not properly zoned for the operation of a retail store such as Dollar General.** Staff Analysis: The zoning of the subject property is Commercial General allowing for retail sales as a principally permitted use.
8. **The public claims a right-of-way over the subject property based upon common-law dedication.** Staff Analysis: The claim of prescriptive rights is a matter to be settled in a civil court and is not under the authority of the Board of Supervisors.
9. **Dollar General is not a local business.** Staff Analysis: There is nothing in Humboldt County land use or zoning regulations limiting development to local interests.

The Nogas have filed lawsuit for quiet title and promissory estoppel against the property owners regarding several of these issues.

According to the July 7, 2016 letter by Floyd Law Firm the appellant has adopted the arguments set forth in the letter to the Planning Commission by Kimberly Tays dated July 4, 2016 and her supplemental comments dated July 5, 2016. In addition to adopting Ms. Tays' comments (objections), the appellant has the following objections based upon their review of the Planning Commission staff report and its attachments. Staff's response to each item immediately follows each issue.

10. **Reduced wetland setback to approximately 16 feet.** Staff Analysis: A Department of Fish and Wildlife representative discovered the wetland during a 2015 site visit. Subsequently, the wetland has been identified and described in the Wetland Delineation Report

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prepared by Virginia Dains, a qualified biologist. The Humboldt Bay Area Plan allows for the reduction of the standard 100 foot wetland buffer setback provided the reduction is necessary to allow development of the parcel with the principally permitted use and the maximum feasible setback is maintained sufficient to protect the wetland's habitat values. The Wetland Protection Plan describes measures to implement to ensure the protection and rehabilitation of the wetland area. The 150 square foot wetland will be buffered by an area 13 times its size. The minimum setback to parking areas is approximately 16 feet. The wetland and buffer area will be separated from foot and vehicular traffic by a permanent post and cable fence. A concrete curb will encircle the wetland buffer to prevent parking area runoff from entering the wetland. During construction, the wetland and buffer will be protected with high visibility fencing and remain undisturbed. After construction the wetland and buffer will be planted with native, locally sourced species and monitored and maintained to ensure the plantings survive. The Wetland Delineation Report and Wetland Protection Plan have been reviewed by the Department of Fish and Wildlife and the California Coastal Commission. Neither agency had significant comments.

11. **Reduction in required parking spaces.** Staff Analysis: The appeal alleges that allowing the applicant to reduce the required onsite parking spaces based on parking surveys from the communities of Gridley, Los Molinos and Orland, CA is not representative of the population surrounding the proposed project. The population of Humboldt Hill was approximately 3,414 in 2010. The surrounding communities of Fields Landing and King Salmon, as well as parts of Elk River may also contribute to the population that will visit the proposed store on a regular basis. These population numbers are in line with the surveys submitted by the applicant. The appellant argues that the Country Club Market is required to have 28 parking spaces and was granted no reduction in parking spaces. Staff would point out that the County Club Market does not have a loading zone. If the proposed project were to remove the loading zone from the project design all of the parking required by code could be accommodated onsite.
12. **Interference with natural drainage patterns.** Staff Analysis: The letter from Kimberly Tays suggests there will not be enough water entering the ground to recharge the wetland due to the impermeable surfaces proposed in the project. The Wetland Protection Plan development by Virginia Dain, a qualified biologist, describes the wetland as seasonal. The report states that direct precipitation and roof run-off will drive the wetland hydrology. Ms. Tays' letter is concerned with the roofing material and potential pollutants. The proposed roofing material is metal which will minimize potential pollutants from entering the wetland.
13. **Unacceptable reduction to wetland buffer zone.** Staff Analysis: See number 10, above.
14. **Light pollution.** Staff Analysis: The project is conditioned to require all new and existing outdoor lighting to be compatible with the existing setting and directed within the property boundaries. Illuminated signs shall be turned off within one (1) hour of close of business. The applicant is required to submit a Lighting Plan for approval by the Planning and Building Department prior to building permit issuance. The plan shall address the amount of light to be used, minimize glare and off-site impacts of light trespass, and provide for energy conservation by reducing the amount of light during non-business hours while maintaining adequate illumination for security.
15. **Traffic congestion, noise pollution and greenhouse emissions:** Staff analysis: The applicant submitted a Trip Generation Assessment from KD Anderson & Associated, Inc. dated October 8, 2014. The assessment is based on review of trip generation rates published by the Institute of Transportation Engineers *Trip Generation Manual, 9<sup>th</sup> Edition* (2012). The conclusion of the report is that 385 new "trips" per day will be generated by the proposed project. Each time an employee or customer travels to the site and then departs the site, one inbound and one outbound trip will be generated. The 385 vehicle trips equal 192 customer visits. The estimate by Dollar General of 10-13 trips per hour is consistent with the assessment. (Thirteen trips per hour multiplied by 14 hours equals 182 customer visits.)

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16. **Lack of wildlife studies:** Staff Analysis: Staff consulted with the Department of Fish and Wildlife with regard to the potential need for a wildlife study. The response was that the wetland "is a small and seemingly disconnected wetland, and the proposal is to preserve it in place, albeit with a reduced buffer. Habitat value for anything other than pacific tree frog (*Pseudacris regilla*) and foraging birds (not likely nesting habitat) is quite limited."
17. **California Coastal Commission suggestions.** Staff analysis: The suggestions by the staff of the Coastal Commission to reduce proposed hardscape, include porous pavement and preserve natural vegetation will be incorporated into the project to the extent feasible. The project is a Regulated Project subject to the State Water Board's Phase II Small Municipal Separate Storm Sewer System (MS4) Program. The applicant must submit a plan for the retention of storm water on site such that pollutant-laden runoff from the proposed new parking lot and other impermeable surfaces does not degrade surrounding coastal wetlands and waters. The plan will require there to be open space and landscaped areas sufficient to meet the MS4 Program requirements. The plan must be submitted prior to building permit issuance. The applicant has chosen to not include porous pavement in the proposed project due to high cost and poor durability. The natural vegetation surrounding the wetland area, approximately 2,000 square feet, will be retained and enhanced with native, locally sourced plants.
18. **Stand-Alone stores encourage single drive trips and reduced walkability and bikeability.** Staff Analysis: The letter from Ms. Tays suggests that a stand-alone store increases vehicle trips. Staff would suggest that the location of the store would promote walking and bicycle trips. Currently, residents of Humboldt Hill must get on the highway to get to a variety store. Walking and biking on the highway is rated as risky by most residents. Having a store located within walking and biking distance will reduce the need to drive on the highway to the nearest variety store.
19. **Alternative building sites.** Staff Analysis: While there are vacant and available sites in other areas of Humboldt the applicant has chosen the Humboldt Hill location as the best fit for their business model.

**FINANCIAL IMPACT:** There may be an effect on the General Fund. The appellant has paid in full the appeal fee associated with this appeal. Any costs incurred by this appeal that exceed the applicant's appeal fee will be covered by the Current Planning Division's FY 2016-17 General Fund Allocation.

**OTHER AGENCY INVOLVEMENT:** The project was referred to the applicable referral agencies for comments and recommendations. The Draft Mitigated Negative Declaration was circulated to State agencies pursuant to the California Environmental Quality Act.

**ALTERNATIVES TO STAFF RECOMMENDATIONS:** The Board of Supervisors can uphold the appeal and deny the project. This alternative should be implemented if the Board is unable to make all of the required findings. Planning Division staff has found that the required findings can be made. Consequently, staff does not recommend further consideration of this alternative.

**ATTACHMENTS:**

NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.

Attachment A: Appeal letter submitted by Floyd Law Firm on behalf of Dan and Kelly Noga

Attachment B: Resolution of the Planning Commission, Resolution No. 16-20

Attachment C: Planning Commission Staff Report

Attachment D: Planning Commission Supplemental Information Items #1 (from January 8, 2015 Planning Commission meeting) and Supplemental Information Items #1 and #2 from July 7, 2016 Planning commission meeting.

Attachment E: Resolution of the Board of Supervisors





## COUNTY OF HUMBOLDT

AGENDA ITEM NO.

**L-2**

Hearing Date: September 6, 2016  
To: Board of Supervisors  
From: Robert S. Wall, Interim Director, Planning and Building Department *(SW)*  
Subject: Appeal of Planning Commission Approval of the Dollar General Coastal Development and Special Permit  
Case Number CDP-14-033AA, SP-14-049AA  
Assessor Parcel Number 305-101-054  
Humboldt Hill area

### RECOMMENDATIONS:

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony and argument by the appellant and applicant, and public comment.
2. Based on the findings in the staff report and testimony received about the project, deny the appeal, uphold the Planning Commission's approval of the project, making the findings in Resolution 16-\_\_\_\_ (Attachment E) for the Dollar General Coastal Development and Special Permit application subject to the conditions of approval.
3. Direct the Clerk of the Board to give notice of the decision to the appellant, the project applicant, the agent and any other interested party.
4. Close the public hearing.

Prepared by \_\_\_\_\_  
Karen Meynell, Planner

CAO Approval \_\_\_\_\_

*TLFR Cheryl D...*

#### REVIEW:

Auditor \_\_\_\_\_ County Counsel *BA* Human Resources \_\_\_\_\_ Other \_\_\_\_\_

#### TYPE OF ITEM:

\_\_\_\_ Consent  
\_\_\_\_ Departmental  
☒ Public Hearing  
\_\_\_\_ Other \_\_\_\_\_

#### PREVIOUS ACTION/REFERRAL:

Board Order No. \_\_\_\_\_

Meeting of: \_\_\_\_\_

#### BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor  
Seconded by Supervisor

Ayes  
Nays  
Abstain  
Absent

**SEE ACTION SUMMARY**

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Kathy Hayes, Clerk of the Board

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**SOURCE OF FUNDING:** Fees submitted by the appellant are deposited into Planning and Building Department Current Planning Revenue Account 1100-277-608000. Any costs incurred by this appeal that exceed the applicant's appeal fee will be covered by the Current Planning Division's FY 2015-16 General Fund Allocation.

## **DISCUSSION:**

### ***Project Description***

The matter for consideration by the Board is an appeal (Attachment A) of the Planning Commission's July 7, 2016 approval (Attachment B) of the Coastal Development and Special Permit application by Dollar General for the construction of a new retail variety store.

### ***Summary***

The project includes construction of a commercial building on a 0.87 acre parcel that is currently vacant. The commercial use of the approximately 9,300 square foot building will be for a retail store which is principally permitted in the Commercial General zoning district. A 150 square foot isolated wetland was identified near the middle of the parcel. A Special Permit is required to reduce the wetland setback in order to develop the parcel for commercial purposes and to allow for a parking exception that would reduce the number of required parking spaces due to the level of anticipated use. The height of the structure ranges from approximately 22 feet at the front of the store to 15 feet at the rear. The hours of operation will be 8 am to 10 pm, seven days a week. The store will operate with three (3) full time employees approximately 95% of the time. Occasionally there will be up to a maximum of five (5) employees. A dedicated loading space is included in the project proposal. There is no tree removal proposed and only minimal grading is necessary. The parcel is served by Humboldt Community Services District for water and sewer services.

### ***Basis of Appeal***

The basis of the appeal is set forth in the appeal letter and attachment submitted by Bradford C. Floyd of the Floyd Law Firm on behalf of his clients, Dan and Kelly Noga, which was received by the Planning and Building Department – Planning Division on July 20, 2016 (Attachment A). This appeal was timely filed in accordance with County Code.

### ***Planning Commission Decision***

On July 7, 2016, the Planning Commission approved the project by adopting Resolution No. 16-20, with a 3-2 vote after review of the staff report and supplemental information and after consideration of public testimony.

### ***Staff Recommendation***

Planning staff recommends that the Board deny the appeal, uphold the Planning Commission decision and approve the project subject to the recommended conditions.

### ***Staff Discussion on the Issues on Appeal***

According to the June 24, 2016 letter by Floyd Law Firm the appellant opposes the proposed project for the following reasons. Staff's response to each item immediately follows each issue.

1. **Increase of traffic on South Broadway and Humboldt Hill Road.** Staff Analysis: Any increase in traffic on roadways adjacent to the proposed project will be insignificant. The location of the variety store will reduce the distance Humboldt Hill area residents need to

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travel to shop. The store is located on South Broadway, the old State Highway which is sufficiently improved to accommodate additional vehicles. Providing the Humboldt Hill population with a variety store in the neighborhood will reduce the amount of vehicle trips entering the highways to visit the next nearest store within the city limits of Eureka.

2. **School bus stop located nearby.** Staff Analysis: The parcel is planned and zoned for commercial development. The proposed development should not interfere with students loading and unloading school buses.
3. **Alleged right-of-way for ingress and egress for the Nogas' properties.** Staff Analysis: Although there is historical use of the subject parcel to access the Nogas' properties, there is no deeded access over the subject property for the benefit of the Nogas' properties. The parking lot for the proposed Dollar General has a curb to prevent customers from entering the Nogas' properties from the parking lot. Furthermore, the easement shown in Exhibit E of the appellants submittal was relinquished through Quitclaim Deed, Instrument No. 2007-16498-4 of Humboldt county Official Records on May 30, 2007 (Attachment D).
4. **Utility easements.** Staff Analysis: The Preliminary Title Report dated December 19, 2014 provides evidence the alleged utility easements do not exist.
5. **Agreement between Nogas and Cookman-Meyer Partnership that neither party would develop their respective property to be in competition with the other's business.** Staff Analysis: The claim that this agreement is binding on a successor in interest's future development is a matter to be settled in a civil court and is not under the authority of the Board of Supervisors. This agreement does not fall within the findings for approval of a Coastal Development Permit pursuant to Humboldt County Code Section 312-17.
6. **The subject property has substantial wetlands and wetland-related species over the majority of the property.** Staff Analysis: The applicant submitted a Preliminary Wetland Delineation (Dains, May 6, 2015) followed by a Wetland Protection Plan (Dains, September 15, 2015). The Wetland Delineation identifies a 150 square foot wetland as a seasonal isolated wetland occurring on disturbed ground. The Wetland Delineation does not identify additional wetland areas on the parcel. The Wetland Protection Plan describes measures to implement to ensure the protection and rehabilitation of the wetland area. There is no other wetland delineation that contradicts the submitted report.
7. **The subject property is not properly zoned for the operation of a retail store such as Dollar General.** Staff Analysis: The zoning of the subject property is Commercial General allowing for retail sales as a principally permitted use.
8. **The public claims a right-of-way over the subject property based upon common-law dedication.** Staff Analysis: The claim of prescriptive rights is a matter to be settled in a civil court and is not under the authority of the Board of Supervisors.
9. **Dollar General is not a local business.** Staff Analysis: There is nothing in Humboldt County land use or zoning regulations limiting development to local interests.

The Nogas have filed lawsuit for quiet title and promissory estoppel against the property owners regarding several of these issues.

According to the July 7, 2016 letter by Floyd Law Firm the appellant has adopted the arguments set forth in the letter to the Planning Commission by Kimberly Tays dated July 4, 2016 and her supplemental comments dated July 5, 2016. In addition to adopting Ms. Tays' comments (objections), the appellant has the following objections based upon their review of the Planning Commission staff report and its attachments. Staff's response to each item immediately follows each issue.

10. **Reduced wetland setback to approximately 16 feet.** Staff Analysis: A Department of Fish and Wildlife representative discovered the wetland during a 2015 site visit. Subsequently, the wetland has been identified and described in the Wetland Delineation Report prepared by Virginia Dains, a qualified biologist. The Humboldt Bay Area Plan allows for

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the reduction of the standard 100 foot wetland buffer setback provided the reduction is necessary to allow development of the parcel with the principally permitted use and the maximum feasible setback is maintained sufficient to protect the wetland's habitat values. The Wetland Protection Plan describes measures to implement to ensure the protection and rehabilitation of the wetland area. The 150 square foot wetland will be buffered by an area 13 times its size. The minimum setback to parking areas is approximately 16 feet. The wetland and buffer area will be separated from foot and vehicular traffic by a permanent post and cable fence. A concrete curb will encircle the wetland buffer to prevent parking area runoff from entering the wetland. During construction, the wetland and buffer will be protected with high visibility fencing and remain undisturbed. After construction the wetland and buffer will be planted with native, locally sourced species and monitored and maintained to ensure the plantings survive. The Wetland Delineation Report and Wetland Protection Plan have been reviewed by the Department of Fish and Wildlife and the California Coastal Commission. Neither agency had significant comments.

11. **Reduction in required parking spaces.** Staff Analysis: The appeal alleges that allowing the applicant to reduce the required onsite parking spaces based on parking surveys from the communities of Gridley, Los Molinos and Orland, CA is not representative of the population surrounding the proposed project. The population of Humboldt Hill was approximately 3,414 in 2010. The surrounding communities of Fields Landing and King Salmon, as well as parts of Elk River may also contribute to the population that will visit the proposed store on a regular basis. These population numbers are in line with the surveys submitted by the applicant. The appellant argues that the Country Club Market is required to have 28 parking spaces and was granted no reduction in parking spaces. Staff would point out that the County Club Market does not have a loading zone. If the proposed project were to remove the loading zone from the project design all of the parking required by code could be accommodated onsite.
12. **Interference with natural drainage patterns.** Staff Analysis: The letter from Kimberly Tays suggests there will not be enough water entering the ground to recharge the wetland due to the impermeable surfaces proposed in the project. The Wetland Protection Plan development by Virginia Dain, a qualified biologist, describes the wetland as seasonal. The report states that direct precipitation and roof run-off will drive the wetland hydrology. Ms. Tays' letter is concerned with the roofing material and potential pollutants. The proposed roofing material is metal which will minimize potential pollutants from entering the wetland.
13. **Unacceptable reduction to wetland buffer zone.** Staff Analysis: See number 10, above.
14. **Light pollution.** Staff Analysis: The project is conditioned to require all new and existing outdoor lighting to be compatible with the existing setting and directed within the property boundaries. Illuminated signs shall be turned off within one (1) hour of close of business. The applicant is required to submit a Lighting Plan for approval by the Planning and Building Department prior to building permit issuance. The plan shall address the amount of light to be used, minimize glare and off-site impacts of light trespass, and provide for energy conservation by reducing the amount of light during non-business hours while maintaining adequate illumination for security.
15. **Traffic congestion, noise pollution and greenhouse emissions:** Staff analysis: The applicant submitted a Trip Generation Assessment from KD Anderson & Associated, Inc. dated October 8, 2014. The assessment is based on review of trip generation rates published by the Institute of Transportation Engineers *Trip Generation Manual, 9<sup>th</sup> Edition* (2012). The conclusion of the report is that 385 new "trips" per day will be generated by the proposed project. Each time an employee or customer travels to the site and then departs the site, one inbound and one outbound trip will be generated. The 385 vehicle trips equal 192 customer visits. The estimate by Dollar General of 10-13 trips per hour is consistent with the assessment. (Thirteen trips per hour multiplied by 14 hours equals 182 customer visits.)

- 16. Lack of wildlife studies:** Staff Analysis: Staff consulted with the Department of Fish and Wildlife with regard to the potential need for a wildlife study. The response was that the wetland "is a small and seemingly disconnected wetland, and the proposal is to preserve it in place, albeit with a reduced buffer. Habitat value for anything other than pacific tree frog (*Pseudacris regilla*) and foraging birds (not likely nesting habitat) is quite limited."
- 17. California Coastal Commission suggestions.** Staff analysis: The suggestions by the staff of the Coastal Commission to reduce proposed hardscape, include porous pavement and preserve natural vegetation will be incorporated into the project to the extent feasible. The project is a Regulated Project subject to the State Water Board's Phase II Small Municipal Separate Storm Sewer System (MS4) Program. The applicant must submit a plan for the retention of storm water on site such that pollutant-laden runoff from the proposed new parking lot and other impermeable surfaces does not degrade surrounding coastal wetlands and waters. The plan will require there to be open space and landscaped areas sufficient to meet the MS4 Program requirements. The plan must be submitted prior to building permit issuance. The applicant has chosen to not include porous pavement in the proposed project due to high cost and poor durability. The natural vegetation surrounding the wetland area, approximately 2,000 square feet, will be retained and enhanced with native, locally sourced plants.
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- 19. Alternative building sites.** Staff Analysis: While there are vacant and available sites in other areas of Humboldt the applicant has chosen the Humboldt Hill location as the best fit for their business model.

**FINANCIAL IMPACT:** There may be an effect on the General Fund. The appellant has paid in full the appeal fee associated with this appeal. Any costs incurred by this appeal that exceed the applicant's appeal fee will be covered by the Current Planning Division's FY 2016-17 General Fund Allocation.

**OTHER AGENCY INVOLVEMENT:** The project was referred to the applicable referral agencies for comments and recommendations. The Draft Mitigated Negative Declaration was circulated to State agencies pursuant to the California Environmental Quality Act.

**ALTERNATIVES TO STAFF RECOMMENDATIONS:** The Board of Supervisors can uphold the appeal and deny the project. This alternative should be implemented if the Board is unable to make all of the required findings. Planning Division staff has found that the required findings can be made. Consequently, staff does not recommend further consideration of this alternative.

**ATTACHMENTS:**

NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.

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Attachment E: Resolution of the Board of Supervisors



PLANNING DIVISION  
PLANNING AND BUILDING DEPARTMENT  
COUNTY OF HUMBOLDT

3015 H Street, Eureka, CA 95501  
Phone (707) 445-7541 • Fax (707) 268-3792  
<http://www.humboldt.gov.org/156>

RECEIVED

JUL 12 2016

CALIFORNIA  
COASTAL COMMISSION  
NORTH COAST DISTRICT

**Applicant**

Dan Dover  
c/o Dollar General  
Cross Development  
5317 Inverrary Drive  
Plano, TX 75093

**Owner**

Cookman-Meyer Partnership  
1920 Freshwater Rd  
Eureka, CA 95503

**Agent**

Dan Dover  
Cross Development  
5317 Inverrary Drive  
Plano, TX 75093

## Notice of Planning Commission Decision

**Date** July 8, 2016

**Assessor Parcel No.** 305-101-054

**Apps No.** 9329

**Permit** CDP 14-033, SP 14-049

**Contact** Karen Meynell - 268-3731

**Description**

The proposed project is a Coastal Development Permit to construct a commercial building on a 0.87 acre parcel that is currently vacant. The commercial use of the approximately 9,300 square foot building will be for a retail store which is principally permitted in the Commercial General zoning district. A 150 square foot seasonal isolated wetland was identified near the middle of the parcel. A Special Permit is required to reduce the wetland setback in order to develop the parcel for commercial purposes and to allow for a parking exception that would reduce the number of required parking spaces due to the level of anticipated use. The height of the structure ranges from approximately 22 feet at the front of the store to 15 feet at the rear. The hours of operation will be 8 am to 10 pm, seven days a week. The store will operate with three (3) full time employees approximately 95% of the time. Occasionally there will be up to a maximum of five (5) employees. A dedicated loading space is included in the project proposal. There is no tree removal proposed and only minimal grading is necessary. The parcel is served by Humboldt Community Services District for water and sewer services.

**Decision**

The project was approved by the Planning Commission on July 7, 2016 by Resolution 16-20 and is subject to the attached Conditions of Approval.

**PACKET INCLUDES:**

**Appeals**

This project may be appealed by any aggrieved person within **10 working** days. The last day to appeal to the Board of Supervisors is 5:00 p.m. July 21, 2016. Additional information regarding appeals is included with this notice.

**Conditions of Approval**

Please review these conditions carefully as other permits may be required before the project commences. In accordance with County Code, this approval may be revoked or rescinded in whole

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or in part, if certain grounds are found to exist (See Humboldt County Code §312-14).

**California Coastal Commission Appeal**

This project is subject to a California Coastal Commission appeal period which begins at the end of the County appeal period. If appealed, the Coastal Commission may deny the project or impose other conditions of approval on the project.

**Effective Date**

If no appeal is initiated, the day after all appeal periods end will become the effective date of the permit. If an appeal has been initiated the effective date will depend on the outcome of the appeal.

**Expiration Date**

You will receive an expiration letter stating the effective date and the expiration date at the end of the Coastal Commission appeal period.

**Extensions**

If the conditions for your project cannot be met before the expiration date, you may apply for an extension with the Planning Division. Extension applications must be submitted with the appropriate fees before the permit expiration date. If the permit expires, a new permit application must be filed and accompanied by applicable fees. The new permit may be subject to different processing requirements and standards. Contact your assigned planner if you have any questions about extensions.

**Changes or Modifications to Project**

If your project needs minor changes or major modifications, review and approval of the project by the Planning Division is required. Applications for changes or modifications must be filed and accompanied by applicable fees. Contact your assigned planner if you think your project needs to be changed or modified.

## ATTACHMENT 1

### CONDITIONS OF APPROVAL

Approval of the Coastal Development and Special Permit is conditioned upon the following terms and requirements which must be fulfilled before a building permit may be issued or use initiated.

1. The applicant shall apply for and obtain an encroachment permit for the commercial driveway. The permit will require the driveway entrance to be surfaced with asphalt concrete or Portland cement concrete. The driveway shall intersect the County road at a 90 degree angle. The driveway grade shall not exceed 2% in the first 20 feet.
2. Applicant will be required to construct a commercial ADA driveway apron; remove the unused driveway drop curb (constructed at the time of the subdivision) and replace with CalTrans Type A2-6 curb and gutter, and construct a 5 foot wide Portland cement concrete sidewalk along the frontage of the lot.
3. The encroachment permit will also include connecting the parking lot drainage into the existing storm drain system within South Broadway. An oil-water filtration system is required prior to discharge into the County storm drain. Per the Development plan the applicant shall prepare shop drawings of the oil-water filtration system and storm water diversion structure for approval. (See also COA #14).
4. The applicant shall comply with the Subdivision's conditions of approval and requirements of the Development Plan for PMS-03-19, on file with the Planning and Building Department, which includes, but is not limited to, construction of a storm water detention system. This system is to be reviewed and inspected by the Department of Public Works (DPW). A fee will be charged by DPW for this review. A copy of the detention construction plan and maintenance plan must be attached and made part of the issuance of any development permit for the lot. (See also COA #14).
5. A total of twenty-four (24) non-tandem, independently accessible parking spaces, including one (1) handicap accessible space, shall be constructed on-site prior to occupancy or before a "final" is issued for the Building Permit. The location of all on-site parking spaces shall appear on the final Building Division Plot Plan. Up to six (6) of the parking spaces may be designated as compact. Compact parking spaces shall be visibly marked with signs and shall be clustered in one section of the parking area. **This requirement shall be clearly identified on the plot plan for building permit.** All parking spaces and access shall be improved with a surface of asphalt or Portland cement and shall be maintained for the life of the project.
6. The project by Code must include a loading space of not less than ten (10) feet wide, sixty (60) feet long and shall contain at least fourteen (14) feet of clearance, or an exception shall be secured in accordance with Section 313-109.1.5.2. Deliveries shall take place during business hours.
7. Site visibility must be maintained at the driveway entrance and at the corners of the lot in conformance with County Code.



8. Applicant shall be responsible to correct any involved drainage problems at the intersection of driveway and the County maintained roadway to the satisfaction of the Department of Public Works, Land Use Division. (See also COA #14).
9. Applicant shall pave, sign and stripe the parking lot.
10. Water and sewer service are available upon payment of applicable fees to Humboldt Community Services District. Water and sewer services shall not be located in a driveway area.
11. Hours of construction activity shall be limited to Monday through Friday from 8:00 am to 6:00 pm, Saturday from 9:00 am to 5:00 pm with no construction activity on Sunday.
12. During construction of the building the applicant shall:
  - a. use dust control techniques when excavating to minimize dust problems on adjacent parcels;
  - b. re-vegetate all disturbed areas prior to winter rain; and
  - c. take all precautions necessary to avoid the encroachment of dirt or debris on adjacent properties.

The plot plan submitted for the Building Permit shall indicate that all ground bared during construction shall be landscaped and/or seeded and mulched prior to October 1st.
13. The applicant shall submit a landscaping plan subject to the review and approval of the Planning Director. All landscaping shall be installed and have its maintenance system in working order prior to occupancy issuance.
14. The applicant shall submit a Drainage Plan for approval by the Department of Public Works that incorporates Low Impact Development techniques into the project design in a manner complementary to the requirements of COA #3 (oil-water filtration) and COA #4 (storm water detention). The Drainage Plan shall comply with the standards of a Regulated Project under the State Water Board's Phase II Small Municipal Separate Storm Sewer System (MS4) Program. Areas identified as treatment areas shall be maintained for the life of the project. The purpose of these combined measures is to maximize the retention of storm water on site such that pollutant-laden runoff from the proposed new parking lot and other impermeable surfaces does not degrade surrounding coastal wetlands and waters.
15. The applicant shall implement all Mitigation Measures set forth in the Mitigated Negative Declaration.
16. The applicant shall submit a soils report with erosion and sediment control measures for review by the Building Inspection Division. Engineered construction plans will be required.
17. The applicant shall submit a Lighting Plan for the project for approval by the Planning and Building Department. The plan shall address the amount of light to be used, minimize glare and off-site impacts of light trespass, and provide for energy conservation by reducing the amount of light during non-business hours while maintaining adequate illumination for security.

18. Signs shall conform to Section 313-87 of the zoning regulations and the County's sight visibility ordinance. A signage plan shall be submitted with the application for Building Permit.
19. **Within five (5) days of the effective date of the approval of this permit**, the applicant shall submit a check to the Planning Division payable to the Humboldt County Recorder in the amount of \$2,260.25. Pursuant to Section 711.4 of the Fish and Game Code, the amount includes the Department of Fish and Wildlife (DFW) fee plus a \$50 document handling fee. This fee is effective through December 31, 2016 at such time the fee will be adjusted pursuant to Section 713 of the Fish and Game Code. Alternatively, the applicant may contact DFW by phone at (916) 651-0603 or through the DFW website at [www.wildlife.ca.gov](http://www.wildlife.ca.gov) for a determination stating the project will have no effect on fish and wildlife. If DFW concurs, a form will be provided exempting the project from the \$2,210.25 fee payment requirement. In this instance, only a copy of the DFW form and the \$50.00 handling fee is required.
20. This project is required to pay for permit processing on a time and material basis as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors. Any and all outstanding Planning fees to cover the processing of the project shall be paid to the Humboldt County Planning Division, 3015 "H" Street, Eureka.
21. A review fee for Conformance with Conditions as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors (currently \$95.00) shall be paid to the Humboldt County Planning Division, 3015 "H" Street, Eureka. This fee is a deposit, and if actual review costs exceed this amount, additional fees will be billed at the County's current burdened hourly rate.
22. The applicant shall submit to the Planning Director annual follow-up reports prepared by a qualified biologist that verifies whether or not: a) the mitigations recommended in the Wetland Protection Plan dated June 5, 2016, prepared by Virginia Dains, Consulting Biologist were adhered to, and b) to assess the success of the restoration plantings and maintenance activities (invasive plant and litter removal and fence maintenance). Surveys shall be conducted for two (2) consecutive years after construction. The report shall prescribe any additional measures required to insure full compliance with the Wetland Protection Plan. A written contract for services and cost estimate for this monitoring work shall be provided to the Department prior to initiation of work. A performance bond may be required by the Planning Director.

**On-going Requirements/Development Restrictions which Must be Satisfied for the Life of the Project:**

1. The project shall be developed and conducted in accordance with the Project Description, Plan of Operations, Project Site Plan and Wetland Protection Plan. Changes other than Minor Deviations to the Plot Plan as provided by Section 312-11.1 shall require a modification of this permit.
2. A six (6) foot high solid wood fence shall be installed at the time of development between the residential and commercial use and be maintained for the life of the development.
3. All new and existing outdoor lighting shall be compatible with the existing setting and directed within the property boundaries. Illuminated signs shall be turned off within one (1) hour of close of business.
4. New utilities shall be installed underground, when feasible.



5. Landscaping shall be maintained for the life of the development in conformance with the approved landscaping plan.

#### **Informational Notes**

1. If cultural resources are encountered during construction activities, the contractor on site shall cease all work in the immediate area and within a 50 foot buffer of the discovery location. A qualified archaeologist as well as the appropriate Tribal Historic Preservation Officer(s) are to be contacted to evaluate the discovery and, in consultation with the applicant and lead agency, develop a treatment plan in any instance where significant impacts cannot be avoided.

The Native American Heritage Commission (NAHC) can provide information regarding the appropriate Tribal point(s) of contact for a specific area; the NAHC can be reached at 916-653-4082. Prehistoric materials may include obsidian or chert flakes, tools, locally darkened midden soils, groundstone artifacts, shellfish or faunal remains, and human burials. If human remains are found, California Health and Safety Code 7050.5 requires that the County Coroner be contacted immediately at 707-445-7242. If the Coroner determines the remains to be Native American, the NAHC will then be contacted by the Coroner to determine appropriate treatment of the remains pursuant to PRC 5097.98. Violators shall be prosecuted in accordance with PRC Section 5097.99.

The applicant is responsible for ensuring compliance with this condition.

2. Gates are not permitted on County right of way for public roads without authorization of the Board of Supervisors. Gates must not create a traffic hazard and must provide an appropriate turnaround in front of the gate (set back approximately 25 feet from the road). Existing gates shall be evaluated for conformance.
3. The applicant is responsible for receiving all necessary permits and/or approvals from other state and local agencies.
4. The Coastal Development Permit and Special Permit shall expire and become null and void at the expiration of one (1) year after all appeal periods have lapsed (see "Effective Date"); except where construction under a valid building permit or use in reliance on the permit has commenced prior to such anniversary date. The period within which construction or use must be commenced may be extended as provided by Section 312-11.3 of the Humboldt County Code.
5. New Development Requires a Permit. Any new development as defined by Section 313-139.6 of the Humboldt County Code (H.C.C.) shall require a Coastal Development Permit and Special Permit or permit modification, except for Minor Deviations from the Plot Plan as provided under Section 312-11.1 of the Zoning Regulations.

## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

1385 EIGHTH STREET, SUITE 130

ARCATA, CA 95521

VOICE (707) 826-8950 FAX (707) 826-8960

DEC 05 2016

CALIFORNIA  
COASTAL COMMISSION  
NORTH COAST DISTRICT

## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Dan and Kelly Noga c/o Bradford C Floyd, Esq.

Mailing Address: 819 Seventh Street

City: Eureka Zip Code: 95501 Phone: 707-445-9754

SECTION II. Decision Being Appealed

1. Name of local/port government: Humboldt County Board of Supervisors
2. Brief description of development being appealed: Development of an approximate 9300 square foot commercial building not to exceed 22 feet in height with associated parking and landscaping. The 0.87-acre parcel is currently vacant and is designated and zoned for Commercial General Uses. A total of 24 parking spaces and a loading zone will be provided on site. The parcel is served by Humboldt Community Services District for water and sewer services.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

Humboldt Hill area, on the east side of South Broadway, approximately 455 feet North from the intersection of Eich Road and South Broadway (APN 305-101-054)

4. Description of decision being appealed (check one.):

Approval; no special conditions

☒ Approval with special conditions:

Denial

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-1-HUM-16-0101

DATE FILED:

12/5/16

DISTRICT:

North Coast

Exhibit No. 4  
A-1-HUM-16-0101  
NOGA APPEAL  
Page 1 of 184



**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

Planning Director/Zoning Administrator

✓ **City Council/Board of Supervisors**

Planning Commission

Other

6. Date of local government's decision: November 15, 2016

Local Government's file number (if any): CDP-14-033/SP-14-049

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Cross Development c/o Russell Gans, Esq.  
814 Seventh Street  
Eureka CA 95501

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Cookman-Meyer Partnership c/o William F. Barnum, Esq.  
PO Box 173  
Eureka CA 95502

(2) Kim Tays  
PO Box 5047  
Arcata CA 95521

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

**SEE ATTACHMENT IV, REASONS SUPPORTING APPEAL, which is attached hereto, along with Exhibits, and incorporated herein by reference.**

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**

**SECTION V. Certification**

The information and facts stated above are correct to the best of my/our knowledge.



\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: 12-5-2016

**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby authorize BRADFORD C FLOYD, Attorney at Law to act as my/our representative and to bind me/ us in all matters concerning this appeal.



\_\_\_\_\_  
Signature of Appellant(s)

Date: Dec 5 2016

#### **Attachment IV. Reasons Supporting This Appeal**

There are several substantive reasons supporting this appeal, including:

1. Applicant's County approved development is based upon a low quality Wetland Delineation performed by its consulting biologist Virginia Dains that is based in part on habitat previously destroyed by the property owner and applicant;
2. The County's variance for the wetland buffer of 16 feet, with development fully surrounding the delineated wetland and wetland buffer is insufficient to protect the wetland that was delineated;
3. The County violated the Humboldt Bay Area Plan by approving a development which covers the majority of the lot;
4. The County's approval of a parking variance of 24 spaces instead of 32 further demonstrates the proposed development is too large for the Subject Property; and,
5. Applicant does not have an established legal right to develop the Subject Property in the manner approved by the County.

Appellant will address each of these substantive reasons individually.

**1. The Wetland Delineation is of low quality.**

In February of 2015 consulting biologist Virginia Dains investigated the Subject Property and based upon her investigation determined a 150 square foot wetland existed on said property. For several reasons Ms. Dains' Wetland Delineation was flawed.

First, one of the owners of the Subject Property, Thomas Cookman, was aware that his property had wetlands on it. He became aware of this fact through letters he received from the Humboldt County Planning Department and the California Coastal Commission. (Exh. A p.49, line 25 to p.50, line 8.)<sup>1</sup> Despite this knowledge, in July or August of 2016 Mr. Cookman hired an individual to mow the entire Subject Property to the ground, including the area delineated by Ms. Dains as wetland. (Exh. A p.50, lines 15-23; p.51, lines 10-20.) A quote from the deposition transcript is quite demonstrative:

**Q. And why did you have somebody go out there and mow the wetlands?**

**A. I mowed it myself many times throughout the years. We mowed it – everything for fire danger and keeping people out of there, and garbage. So every single year we would – we would mow it, and [I] did not mow it the year prior to this and the brush was getting out of hand.**

**Q. Ever since you were aware – well, you said that for about the last year you were aware of a designated wetlands area, correct?**

---

<sup>1</sup> Attached hereto as Exhibit A is a portion of the deposition transcript of Thomas J. Cookman taken on October 24, 2016. Prior to answering questions at his deposition Mr. Cookman was placed under oath by the Court Reporter. This oath has the same force and effect as the oath taken in a court of law. Exhibit A contains the deposition transcript's cover page and excerpts from Mr. Cookman's deposition that appellant believes are relevant to the subject matter of this appeal.



**A. Yes. Not quite a whole year, but yes.**

**Q. And this was the first time since you were aware that it was a wetlands that you caused that property to be mowed –in July or August of this year.**

**A. Yes. (Exh. A, p.50, line 24 to p.51, line 20.)**

By Mr. Cookman's testimony he did not mowed the Subject Property in 2015 but he mowed it in 2014 with his tractor. (See Exh. A, p.50, line 24 to p.51, line 8; p.52, lines 13-19.) In fact, appellant observed Mr. Cookman mowing the entire parcel in the latter part of 2014, just a couple of months before Ms. Dains inspected the Subject Property. Some of the vegetation mowed down included Hooker's Willows. (Exh. A, p.52, lines 24 to p.53, line 7.) Since the Subject Property was mowed by Mr. Cookman in late 2014, when Ms. Dains inspected the Subject Property in February 2015 the vegetation she observed had only been growing a couple of months. This makes her investigation faulty as the vegetation she observed had been completely tampered with. She could not have conducted a proper wetland delineation based upon an evaluation of the plant species observable on the site at the time that she was there.

It is also noteworthy that Mr. Cookman also mowed the Subject Property in August 2016, fifteen to sixteen months after Ms. Dains authored her Preliminary Wetland Designation (Exh. B) and one to two months after Ms. Dains authored the Wetland Protection Plan (Exh. C). Appellant took photographs shortly before the Subject Property was mowed in 2016; while the property was being mowed; and shortly after the property was mowed. This packet of photographs is attached hereto as Exh. D<sup>2</sup>. A comparison of Exhibit D-9 and 10 (photographs taken shortly after the Subject Property was mowed in 2016) with the photographs by Ms. Dains at the time of her site investigation demonstrate the Subject Property was mowed shortly before her investigation. (See Exh. B, pp.56-62.) Just before the Subject Property to be mowed in 2016 the Hooker's Willows were over fifteen feet tall and covered much of the property. These willows are now growing back and are approximately 4 feet tall. These willows stretch from the east end of the property to the west end.

Second, the Preliminary Wetland Delineation prepared by Ms. Dains was lacking in several respects. For example, Ms. Dains did not independently test the soils. Rather, she relied on a 1965 general agricultural survey noting that "no modern soil survey available for the Eureka area." (Exh. B, p.15, Soils.) Ms. Dains essentially guesses on the soil composition. (Exh. B, pp.15-16.) This fact alone demonstrates her wetland delineation is faulty under Coastal Commission standards.

Even where Ms. Dains identified wetland vegetation on site, she failed to map out where the different plant species she identified were located and to properly characterize those areas. (Exh. B, pp.14-16 and Table 2.) For instance, Ms. Dains identified a hydrophytic herb

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<sup>2</sup> Exhibit D is a packet of photographs taken before the Subject Property was mowed in August 2016 (D-1 to D-3); photographs taken while the Subject Property was mowed in August 2016 (D-4 to D-8); photographs taken immediately after the property was mowed in August 2016 (D-9 to D-10); and photographs depicting the Subject Property on December 1, 2016 (D-11 to D-12).

named "rigid hedge-nettle" a plant which only grows under natural conditions in wetlands (at least 99% of the time). The scientific name of this plant is *Stachys ajugoides* var. *rigida*. (Exh. B, Table 2.) Ms. Dains found the rigid hedge-nettle growing **outside** the area she determined was a seasonal wetland. (Exh. B, Attachment (Wetland Determination Data Form).) This fact alone demonstrates her wetland delineation is flawed. Also, the time frame Ms. Dains investigated the Subject Property was during a drought year. Ms. Dains acknowledges this throughout her report but does not discuss its significance. (See Exh. B, p.4 (Methods).)

Third, hundreds of Hooker's Willow are located through the middle of the Subject Property, from its eastern border to the western border, as demonstrated by several of the photographs in the attached exhibit. (Exh. D.) Ms. Dains notes that Hooker's Willow is rated as Facultative Wetland and "usually occur in wetlands (estimated probability 67%-99%) but occasionally found in non-wetland." (Exh. B, pp.50-51.) Despite this, Ms. Dains report does not indicate the location of the Hooker's Willow nor does she determine that their location also constitutes likely additional wetlands on the property. Perhaps this faulty conclusion is due to Mr. Cookman mowing the entire parcel a couple of months before Ms. Dains conducted her site investigation. The photographs by Ms. Dains demonstrate the Subject Property was mowed shortly before her investigation. (See Exh. B, pp.56-62.) Many of the Hooker's Willows are located exactly where the applicant proposes to construct its 9,300 square foot building.

At minimum, the Commission should deny the permit in this matter until a proper wetland delineation can be performed. This will ensure wetland(s) on the Subject Property are properly delineated to the satisfaction of the Coastal Commission. This may take several years (based upon the mowing history on this property) before the property can be properly inspected. In addition, during this interim period, Mr. Cookman, his partner Mr. Meyers, the applicant and all others should be ordered to cease and desist from taking any action that would disturb the vegetation on the Subject Property until such time as a proper investigation can be undertaken by proper experts. The Commission cannot approve the development approved by the County or any development on this site until a proper wetland delineation is conducted and the wetlands on the site are protected.

## **2. The Wetland Buffer Approved by County is Insufficient to Protect the Delineated Wetland**

In this matter, County approved a variance of the Wetland Buffer of less than 16 feet from the delineated wetland when the normal setback distance is at least 100 feet per the Humboldt Bay Area Plan (HBAP) 3.30.B.6.c, d. (Exh. E.) As depicted by Exhibit E, the delineated wetland is wholly surrounded by new development. It borders the building, the driveway, and the loading area. A fence will be placed around it, but one could hardly argue the wetland is protected.

HBAP 3.30.B.6.e states:

**In both urban and rural areas, setbacks of less than the distance specified above may be permitted only when the prescribed buffer would prohibit development of the site for principle use for which it was designated. Any such reduction in setback shall still retain the maximum setback feasible, and may require mitigation measures, in addition to those specified below, to ensure new development does not adversely affect the wetland's habitat values.**

The proposed development cannot be approved under this standard. The principle use of the Subject Property, i.e., its zoning is Commercial General. As the Commission can clearly see, the proposed project, as depicted in Exhibit E, has development on nearly 80% of the lot will in the form of the building, sidewalks, gutters and curb, parking area, driveways and loading zones. No alternatives analysis was conducted by applicant or required by County on this .87 acre lot. Thus, the County made only a facial conclusion, unsupported by any analysis that the 100' buffer prescribed in the HBAP "would prohibit development of the site for the principle use for which it was designated." Certainly a much smaller commercial business could be located on this lot such as a coffee shop, a small manufacturing plant, a professional office and so forth. A smaller scale development would protect both the wetland and also allow for development of a portion of the lot.

### **3. The New Proposed Development Violates HBAP 3.30.B.6.c-f.**

HBAP 3.30.B.6.a precludes development in areas adjacent to coastal wetlands known as Wetland Buffer Areas (WBA). The WBA is supposed to be at least a 100-foot setback from the delineated wetland. (HBAP 3.30.B.6.c-d.) If the 100-foot setback prohibits development of the site for its principle use for which it is zoned the setback can be reduced so long as the maximum setback possible is retained. (HBAP 3.30.B.6.e.) If the County allows a variance of less than 100 feet then it "may" require additional mitigation measures but it "shall" include all of the mitigation measures set forth in HBAP 3.30.B.6.f. (Id.)

In this matter the Humboldt County Planning Commission approved applicant's permit in this matter without considering the mandatory mitigation measures set forth in HBAP 3.30.B.6.f. (See Exh. F, pp.12-15 (Attachment 1 Conditions of Approval).) In a letter authored by Bradford C Floyd to the County Board of Supervisors (Board) dated October 27, 2016, Mr. Floyd brought this omission to the Board's attention. (Exh. G.) County staff attempted to resolve this problem by simply reciting HBAP 3.30.B.6.f in its entirety as an additional condition. (Exh. H, p.9, item 23, and pp.12-13.) The County's conditions are inadequate because they only repeat the standard; they do not identify precisely how this standard should be met in this particular development. The question raised is: Is it even possible for the applicant to fill the gap that the County approval left open and craft mitigation measures that comply with this standard?

One of the mandatory mitigation measures of the HBAP, HBAP 3.30.B.6.f(1), requires that not more than 25% of the lot surface shall be effectively impervious. The lot size of the Subject Property is .87 acres or 37,897 square feet. The building itself is 9,300 square feet, just over 24% of the lot size. This does not include sidewalks, curbs and gutters, driveway, parking lot and loading zone. When these items are included approximately 80% of the lot, as

recommended by staff and approved by the Planning Commission, would have a surface that was effectively impervious. Furthermore, the Conditions of Approval adopted by the Board, such as conditions 1, 2, and 5 still allow applicant to use "asphalt concrete" or Portland cement concrete for the sidewalks, curbs and gutters, driveway and parking lot. (Exh. H, p.7.)

To comply with HBAP 3.30.B.6.f(1) the sidewalks, curbs and gutters, driveway, parking lot and loading zone would have to be constructed using porous materials, something appellant believes is impossible to do. The County did not prescribe anything. Neither County staff nor the Board required applicant to demonstrate it could construct and maintain these improvements using porous materials. Nor did they require soil testing to determine such things as water absorption rates, or the water table on the Subject Property. Without this information it is unknown whether a porous surface is feasible for its proposed purpose or would act as anything other than an impervious surface.

#### **4. The Parking Space Variance of 24 Spaces Instead of the Required 32 Spaces Further Demonstrates the Proposed Project is too large for the Subject Property.**

In subsections 2 and 3 appellant demonstrated that the proposed development violates the HBAP 3.30.B.6. The setback is insufficient. The wetland is completely surrounded by the proposed improvements. Additionally, the building, sidewalks, curbs and gutters, driveway and parking lot of the proposed development would cover approximately 80% of the Subject Property.

A further indicator that the proposed project is too big for the Subject Property is the parking variance granted by County for the proposed development. Under Humboldt County Code the parking required for the proposed development is 32 spaces. County granted a variance to 24 spaces—a 25% reduction. This variance was granted because there just was not enough room left on the property to squeeze in 8 additional spaces.

Again, the proposed development is too big. A smaller commercial development would protect the wetland(s) located on the Subject Property while still allowing for development of the property. A smaller development would also reduce the number of parking spaces required.

#### **5. Neither the Applicant nor the Property Owner can Demonstrate a Legal Right to use the Subject Property.**

California Public Resources Code section 30601.5 requires the applicant for a coastal development permit to demonstrate a legal right to use the property for the proposed development. Applicant cannot demonstrate this for reasons set forth below.

An asphalt road exists on the western portion of the Subject Property. This is the old highway to which the State of California relinquished its rights years ago. The parking lot proposed by applicant is located on this strip of roadway. A lawsuit is currently pending in the Humboldt County Superior Court over what rights the public and private individuals have to use this strip of roadway. The lawsuit is titled *Friends of South Broadway, a California Unincorporated Nonprofit Association, et. al. v. Cookman-Meyer Partnership, et. al.* Humboldt County case number DR140658. If plaintiffs are successful in that lawsuit that would prevent the proposed development of the Subject Property as it would unreasonably interfere with the public and



private use of this strip of road. Until this lawsuit is final, a judgment entered and any appeals concluded, applicant cannot show a legal right to use the Subject Property for the proposed development.

#### **6. "Substantial Issues" Certainly Exist in this Appeal.**

In determining whether a "substantial issue" exists the Commission is guided by the following five factors: 1. the degree of factual and legal support for the local government's decision; 2. the extent and scope of the development as acted upon by local government; 3. the significance of the coastal resources affected by the decision; 4. the precedential value of the local government's decision for future interpretations of its LCP; and, 5. whether the appeal raises only local issues as opposed to those of regional or statewide significance.

When these five factors are applied to the facts involved in this matter, as discussed in subsections 1-4 above, it is clear a "substantial issue" exists. Currently we know there is at least one wetland on the Subject Property. But, due to the low quality of the wetland delineation, caused in large part by illegal actions of the property owner (probably acting in concert with the applicant) as set forth in subsection 1 above, the extent of the identified wetland or whether additional wetlands exist on the Subject Property is currently unknown.

Substantial evidence supports the conclusion that far more wetlands exist on the property than the area delineated by the applicant's consultant. As the attached photographs show, Hooker's Willow, a FAC-W native plant grows across a long stretch of the property, in an area where development is proposed. Further, the applicant has illegally removed other plant species that might indicate the presence of the wetlands on the site. But even the delineation submitted by the applicant shows an obligate species *Stachys ajugoides* var. *rigida* (rigid hedge-nettle) in an area characterized in the Wetlands Determination Data Form as uplands. (Ex. B, p. 54.) The delineation was also inadequate because Ms. Dains did not test the soils. Because the delineation was inadequate and because substantial evidence exists that the wetlands on the site are much more extensive than the "small (149 sf) isolated seasonal wetland" mapped by the applicant, a substantial issue exists with respect to the factual and legal support for the County's decision.

In addition, even if we assume that the wetland was properly delineated, the County's reduction of the 100 foot wetland's buffer required by HBAP section 3.30.B.6 does not meet the legal standard of HBAP section 3.30.B.6.e. That section permits a reduction of the setback "only when the prescribed buffer would prohibit development of the site for the principal use for which it was designated." Many smaller commercial enterprises could be developed on this lot that would still meet the required 100-foot buffer, but the County simply rubberstamped the applicant's proposal, without requiring or conducting an appropriate alternatives analysis. Instead of the proposed development being tailored to protect the wetland, wetland protection has been compromised to accommodate the proposed development. This is legally inadequate to support the County's decision.

While the scope of the proposed development is moderate in that it does not involve miles of coastline, the precedential value of the County's interpretation of its HBAP is very significant with respect to the protection of wetlands. If property owners are allowed to manipulate data by altering their property in order to minimize wetlands, as was done in this case, then why even try to protect wetlands or have them delineated? If facially inadequate delineations are accepted as the basis for approval of proposed development, and if the strict standard for the reduction of the buffer area for those wetlands is not observed, then protection of wetlands is lost. The County must be reminded that protection of wetlands is critical and that the procedures for their delineation and for protection (e.g., through buffering) must be respected and followed.

For these reasons, the Commission must find that a substantial issue exists with respect to the consistency of the proposed development with the HBAP.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF HUMBOLDT

DAN L. NOGA and KELLY NOGA, )  
 )  
Plaintiffs, )  
 )  
vs. ) No. DR140658  
 )  
THOMAS J. COOKMAN, DARROLL D. )  
MEYER, JR., et al., )  
 )  
Defendants. )  
 )  
\_\_\_\_\_)  
AND RELATED CROSS-ACTION. )  
\_\_\_\_\_)  
\_\_\_\_\_)

Deposition of: THOMAS J. COOKMAN  
Date: Monday, October 24, 2016  
Time: 1:28 p.m.  
  
Place: Coleman Reporters  
730 Fifth Street, Suite M  
Eureka, California 95501  
  
Reporter: Tania N. Brunell, CSR 4277

COLEMAN REPORTERS  
730 Fifth Street, Suite M  
Eureka, California 95501  
(707) 443-6465



1 A P P E A R A N C E S:

2 For the Plaintiffs:

3 FLOYD LAW FIRM  
4 819 Seventh Street  
Eureka, California 95501  
5 By: BRADFORD C. FLOYD, ESQ.

6 For the Defendants:

7 BARNUM LAW OFFICE  
Post Office Box 173  
8 Eureka, California 95502-0173  
By: WILLIAM F. BARNUM, ESQ.  
9

10 For Cross Development and CDDG Humboldt LLC:

11 MITCHELL BRISSO DELANEY & VRIEZE  
P.O. Drawer 1008  
12 Eureka, California 95502-1008  
By: RYAN T. PLOTZ, ESQ.  
13

14 Also present: Darroll D. Meyer, Jr.  
15

16 DEPOSITION OF THOMAS J. COOKMAN, taken on  
behalf of the Plaintiffs, at Coleman Reporters, 730  
17 Fifth Street, Suite M, Eureka, California, on the 24th  
day of October, 2016, at 1:28 p.m., before Tania N.  
18 Brunell, CSR 4277.  
19  
20  
21  
22  
23  
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25

1 getting the subject parcel split into three parcels?

2 A. I -- he had point; I'm sure that he had  
3 Schillinger or whoever draw it up.

4 Q. Well, do you know if he prepared the parcel map  
5 or did Schillinger?

6 A. I don't know.

7 Q. Okay. How about the development plan? Do you  
8 know what a development plan is?

9 A. Yeah. I believe Schillinger did that.

10 Q. Okay. And you don't believe that Dan Noga did  
11 that?

12 A. I mean, he went and hired him, so -- he was the  
13 point man. I'm not sure how you -- If he asked Ed  
14 Schillinger to do it, then I would say that would be the  
15 one did it. So Dan asked Schillinger to do it, so I  
16 would say that then Dan developed it through Ed  
17 Schillinger.

18 Q. All right. You didn't prepare the parcel map?

19 A. No.

20 Q. You didn't prepare the development plan?

21 A. No.

22 Q. You didn't ask Ed Schillinger to prepare the  
23 parcel map of the development plan?

24 A. No.

25 Q. Were you aware that Parcel 2 -- at any time



1 were you aware that Parcel 2 had a wetlands on it?

2 A. Yes.

3 Q. When did you first become aware of that?

4 A. Through letters that I received from the  
5 planning and coastal commission. Any of the parties of  
6 interest will get a letter, and it said something about  
7 that. One of the items for discussion was a little bit  
8 of wetlands on it.

9 Q. All right. Do you know when that was?

10 A. No.

11 Q. Do you know what year?

12 A. Within the last year, so --

13 Q. Before August of this year?

14 A. Yes.

15 Q. In August or July, did you hire somebody to  
16 come out and mow the parcel?

17 A. Yes.

18 Q. Okay. And that included -- that was mowing the  
19 entire parcel, correct?

20 A. Yes.

21 Q. Including the area designated as wetlands,  
22 correct?

23 A. I assume so, yes.

24 Q. Okay. And why did you have somebody go out  
25 there and mow the wetlands?

1 MR. PLOTZ: I'm going to object to this  
2 question on relevance grounds.

3 THE WITNESS: I mowed it myself many times  
4 throughout those years. We mowed it -- everything for  
5 fire danger and keeping people out of there, and  
6 garbage. So every single year we would -- we would mow  
7 it, and did not mow it the year prior to this and the  
8 brush was getting out of hand.

9 BY MR. FLOYD:

10 Q. All right. Ever since you were aware -- well,  
11 you said that for about the last year you were aware of  
12 a designated wetlands area, correct?

13 A. Yes. Not quite a whole year, but yes.

14 Q. All right. And this was the first time since  
15 you were aware that it was a wetlands that you caused  
16 that property to be mowed --

17 MR. PLOTZ: Objection. Relevance.

18 MR. FLOYD: -- in July or August of this year,  
19 correct?

20 THE WITNESS: Yes.

21 BY MR. FLOYD:

22 Q. Who was the person that you hired to go out and  
23 do that?

24 A. I don't remember.

25 Q. You don't remember his name?

1           A. No.

2           Q. Do you remember the name of the business?

3           A. No. I could get a check. I mean, we paid him,

4 so I could track that down for you.

5           Q. Okay. Was there a reason why that was done in

6 July or August of this year?

7           A. I'm aware it would be for fire danger.

8           Q. Okay. Is that the only reason?

9           A. Yes.

10          Q. And you say it was two years before that

11 approximately that it was mowed before?

12          A. Yes.

13          Q. And was it the same person or business that did

14 it before?

15          A. No.

16          Q. Who was it before?

17          A. I did it myself with my own tractor. Dan did

18 it I think one time. Keith has done it. So we were

19 mowing that property every year since we purchased it.

20          Q. Do you have records of when you mowed it prior

21 to the last time it was mowed?

22          A. No, because we never paid anybody. Did it

23 myself when I had time.

24          Q. Are you familiar with willows?

25          A. Yes.

1 Q. Were there willows on it that were mowed down  
2 this last time?

3 A. I don't go out to the property.

4 Q. You what?

5 A. So I -- I mean, I don't know that. So I don't  
6 know what vegetation was on it. Alders. There was --  
7 there was trees. Willow trees.

8 Q. Do you know what tussocks are?

9 A. No.

10 MR. BARNUM: What?

11 MR. FLOYD: Tussocks.

12 MR. BARNUM: Want to spell it for us?

13 MR. FLOYD: T-U-S-S-O-C-K-S. Tussocks.

14 MR. BARNUM: T --

15 MR. FLOYD: T-U-S-S-O-C-K-S.

16 THE WITNESS: I've never heard that word.

17 MR. FLOYD: Okay. All right.

18 BY MR. FLOYD:

19 Q. With regard to Keith Forbes, did you ever have  
20 any further conversations with Keith about selling  
21 Parcel 2 after he came to you and said that his family  
22 wasn't interested in it?

23 A. No.

24 Q. Did you have any further discussions with Dan  
25 Noga about selling the property to him after that

	development. The parcel, including the wetland area, has been previously disturbed by the dumping of fill, asphalt scrap, off road vehicle traffic and parking. The proposed project will result in the enhancement and restoration of the degraded wetland and therefore be less environmentally damaging than the "no project" alternative.
<u>The best mitigation measures feasible have been provided to minimize adverse environmental effects</u>	<u>Project mitigation proposed should enhance and restore the wetland to a higher functioning wetland feature. The objective will be to maintain a seasonal wetland with native herb and shrub canopy layers. The wetland will function for groundwater percolation and will retain escape cover with seasonally moist soils. It will provide foraging opportunities for seed and fruit eating birds and nesting opportunities for songbirds.</u>
<u>The required mitigation will maintain or enhance the functional capacity of the wetland or estuary</u>	<u>No development within the wetland is proposed. The mitigation measures imposed on the project will effectively enhance the functionality of the wetland.</u>
<b><u>312-39.15 Coastal Wetland Buffers</u></b>	
<u>Development will be sited and designed to prevent impacts which would significantly degrade wetland habitat areas, and shall be compatible with the continuance of such habitat areas</u>	<u>The project includes a number of mitigation measures designed to prevent impacts to the wetland. These include clearly delineating the limits of the wetland to prevent construction activities or other intrusion in the area. During construction the wetland area will be protected with high visibility fencing and remain undisturbed. After construction, the wetland area will be separated from foot and vehicular traffic by a permanent post and cable fence and planted with native, locally sourced species and monitored and maintained to ensure the plantings survive. These measures will prevent impacts to the area and enhance the habitat value of the wetland.</u>
<u>The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms shall be maintained, and where feasible, restored.</u>	<u>No development within the wetland is proposed. Project mitigation proposed should enhance and protect the wetland onsite.</u>



**Preliminary Wetland Delineation  
Cross Development Site  
5707 South Broadway (Humboldt Hill) Eureka, CA**

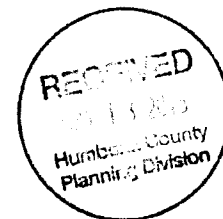
**Prepared for:**

**Cross Development LLC  
5317 Inverrary Drive  
Plano, TX 75093**

**Prepared by:**

**Virginia Dains  
Consulting Biologist  
3371 Ayres Holmes Road  
Auburn, CA 95602  
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530-888-9180**

**May 6, 2015**



**Exhibit No. 4  
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## Background

Cross Development LLC is examining the development potential of 0.87 acre parcel (APN: 305-101-054) located in the Humboldt Hill area of Eureka, Humboldt County, CA for commercial uses. The potential presence or absence of "wetlands" on the property was examined due to its location adjacent to extensive wetlands identified in the National Wetland Inventory (NWI) and County records. The property is zoned as General Commercial/Wetland given its proximity to low lying areas of Humboldt Bay. This preliminary wetland delineation represents the results of biological records search, field investigations, and detailed mapping based on the several waters and wetlands jurisdictions as described below.

## Waters and Wetland Jurisdictions

Waters (including wetlands) are defined differently by various agencies. "Waters of the United States" including wetlands are identified in this project as those under jurisdiction of the U.S. Army Corps of Engineers (USACE). "Waters of the State" are under jurisdiction of the California Coastal Commission (CCC), the State Water Resources Control Board (WRCB), and the California Department of Fish and Wildlife (DFW). Many of these jurisdictions overlap. All state agencies recognize and accept the USACE definition of waters and wetlands, but "Waters of the State" may extend beyond the lines of federal jurisdiction to monitor and protect resources important to each agency's mission.

Jurisdictional areas examined for this delineation include:

- Waters of the US (USACE) & Waters of the State (DFW 1600)
- Waters of the US-Special Aquatic Sites- Wetlands (USACE)
- Waters of the State --CCC- one parameter wetlands within the Coastal Zone
- Waters of the State --CCC & DFW riparian vegetation associated with perennial, intermittent, or ephemeral channels in the Coastal Zone
- Waters of the State --DFW - riparian vegetation outside of the coastal zone that is associated with perennial, intermittent, or ephemeral channels, or ephemeral channels that are not under Corps jurisdiction
- Waters of the State -- WRCB -- any ponds, ditches, channels with surface water that may be man-made and/or isolated and not under Corps jurisdiction

## Waters of the United States

The discharge of dredged or fill material in "Waters of the United States" is regulated by the US Army Corps of Engineers under authorization by section 404 of the Clean Water Act of 1972. A subset of "Waters of the US", referred to as special aquatic sites, includes wetlands that are identified by application of the USACE wetland delineation manual (USACE 1987) and, for this survey, the 2010 Regional Supplement for Western Mountains, Valleys, and Coast Region (USACE 2010). Both of these manuals use a 3-parameter approach to the identification of

wetlands where hydrophytic vegetation, hydric soils, and wetland hydrology must be present in a normal year to be included. The USACE defines waters under its jurisdiction as:

**40 CFR 230.3(s)** *The term waters of the United States means:*

1. *All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;*
2. *All interstate waters including interstate wetlands;*
3. *All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie pot holes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:*
  - (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or*
  - (ii) (From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or*
  - (iii) Which are used or could be used for industrial purposes by industries in interstate commerce;*
4. *All impoundments of waters otherwise defined as waters of the United States under this definition;*
5. *Tributaries of waters identified in paragraphs (s)(1) through (4) of this section;*
6. *The territorial sea;*
7. *Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (s)(1) through (6) of this section; waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.*

**Waters of the State**

**California Coastal Commission**

The California Coastal Commission wetlands were mapped within the limits of the coastal zone. The South Broadway, Humboldt Hill, property is found within the coastal zone as defined by the CCC and is under the administrative jurisdiction of the City of Eureka's Local Coastal Program. The California State Coastal Commission defines wetlands by the CCC Administrative Regulations (Section 13577 (b)) as:

*Wetlands are lands where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent or drastic fluctuations of*

*surface water levels, wave action, water flow, turbidity or high concentrations of salt or other substance in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deepwater habitats. (14 CCR Section 13577, 1994).*

The Commission's one-parameter definition is similar to the USFWS wetlands classification system, which states that wetlands must have one or more of the following three attributes:

*(1) At least periodically the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.*

#### **California Water Resources Control Board**

The California Water Resources Control Board includes as "Waters of the State" as "any surface water or groundwater, including saline waters, within the boundaries of the state" (Water Code Section 13050(e)). These include:

- *All "waters of the United States"*
- *All surface waters that are not "waters of the United states", e.g. non-jurisdictional wetlands (including isolated wetlands)*
- *Groundwater*
- *Territorial seas*

#### **State of California Department of Fish and Wildlife**

The State of California Department of Fish and Wildlife regulates water resources under Section 1600-1616 of the California Fish and Wildlife Code. Section 1602 which states:

*"An entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake."*

CDFW jurisdiction includes ephemeral, intermittent and perennial watercourses and extends:

*"bank to bank limits in unvegetated streams or outer edge of riparian community where present" (CDFW 1994).*

## Project Description

The Cross Development site is located at 5707 South Broadway Street in the Spruce Point area of Humboldt Hill (Eureka, CA). Figure 1 (General Location Map, attached) shows the location of the property on the east side of South Broadway Street (Sec 8 T4N R1W) a few hundred yards southwest of its junction with Humboldt Hill Road. The property is being proposed for the location of a Dollar General store. Development of the 0.87 acre parcel will include a 9,100 square foot building site, parking for 30 vehicles, traffic access to Humboldt Hill Road and the commercial property to the north, a detention pond, sidewalk, curb and gutter, and open space retention for conservation of a mature Sitka spruce.

## Methods

Field surveys of the approximate 1 acre site were conducted on February 25, 2015.

Reconnaissance surveys of the entire site were conducted by walking the property and making detailed observations of vegetation and landforms. Global positioning system (GPS) mapping was conducted using Trimble GeoXH recording device with data post processing correcting to sub-meter accuracy (table 1). A list of plant species observed in the survey area and their status as wetland indicator species (Lichvar 2012) is attached as Table 2.

*Just a list of  
plant species,  
not the location  
of them.*

The determination of wetland boundaries were based on the jurisdictional criteria. Data sheets which document the criteria for inclusion as "wetland" or "upland" were recorded at representative locations and are attached.

Field observations were supplemented with wetland classification (Cowardin et al 1979) mapping from the National Wetlands Inventory (USFWS 2015), regional soil mapping (McLaughlin and Harradine 1965), and the National Hydric Soils list (NRCS 2012).

Field conditions during the late February survey were dry in comparison with regional averages. Significant precipitation fell during the first two weeks of February, the two weeks prior to the field survey were dry. Conditions in January 2015 were also dry, 1.3 inches received in the month compared to the average January precipitation of 6.5 inches (WRCC 2015).

Representative photos of the survey area are attached.  
The qualifications of the author are attached.

## Findings

### Physical Setting and Land Use

The Cross Development site is found on the southwest facing slope of Spruce Hill at 13 to 15 feet in elevation. The regional land use is a mix of residential and commercial properties that lie



adjacent to undeveloped grazing lands associated with the drainage ways of Buhne Slough. The National Wetland Inventory (NWI 2015) shows large contiguous Palustrine Emergent wetlands adjacent to the property in low-lying areas associated with the drainages of Buhne Slough. The NWI mapping does not include this development parcel or the adjacent residential and commercial properties to the north and east. The parcel is highly disturbed by the dumping of fill, asphalt scrap, off road vehicle traffic and parking. The following sections describe general observations of vegetation, soil and the hydrology of the site.

## Vegetation

The property is vegetated with a mix of ruderal herbs, horticultural introductions, and common native species. Tall fescue (*Festuca arundinacea*) and sweet vernal grass (*Anthoxanthum odoratum*), two introduced grasses, dominate much of the eastern portion of the site. Extensive patches of wild radish (*Raphanus sativus*) and mats of California blackberry (*Rubus ursinus*) and the horticultural multiflora rose (*Rosa multiflora* var. *carnea*) cover the remainder of the site. Isolated individuals of native perennial tufted hairgrass (*Deschampsia cespitosa*), Hooker's willow (*Salix hookeriana*), and soft rush (*Juncus effusus*) are found as part of the overall mosaic of vegetation but do not occur as remnants of natural vegetation. Several horticultural species including grape hyacinth, daffodil, cultivated iris, cotoneaster, Spanish heather, pampas grass, English ivy, Freesia, and Amaryllis are found on the site as escapes from cultivation and are representative of the disturbed nature of the vegetation.

## Soils

Soils in the survey area are generally mapped in Figure 2 (attached). There is no modern soil survey available for the Eureka area. An agricultural soil survey done by McLaughlin and Harradine (1965) is the source of soil information used in this document and does not include recent urban/residential land use changes in the area. The soil series described in this early document may or may not concur with established series descriptions of the same name described from other regions.

The project site and adjacent land at elevations near sea level or along major drainages are mapped as Bayside series soils (Aeric Fluvaquents). These soils are found in depressional areas on floodplains formed in basin positions adjacent to small streams and in the reclaimed tidal marsh flats around Humboldt Bay. These soils have poor sub-soil drainage that limits agriculture to pasturelands, much of which is clayey and poorly drained and gives rise to much of the mapped wetlands along the lower alluvial terraces of Buhne Slough. Bayside series soils are included on the list of hydric soils (NRCS 2012).

The disturbed nature of the project site suggests that significant change in soil conditions have been made since the general soil survey was completed in 1965. The site is also elevated about the floodplains of Buhne Slough. It located on the south side of Spruce Hill at an elevation of 12-15 feet. Bayside soil may underlie the disturbed ground, though characteristics of this series were not observed on site. Aerated sandy loam surface horizons support thick weedy vegetative growth over much of the site. Hookton series soils which are mapped at higher elevations on stratified seaside terraces form the adjacent

prominence of Spruce Hill are more similar to the observed conditions. Wetlands associated with Hookton soils in springs and seeps emerging from the layered strata.

### Hydrology

The South Broadway parcel receives local runoff from adjacent residential and commercial properties. There are no organized drainages, channels or swales. Overland flow is diverted around fill piles and off-road vehicle tracts. Prior land disturbances have left unnatural topography that does not coalesce into drainage patterns. There are no seeps or springs as could be expected at the physiographic contact with stratified substrates. Some nuisance water may enter the site from the adjacent mobile home park or commercial development, but precipitation is the only significant source of hydrology for the parcel. Runoff from the parcel is intercepted by South Broadway Street and directed along the road frontage to a manmade channel running southwesterly under the street to join the regional drainage of Buhne Slough. Buhne Slough enters Humboldt Bay through a tide gate south of King Salmon Avenue west of the small community of King Salmon.

### Findings: Wetlands Type and Extent

A single isolated seasonal wetland 149 square feet in extent was found on the South Broadway development site (Figure 3: Wetland Delineation Map). No other jurisdictional waters or waters of the state. Coastal Commission and DFW, were present.

The seasonal wetland is formed in a small depression excavated 10- 12 inches into the local topography. It is likely that it is an artifact of previous earthwork or other disturbance. It is not connected to an organized drainage nor does it have an outlet that feeds the regional drainage network. The depression is generally steep sided (40% slope) and does not support a gradation in vegetation, soil, or hydrology that could support one-parameter wetlands.

*Shows only in or on water*  
*Equally likely to be in wetlands or non-wetlands. May indicate wetlands.*  
The basin of the depression is largely unvegetated, but the sides and rim of the basin support hydrophytic herbs and shrubs primarily Hookers willow (*Salix hookeriana*), soft rush (*Juncus effusus*), and creeping buttercup (*Ranunculus repens*). Outside of the wetland area these species are replaced by facultative upland (FACU) species including sweet vernal grass (*Anthoxanthum odoratum*), and tangles of California blackberry (*Rubus ursinus*) and multiflora rose (*Rosa multiflora*) that dominate much of the site.

The underlying soil in the basin suggested development under saturated conditions showing hydromorphic indicators of a depleted matrix with low chroma colors and concentration mottling within the upper 6 inches. Soil in the basin was still saturated to 2 within inches of the surface after 2 weeks of dry weather preceding the field survey. Water stained leaves were observed in the basin and were recorded as secondary indicator of wetland hydrology.

The uplands surrounding the seasonal wetland basin had brown soils that were not saturated or mottled and which sloped gently towards the mapped wetland.

Field data sheets describing the boundary of this seasonal wetland are attached (Delineation Data Sheets).

## **Summary**

Preliminary findings of February 2015 wetland mapping on the 0.86 acre Cross Development site off South Broadway Street in Humboldt Hill describe a small (149 sq. ft.) isolated seasonal wetland occurring in disturbed ground. This information can be used to plan work efforts for avoidance and minimization if possible, or mitigation of impacts to this habitat as necessary.

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## **Attachments**

**Figure 1: General Location Map**

**Figure 2: Soils Map**

**Figure 3: Wetland Delineation Map**

**Table 1: Post processed GPS accuracy**

**Table 2: List of Plants Observed**

**Delineation Data Sheet: DP wet**

**Delineation Data Sheet: DP up**

**Site Photos**

**Resume of the Author: Virginia Dains**



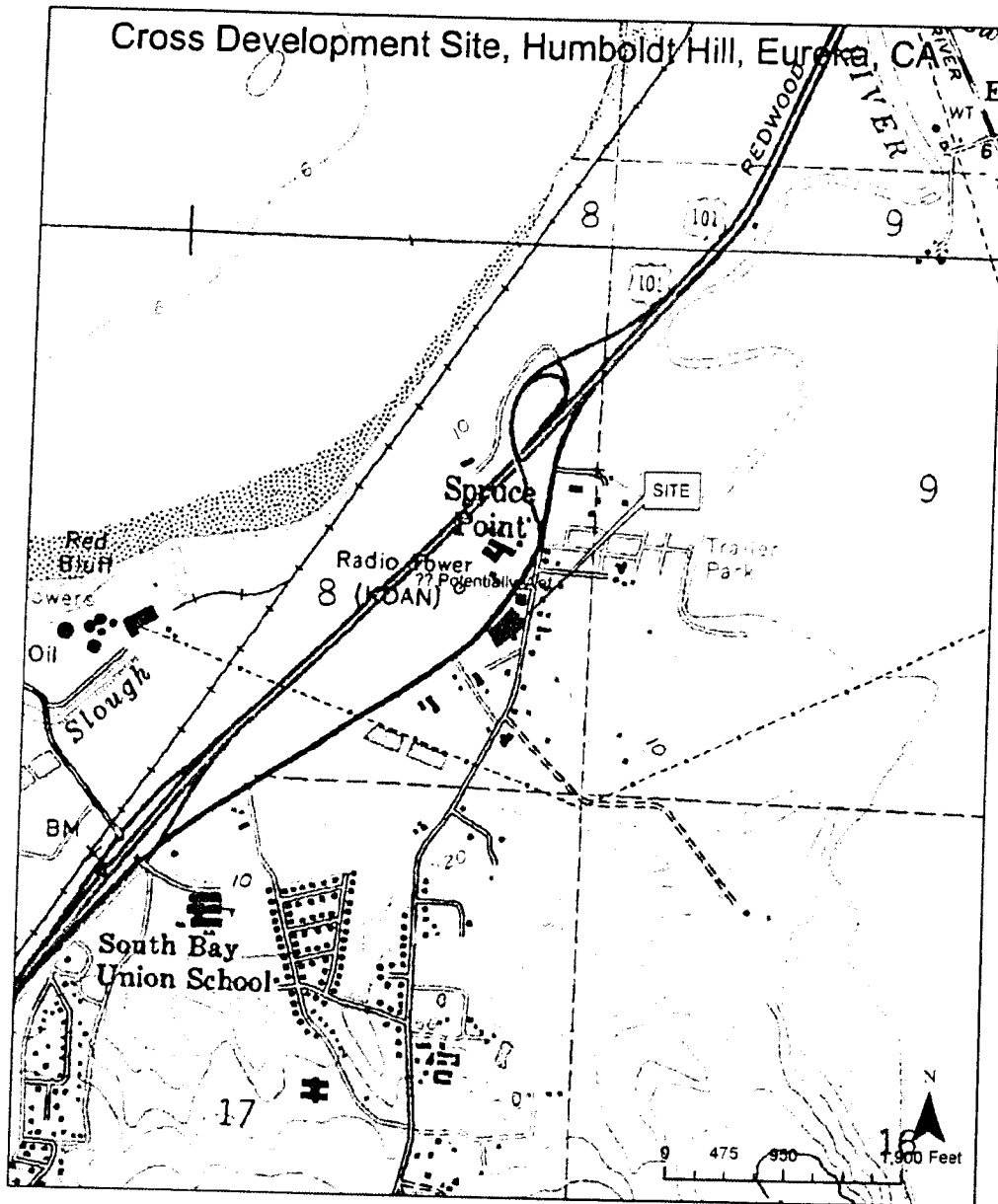


Figure 1 General Location Map (from USGS Fields Landing 7 ½ minute topographic map)

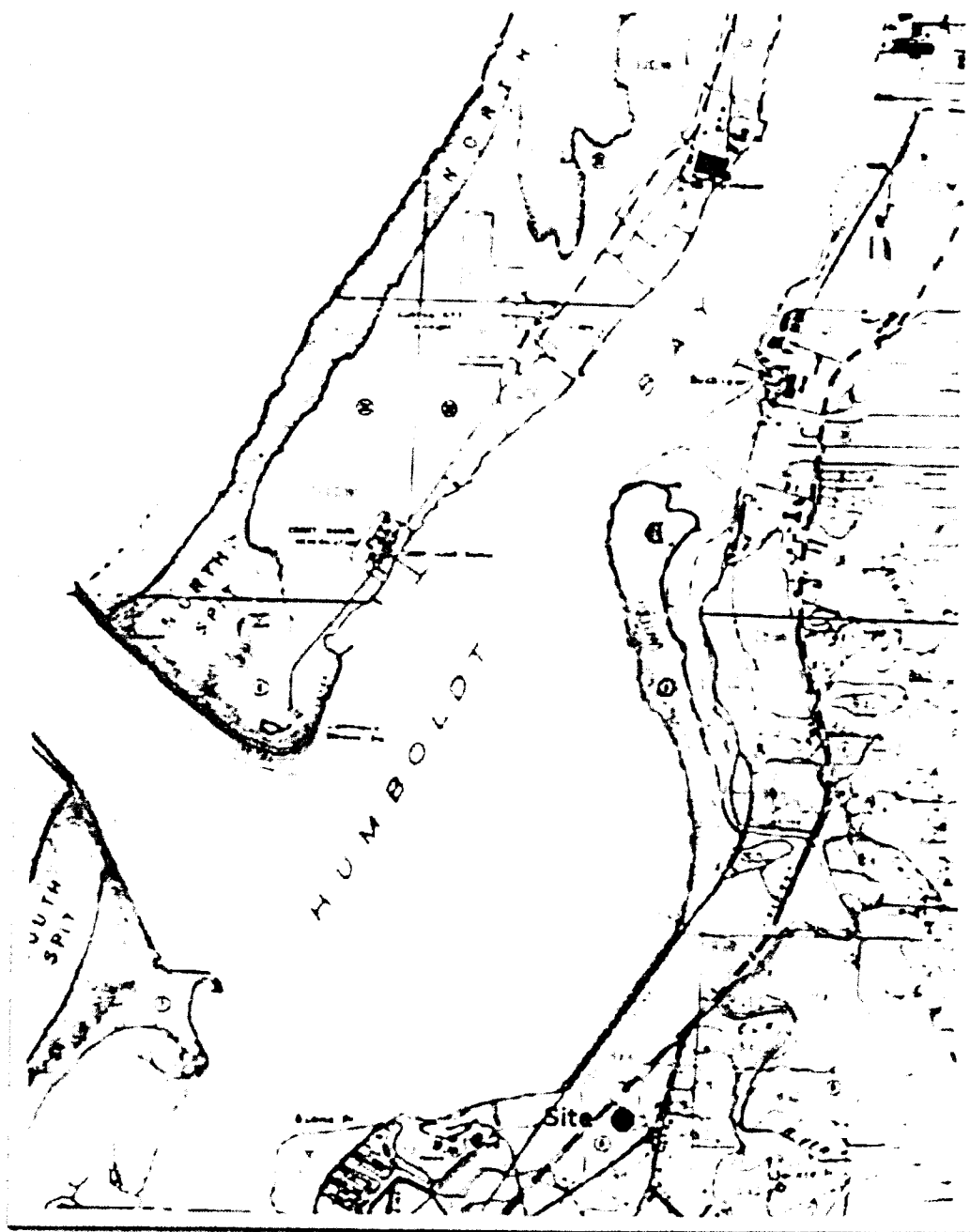


Figure 2 Soils Map (McLaughlin and Harradine 1965)

Site Key: Ba2-Bayside silty clay loam, poorly drained, 0-3 % slopes, Ba3--Bayside silty clay loam, imperfectly drained, 0-3 % slopes, Ba4--Bayside silty clay loam, imperfectly drained, shallow overwash, 0-3% slopes, Ba6--Bayside silty clay loam, very poorly drained, 0-3% slopes, Ba7- Bayside silty clay loam, imperfectly to poorly drained, 0-9% slopes

Preliminary Wetland Delineation  
Cross Development Parcel, Humboldt Hill, Eureka, CA

**Exhibit No. 4**  
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Figure 3 Wetland Delineation Map

Preliminary Wetland Delineation  
 Cross Development Parcel, Humboldt Hill, Eureka, CA

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Table 1 Estimated Accuracies for Corrected GPS Positions for Humboldt Hill Post Processing

Range	Percentage
0-5cm	-
5-15cm	80.30%
15-30cm	9.09%
30-50cm	10.61%
0.5-1m	-
1-2m	-
2-5m	-
>5m	

Table 2 Plant Species Observed At Humboldt Hill Dollar General Development Site And Their Status As Wetland Indicator Species

Scientific Name	Common Name	Wetland Indicator (Lichvar 2012)
<i>Achillea millefolium</i>	yarrow	FACU
<i>Amarillis</i> sp.	Amarillis	
<i>Anagallis arvensis</i>	scarlet pimpernel	
<i>Anthoxanthum odoratum</i>	sweet vernal grass	FACU
<i>Simphyotrichum chilense</i>	Pacific American Aster	FAC
<i>Baccharis pilularis</i>	coyote brush	
<i>Bellis perennis</i>	English daisy	
<i>Brassica rapa</i>	field mustard	
<i>Cortaderia selloana</i>	pampas grass	FACU
<i>Cotoneaster</i> sp.	cotoneaster	
<i>Cyperus eragrostis</i>	tall flatsedge	FACW
<i>Daucus carota</i>	carrot	FACU
<i>Deschampsia cespitosa</i>	tufted hair-grass	FACW
<i>Epilobium ciliatum</i>	willowherb	FACW
<i>Erica lusitana</i>	Spanish heather	
<i>Festuca arundinacea</i>	tall fescue	FAC
<i>Foeniculum vulgare</i>	fennel	
<i>Freesia</i> sp.	freesia	
<i>Geranium dissectum</i>	cut-leaved geranium	
<i>Hedera helix</i>	English ivy	
<i>Holcus lanatus</i>	common velvetgrass	FAC
<i>Iris</i> sp.	Garden iris	
<i>Juncus effusus</i>	common bog rush	FACW
<i>Juncus lesueurii</i>	Salt marsh rush	FACW
<i>Linum usitatissimum</i>	common flax	
<i>Lotus corniculatus</i>	bird's-foot trefoil	FAC
<i>Lupinus rivularis</i>	riverbank lupine	FAC
<i>Medicago polymorpha</i>	California burclover	FACU
<i>Muscari</i> sp.	Grape hyacinth	
<i>Narcissus</i> sp.	Daffodil	
<i>Oxalis pes-capra</i>	Creeping wood-sorrel	
<i>Picea sitchensis</i>	Sitka spruce	FAC
<i>Helminthotheca echioides</i>	Akan Asante	FAC
<i>Plantago lanceolata</i>	long-leaf plantain	FACU
<i>Polystichum munitum</i>	Sword fern	FACU
<i>Ranunculus repens</i>	Creeping buttercup	FAC
<i>Raphanus sativus</i>	wild radish	
<i>Rosa multiflora</i> var. <i>carnea</i>	Multiflora rose	FACU
<i>Rubus ursinus</i>	California blackberry	FACU
<i>Rumex acetosella</i>	common sheep sorrel	FACU
<i>Rumex occidentalis</i>	Western dock	FACW
<i>Rumex crispus</i>	curly dock	FAC
<i>Salix hookeriana</i>	Hooker's willow	FACW
<i>Senecio vulgaris</i>	common groundsel	FACU
<i>Sonchus arvensis</i>	perennial sow thistle	FACU
<i>Stachys ajugoides</i> var. <i>rigida</i>	rigid hedge-nettle	OBL
<i>Taraxacum officinale</i>	common dandelion	FACU
<i>Vicia americana</i>	purple vetch	



Scientific Name	Common Name	Wetland Indicator (Lichvar 2012)
Vicia hirsuta	hairy vetch	
Vulpia myuros	rattail fescue	FACU

\*Wetland Indicator Status Codes (Lichvar 2012)

Code	Rating	Comment
Blank	Upland	Plants not listed in the official wetland plant list are assumed to be upland species.
OBL	Obligate Wetland	Occurs almost always (estimated probability 99%) under natural conditions in wetlands.
FACW	Facultative Wetland	Usually occurs in wetlands (estimated probability 67%-99%), but occasionally found in non-wetlands.
FAC	Facultative	Equally likely to occur in wetlands or non-wetlands (estimated probability 34%-66%).
FACU	Facultative Upland	Usually occurs in non-wetlands (estimated probability 67%-99%), but occasionally found on wetlands (estimated probability 1%-33%).
UPL	Obligate Upland	Occurs in wetlands in another region, but occurs almost always (estimated probability 99%) under natural conditions in non-wetlands in the regions specified.

**WETLAND DETERMINATION DATA FORM - Western Mountains, Valleys, and Coast Region**

Project/Site: 5707 South Broadway City/County: Eureka/Humboldt Sampling Date: 2.25.15  
 Applicant/Owner: Cross Development State: CA Sampling Point: DP Wet  
 Investigator(s): Virginia Davis Section, Township, Range: S04.8 T4N R1W  
 Landform (Hill/slope, terrace, etc.): \_\_\_\_\_ Local relief (concave, convex, none): Concave Slope (%): 45  
 Subregion (LRR): NW Forest and Coast Lat: 124.199942 Long: 40.741136 Datum: NAD83  
 Soil Map Unit Name: Bayside Silty Clay loam NWI classification: None  
 Are climatic/hydrologic conditions on the site typical for this time of year? Yes \_\_\_\_\_ No X (If no, explain in Remarks.)  
 Are Vegetation X Soil X or Hydrology \_\_\_\_\_ significantly disturbed? Are 'Normal Circumstances' present? Yes \_\_\_\_\_ No X  
 Are Vegetation \_\_\_\_\_ Soil \_\_\_\_\_ or Hydrology \_\_\_\_\_ naturally problematic? (If needed, explain any answers in Remarks.)

**SUMMARY OF FINDINGS** - Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes <u>X</u>	No _____	Is the Sampled Area within a Wetland?	Yes <u>X</u>	No _____
Hydric Soil Present?	Yes <u>X</u>	No _____			
Wetland Hydrology Present?	Yes <u>X</u>	No _____			
Remarks: <u>Very dry January and February, Soil is mixed fill/disturbed</u>					

**VEGETATION** - Use scientific names of plants.

*Handwritten note:* Looks like willow →

Tree Stratum (Plot size: _____)	Absolute % Cover	Dominant Indicator Species?	Strata	Dominance Test worksheet: Number of Dominant Species That Are OBL, FACW, or FAC: <u>2</u> (A) Total Number of Dominant Species Across All Strata: <u>4</u> (B) Percent of Dominant Species That Are OBL, FACW, or FAC: <u>50</u> (A/B)
1. _____	_____	_____	_____	
2. _____	_____	_____	_____	
3. _____	_____	_____	_____	
4. _____	_____	_____	_____	
= Total Cover				
Shrub Stratum (Plot size: <u>3m</u> )	<u>25</u>	<u>X</u>	<u>FACW</u>	
1. <u>Baccharis harknessiana</u>	<u>25</u>	<u>X</u>	<u>FACW</u>	
2. <u>Salix</u>	_____	_____	_____	
3. _____	_____	_____	_____	
4. _____	_____	_____	_____	
5. _____	_____	_____	_____	
= Total Cover				
Herb Stratum (Plot size: <u>3m</u> )	<u>3</u>	_____	<u>FACW</u>	
1. <u>Juncus effusus</u>	<u>3</u>	_____	<u>FACW</u>	
2. <u>Rumex acetosella</u>	<u>5</u>	_____	<u>FACW</u>	
3. <u>Ranunculus repens</u>	<u>15</u>	<u>X</u>	<u>FAC</u>	
4. <u>Achroanthum adactyloides</u>	<u>3</u>	_____	<u>FACW</u>	
5. _____	_____	_____	_____	
6. _____	_____	_____	_____	
7. _____	_____	_____	_____	
8. _____	_____	_____	_____	
9. _____	_____	_____	_____	
10. _____	_____	_____	_____	
11. _____	_____	_____	_____	
= Total Cover				
Woody Vine Stratum (Plot size: <u>3m</u> )	<u>8</u>	<u>X</u>	<u>FACW</u>	
1. <u>Rubus ursinus</u>	<u>8</u>	<u>X</u>	<u>FACW</u>	
2. <u>Rosa multiflora</u>	<u>7</u>	<u>X</u>	<u>FACW</u>	
3. _____	_____	_____	_____	
= Total Cover				
% Bare Ground in Herb Stratum: <u>74</u>				
Remarks: $36 \times 1.2 = 5.2$ $15 \times 1.2 = 3$ $2.13$ $7.5$				

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US Army Corps of Engineers

Preliminary Wetland Delineation  
 Cross Development Parcel, Humboldt Hill, Eureka, CA

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[illegible]

Wetland Hydrology Indicators		Secondary Indicators (2 or more required)	
Primary Indicators (minimum of one required; check all that apply)			
<input type="checkbox"/> Surface Water (A1)	<input type="checkbox"/> Water-Stained Leaves (B9) (except MLRA 1, 2, 4A, and 4B)	<input checked="" type="checkbox"/> Water-Stained Leaves (B9) (MLRA 1, 2, 4A, and 4B)	
<input checked="" type="checkbox"/> High Water Table (A2)	<input type="checkbox"/> Salt Crust (B11)	<input checked="" type="checkbox"/> Drainage Patterns (B10)	
<input type="checkbox"/> Saturation (A3)	<input type="checkbox"/> Aquatic Invertebrates (B13)	<input type="checkbox"/> Dry-Season Water Table (C2)	
<input type="checkbox"/> Water Marks (B1)	<input type="checkbox"/> Hydrogen Sulfide Odor (C1)	<input type="checkbox"/> Saturation Visible on Aerial Imagery (C9)	
<input type="checkbox"/> Sediment Deposits (B2)	<input type="checkbox"/> Oxidized Rhizospheres along Living Roots (C3)	<input type="checkbox"/> Geomorphic Position (D2)	
<input type="checkbox"/> Drift Deposits (B3)	<input type="checkbox"/> Presence of Reduced Iron (C4)	<input type="checkbox"/> Shallow Aquitard (D3)	
<input type="checkbox"/> Algal Mat or Crust (B4)	<input type="checkbox"/> Recent Iron Reduction in Tilled Soils (C6)	<input type="checkbox"/> FAC-Neutral Test (D6)	
<input type="checkbox"/> Iron Deposits (B5)	<input type="checkbox"/> Stunted or Stressed Plants (D1) (LRR A)	<input type="checkbox"/> Raised Art Mounds (D8) (LRR A)	
<input type="checkbox"/> Surface Soil Cracks (B6)	<input type="checkbox"/> Other (Explain in Remarks)	<input type="checkbox"/> Frost-Heave Hummocks (D7)	
<input type="checkbox"/> Inundation Visible on Aerial Imagery (B7)			
<input type="checkbox"/> Sparsely Vegetated Concave Surface (B8)			
Field Observations:			
Surface Water Present?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Depth (inches):	
Water Table Present?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Depth (inches):	2"
Saturation Present?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Depth (inches):	
(includes capillary fringe)		Wetland Hydrology Present? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:			
Remarks:			
Saturation observed near soil surface. depression and water stained leaves			

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**WETLAND DETERMINATION DATA FORM - Western Mountains, Valleys, and Coast Region**

Project/Site: 5707 South Broadway City/County: Eureka, Humboldt Sampling Date: 2.25.15  
 Applicant/Owner: Cross Development State: CA Sampling Point: DP up  
 Investigator(s): Virginia Dains Section, Township, Range: Sec 8 T4N R1W  
 Landform (hillslope, terrace, etc.): hillslope Local relief (concave, convex, none): sloping Slope (%): 10%  
 Subregion (LRR): NW Forest and Coast Lat: 40.741172 Long: 124.199945 Datum: NAD83  
 Soil Map Unit Name: Bayside Silty Clay loam NWI classification: none  
 Are climatic/hydrologic conditions on the site typical for this time of year? Yes ☐ No ☒ (If no, explain in Remarks.)  
 Are Vegetation ☐ Soil ☒ or Hydrology ☐ significantly disturbed? Are "Normal Circumstances" present? Yes ☐ No ☒  
 Are Vegetation ☐ Soil ☐ or Hydrology ☐ naturally problematic? (If needed, explain any answers in Remarks.)

**SUMMARY OF FINDINGS - Attach site map showing sampling point locations, transects, important features, etc.**

Hydrophytic Vegetation Present?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Is the Sampled Area within a Wetland? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Hydric Soil Present?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Wetland Hydrology Present?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Remarks: <u>Very Dry January and February Site is mixed fill. Not typical Bayside</u>		

**VEGETATION - Use scientific names of plants.**

Transect (Plot size: _____)	Absolute % Cover	Dominant indicator Species?	Status	<b>Dominance Test worksheet:</b> Number of Dominant Species That Are OBL, FACW, or FAC: <u>1</u> (A) Total Number of Dominant Species Across All Strata: <u>4</u> (B) Percent of Dominant Species That Are OBL, FACW, or FAC: <u>25</u> (A/B)														
1. _____	_____	_____	_____															
2. _____	_____	_____	_____															
3. _____	_____	_____	_____															
4. _____	_____	_____	_____															
= Total Cover				<b>Prevalence Index worksheet:</b> <table border="0"> <tr> <td>Total % Cover of</td> <td>Multiply by</td> </tr> <tr> <td>OBL species <u>15</u></td> <td>x 1 = <u>15</u></td> </tr> <tr> <td>FACW species <u>7</u></td> <td>x 2 = <u>14</u></td> </tr> <tr> <td>FAC species <u>5</u></td> <td>x 3 = <u>15</u></td> </tr> <tr> <td>FACU species <u>38</u></td> <td>x 4 = <u>152</u></td> </tr> <tr> <td>UPL species <u>15</u></td> <td>x 5 = <u>75</u></td> </tr> <tr> <td>Column Totals:</td> <td><u>80</u> (A) <u>271</u> (B)</td> </tr> </table>	Total % Cover of	Multiply by	OBL species <u>15</u>	x 1 = <u>15</u>	FACW species <u>7</u>	x 2 = <u>14</u>	FAC species <u>5</u>	x 3 = <u>15</u>	FACU species <u>38</u>	x 4 = <u>152</u>	UPL species <u>15</u>	x 5 = <u>75</u>	Column Totals:	<u>80</u> (A) <u>271</u> (B)
Total % Cover of	Multiply by																	
OBL species <u>15</u>	x 1 = <u>15</u>																	
FACW species <u>7</u>	x 2 = <u>14</u>																	
FAC species <u>5</u>	x 3 = <u>15</u>																	
FACU species <u>38</u>	x 4 = <u>152</u>																	
UPL species <u>15</u>	x 5 = <u>75</u>																	
Column Totals:	<u>80</u> (A) <u>271</u> (B)																	
= Total Cover																		
<b>Herb Stratum (Plot size: <u>3m</u>)</b>																		
1. <u>Juncus effusus</u>	<u>7</u>	<u>X</u>	<u>FACW</u>															
2. <u>Aster chilensis (Symphyotrichum)</u>	<u>5</u>	<u>X</u>	<u>FACU</u>															
3. <u>Amorcanthum odoratum</u>	<u>5</u>	<u>X</u>	<u>FACU</u>															
4. <u>Geranium dissectum</u>	<u>15</u>	<u>X</u>	<u>UPL</u>															
5. <u>Stachys ayuagorda</u>	<u>15</u>	<u>X</u>	<u>OBL</u>															
= Total Cover																		
<b>Woody Vine Stratum (Plot size: <u>3m</u>)</b>																		
1. <u>Rubus ursinus</u>	<u>15</u>	<u>X</u>	<u>FACU</u>															
2. <u>Rosa multiflora</u>	<u>18</u>	<u>X</u>	<u>FACU</u>															
= Total Cover																		
% Bare Ground in Herb Stratum <u>40</u>																		
<b>Remarks:</b> <u>47 x .2 = 9.4</u>																		

Hydrophytic Vegetation Present? Yes ☐ No ☒

Sampling Point: DP up

## HYDROLOGY

**US Army Corps of Engineers**

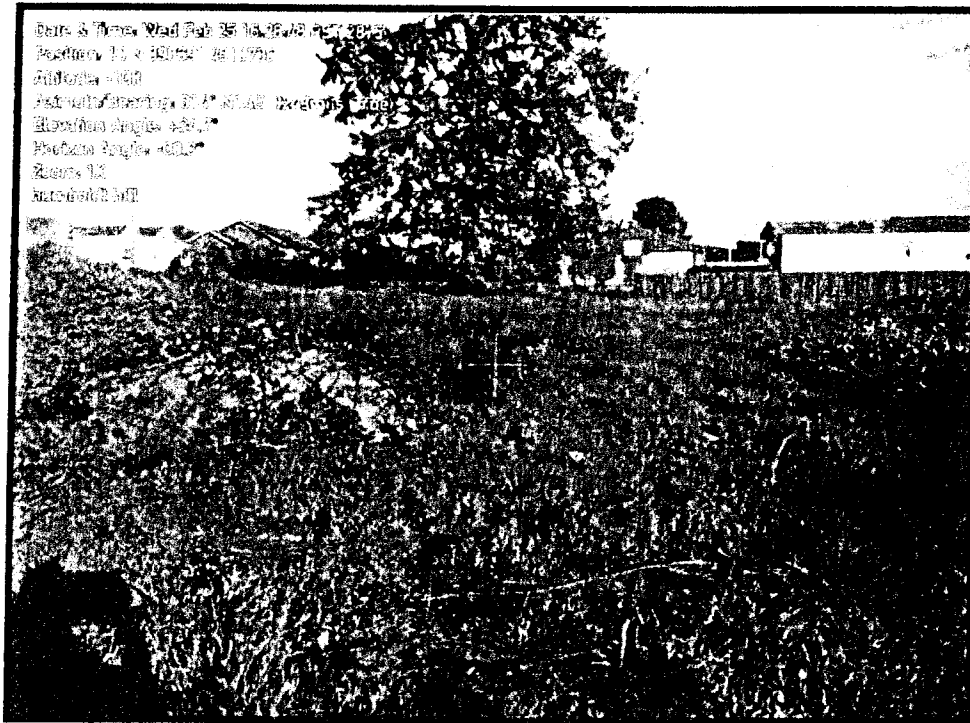
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Preliminary Wetland Delineation  
Cross Development Parcel, Humboldt Hill, Eureka, CA

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**Cross Development Site Photos  
February 25, 2015**



**Photo 1**

**Northeast property corner showing mature Sitka spruce, mounds of fill covered with California blackberry, multiflora rose in foreground along with scrap asphalt, sweet vernal grass and ornamentals.**



## Photo 2

Looking southeast across property. Willows associated with the seasonal wetland are shown in the upper right corner. Foreground vegetation is sweet vernal grass, vetch. A large patch of wild mustard (white flowers) is in the middle distance.



**Photo 3**  
 Hooker's willow growing outside of the seasonal wetland basin  
 overgrown with California blackberry (FACU).



**Photo 4**

**Dominant cover type in the lower half of the property is a mix of California black berry and multiflora rose, both Facultative Upland species (FACU). Taken near the upland data point.**



**Photo 5**

**Hooker's willow and Soft rush (*Juncus effusus*) facultative wetland species (FACW) mark the rim of the seasonal wetland depression. Chilean aster flowering in the lower right corner (FAC).**





**Photo 6**

Seasonal wetland bottom of the depression showing water-stained leaves (a secondary hydrology indicator). Broadleaf plant is creeping buttercup (*Ranunculus repens*) a Facultative (FAC) rated hydrophytic species. Bottom of basin is largely unvegetated.



**Photo 7**

From the edge of the seasonal wetland looking over the remainder of the site. White flowers are wild radish, yellow flowers are mustard, mounded vegetation is multiflora rose. Isolated tussocks of soft rush (*Juncus effusus*) are mixed with sweet vernal grass, blackberry and rose.

**VIRGINIA DAINS**  
**Biological Resource Consulting**

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**530-888-9180 / virginiadains@gmail.com**

**EDUCATION**

M.S. Biology (Plant Ecology), 1992, California State University, Sacramento, Thesis Topic:  
"The Water Relations of *Alnus rhombifolia*"

B.S. Biology (Field Biology), 1978, California Polytechnic State University, San Luis Obispo

2012 CRAM Wetlands Riverine and Vernal Pool certified.

**EXPERIENCE** Biological Consulting contracts since 1979 include:

**Special-status plant surveys** throughout California and western Nevada. Projects were conducted for state, federal, or private concerns and include GPS field mapping, mitigation measures, and conservation guidelines.

**Wetland delineations** in the Arid West and Western Mountains regions assessing riparian, seasonal wetland, vernal pools, alkaline, mountain meadow, seeps and discharge wetland habitats in California and Nevada.

**Wetland delineation training** assistant for U.S. Army Corps of Engineers training classes.

**Wetland Plant Identification Instructor** for EPA, US FWS, and California Native Plant Society.

**Wetland mitigation** design and implementation of constructed seasonal wetlands, coastal meadow, salt and brackish marsh habitats.

**ARCView GIS** proficient, field GPS data collection and post processing.

**Other Experience:** Vegetation mapping with remote sensing, forage inventory, residual dry matter monitoring, grazing prescriptions, noxious weed mapping, Workshop leader on Vernal Pools, Backcountry Naturalist for The Nature Conservancy wilderness tours; Mt. St. Helens vegetation recovery researcher 1983-present.

**Wetland Protection Plan**  
**Cross Development Site**  
**5707 South Broadway (Humboldt Hill) Eureka, CA**

**Prepared for:**

**Cross Development LLC**  
**5317 Inverrary Drive**  
**Plano, TX 75093**



**Prepared by:**

**Virginia Dains**  
**Consulting Biologist**  
**3371 Ayres Holmes Road**  
**Auburn, CA 95602**  
**viriniadains@gmail.com**  
**530-888-9180**

**Revised June 05, 2016**



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### Project Description, Goals, and Objectives

The purpose of this Wetland Protection Plan is to detail the means by which a single seasonal wetland of approximately 150 square feet in extent will be retained on an 0.87 acre parcel that is being considered for commercial development (Figure 1). The parcel is found within the coastal zone as defined by the CCC and is under the administrative jurisdiction of the City of Eureka's Local Coastal Program. The proposed site is found in the Humboldt Hill area of Eureka, CA. Mapping of this wetland was conducted according to the guidelines of the US Army Corps of Engineers wetland delineation manual and supplements (USACE 1987 and 2010) and the California Coastal Commission (CCC 1994). A delineation report was submitted to Humboldt County for documentation and Eureka field office of the Corps of Engineers for verification (Dains 2015).

The goals outlined within this plan are to protect the existing wetland during and after development of the site, and to enhance buffer conditions to favor native wetland species. The objective will be to maintain a shaded seasonal wetland with native herb and shrub canopy layers. The wetland will continue to function for groundwater percolation and will retain escape cover with seasonally moist soils, foraging opportunities for seed and fruit eating birds, and nesting opportunities for songbirds.

### Existing Site Conditions

The parcel is highly disturbed by the dumping of fill, asphalt scrap, off road vehicle traffic and parking. Vegetation consists of a mix of ruderal herbs, horticultural introductions, and common native species. Tall fescue (*Festuca arundinacea*) and sweet vernal grass (*Anthoxanthum odoratum*), two introduced grasses, dominate much of the eastern portion of the site. Extensive patches of wild radish (*Raphanus sativus*) and mats of California blackberry (*Rubus ursinus*) and the horticultural multiflora rose (*Rosa multiflora* var. *carnea*) cover the remainder of the site. Isolated individuals of native perennial tufted hairgrass (*Deschampsia cespitosa*), Hooker's willow (*Salix hookeriana*), and soft rush (*Juncus effusus*) are found as part of the overall mosaic of vegetation but do not occur as remnants of natural vegetation. Several horticultural species including grape hyacinth, daffodil, cultivated iris, cotoneaster, Spanish heather, pampas grass, English ivy, Freesia, and Amaryllis are found on the site as escapes from cultivation and are representative of the disturbed nature of the vegetation.

The basin of the wetland depression is largely unvegetated, but the sides and rim of the basin support hydrophytic herbs and shrubs primarily Hookers willow (*Salix hookeriana*), soft rush (*Juncus effusus*), and the invasive creeping buttercup (*Ranunculus repens*). Uplands surrounding the wetland are dominated by facultative upland (FACU) species including introduced sweet vernal grass (*Anthoxanthum odoratum*), and mats of California blackberry (*Rubus ursinus*) and invasive multiflora rose (*Rosa multiflora*).



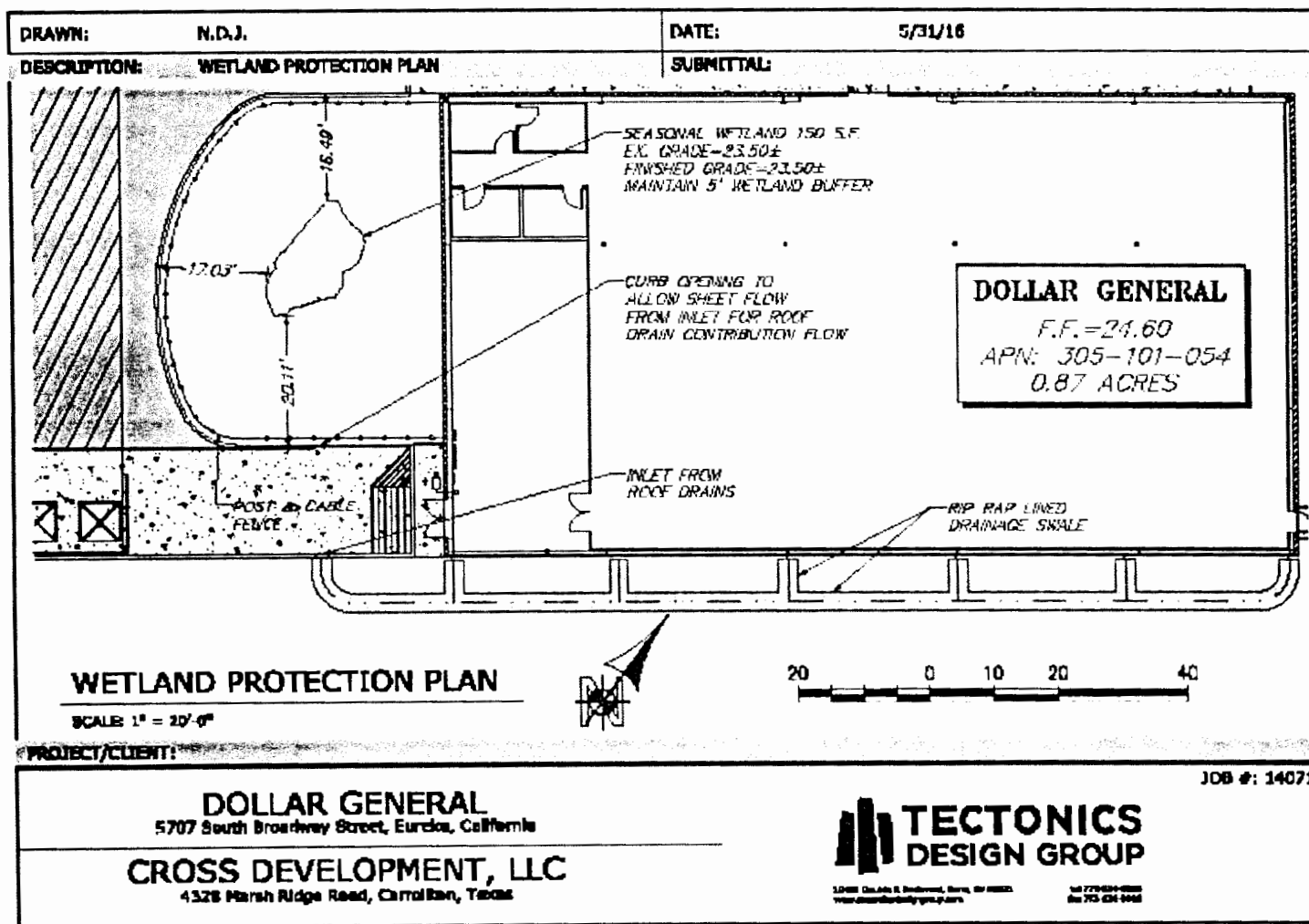


Figure 1 Wetland Protection Area

### Site Protection

A revegetation biologist or ecologist will be responsible for the protection and enhancement of the wetland and its buffer.

The seasonal wetland will be protected by a vegetated buffer 13 times its area with setbacks from the development of 16.49 ft. to the north, 17.03 ft. to the west, and 20.11 ft. to the south. The total buffer area and wetland area is approximately 1,889 sq. ft. (0.04 acres) in extent. The buffer size was determined by the maximum feasible set-aside for avoidance. Biologically the buffer size is mitigated by the minimal size and depth of the wetland, the lack of native plants or biologically significant habitat in its current surroundings, the low susceptibility of the level ground to erosion, and the minimal potential for significant wildlife use in the existing wetland.

The hydrology of the wetland set-aside will be driven by direct precipitation, some adjacent run-off from sidewalks, and augmented by roof runoff which is channeled from the rear of the building into a vegetated swale and which overflows into the wetland area through curb openings (figure 1).

Prior to construction the wetland and its buffer will be identified and protected with high visibility rope and posts. Grading plans shall identify this area as Sensitive Habitat. The land surface elevation of the wetland and its upland boundary will remain undisturbed. Small topographic changes in the buffer area will be made to maintain internal drainage towards the wetland. A biological monitor will visit the site during construction to ensure the protection measures are effective.

After construction the wetland and its buffer will be separated from foot and vehicle traffic areas by a simple post and cable fence as well as a concrete curb to prevent runoff from the parking area entering the wetland.

### Site Preparation

After grading and construction of the developed area is complete, the wetland and its buffer area will be weeded and prepared for replanting. Some native species will be retained. Hookers willow adjacent to the wetland along with bog Rush (*Juncus effusus*) will remain. Other native species that may be present in or adjacent to the wetland will be incorporated in the revegetation plan as they are encountered. Native California blackberry will be removed from the buffer since this species is found in direct association with multiflora rose, an invasive species, and can quickly overgrow restoration plantings. Some earthwork within the buffer may be required to refine contours within the watershed before planting.

### Implementation

Restoration of the buffer area shall begin concurrently with the completion of construction.

Plant species appropriate for buffer protection and enhancement of the seasonal wetland are listed in Table 1. Other natives may be used at the discretion of the biologist in charge. A planting plan is shown in Figure 2.

All planting material will be locally obtained and inspected for health and viability before being introduced to the site. One- or five-gallon shrubs will be obtained depending on the quality and availability. Bare root stock or small container plants of herbaceous species such as bog rush, tufted hair grass, or California aster will be planted during the fall prior to the rainy season. Some native plant material may be rescued from on-site and held in temporary nurseries on-site to be transplanted into the buffer area after construction. Soil amendments will be avoided unless specific conditions, such as sand, dense clay, or rubble are encountered in the planting area. Fertilizers are more likely to encourage the establishment of weedy introduced species than benefit native transplants. A 6-8 inch woodchip mulch may be used to limit weeds around container plantings.

Timing of planting should coincide with fall and winter rains. If construction is not completed before the rainy season and restoration is postponed to the spring or summer, irrigation will be prescribed on a twice monthly basis. The entire wetland area will be soaked to ensure establishment of revegetation stock. No permanent or temporary irrigation will be installed.

Table 1 Native Plants for Buffer Enhancement

Growth Form	Function	Species	Wetland Rating*	Planting Density	Count
Trees/large Shrubs	Cover, deciduous insect forage	Hookers willow <i>Salix hookeriana</i>	FACW	Present on site/conserved	1+
Trees/large Shrubs	Cover, Evergreen, Attracts birds	Wax-myrtle <i>(Morella californica)</i>	FAC	10 ft. centers	3-5
Shrubs	Flowers attract hummingbirds, fruits provide additional forage	Red-flowering Currant <i>(Ribes sanguineum)</i>	FAC	8 ft centers	3-5
Perennial Herbs	Low cover, green mulch	Tufted hairgrass <i>(Deschampsia cespitosa)</i>	FACW	1 ft. centers	1,500
Perennial Herbs	Surface shade	Bog rush <i>(Juncus effusus)</i>	FACW	2' centers present on site	3-5
Perennial Herb/sub-shrub	Insect forage, attracts birds and pollinators	Riverbank lupine <i>(Lupinus rivularis)</i>	FACW	1.5 ft. centers	5-7
Perennial Herb/sub-shrub	Insect forage, attracts birds and pollinators	California aster <i>(Aster chilensis)</i>	FAC	1.5 ft centers	5-7

\*Wetland Indicator Status Codes (Lichvar 2012)

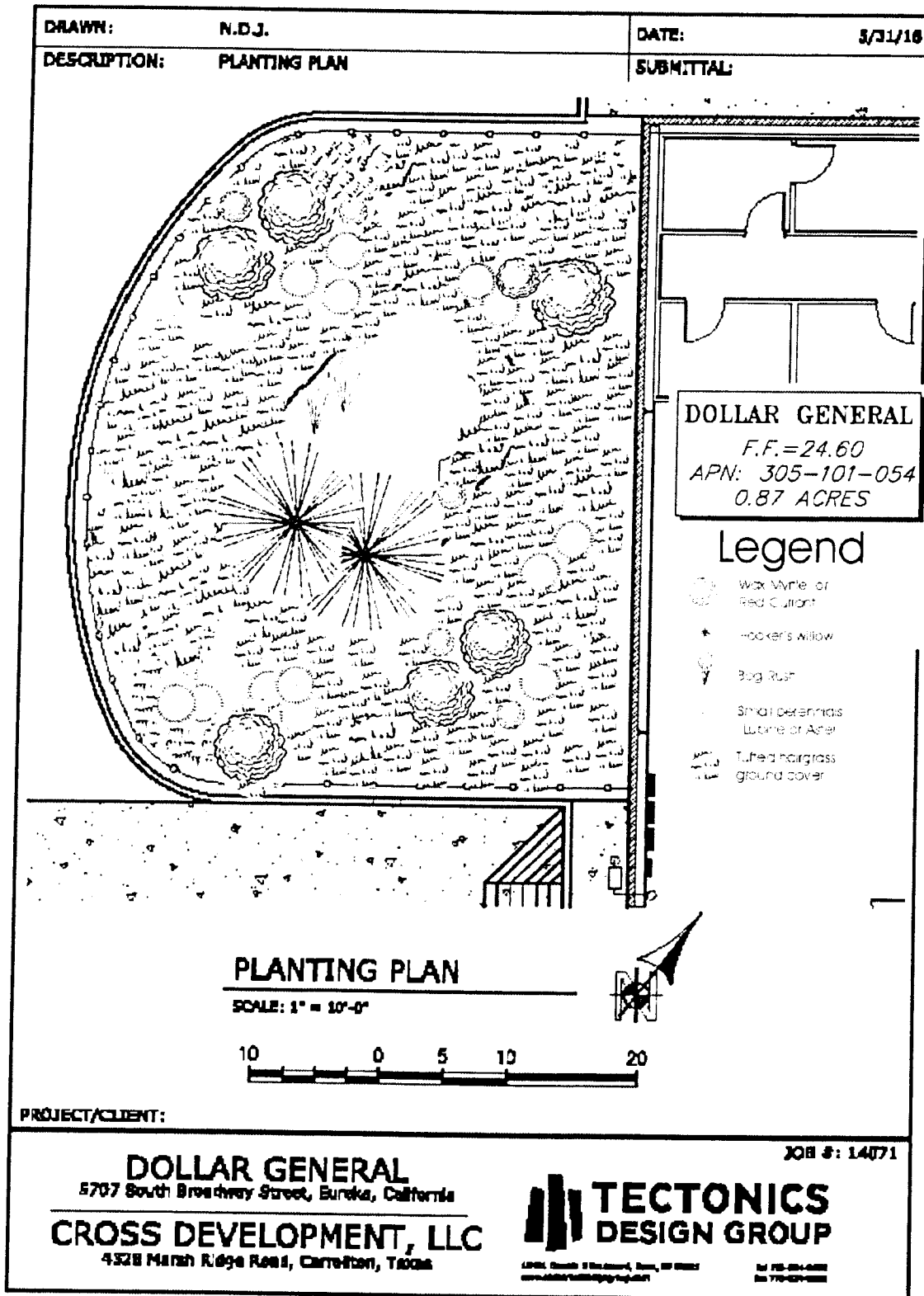


Figure 2 Planting Plan

### **Maintenance Plan**

Short term maintenance for two growing seasons will be the responsibility of the revegetation/restoration contractor. Maintenance will include: weeding, assessing the need for dry season irrigation of plantings, survivorship and replanting as needed to develop a perennial ground cover of native species.

Long term maintenance will be the responsibility of the project proponent or their responsible party. Long term maintenance will be folded into the general maintenance requirements for other landscaping on the site. These will include routine weed and litter removal, and maintenance of the protective fencing.

### **Summary**

The goal of protecting on-site a small seasonal wetland with the objective of maintaining shaded seasonally wet habitat is described in this document. Means for protection prior to, during and after construction are given. Habitat improvements through installation of native shrubs and perennial herbs are planned. The timeline for this project is concurrent with the construction of the commercial development. Two year monitoring of restoration plantings with the goals of developing perennial ground cover is described and long term maintenance.

## References

CCC 1994 Procedural Guidance for the Review of Wetland Projects in California's Coastal Zone. State of California, California Coastal Commission, June 15, 1994. Accessed online: <http://www.coastal.ca.gov/wetrev/wetttitle.html>

Dains, Virginia 2015 Preliminary Wetland Delineation Cross Development Site 5707 South Broadway (Humboldt Hill) Eureka, CA Prepared for: Cross Development LLC, 5317 Inverrary Drive, Plano, TX 75093. Prepared by: Virginia Dains, Consulting Biologist, 3371 Ayres Holmes Road, Auburn, CA 95602. June 6, 2016

Lichvar, R.W. 2012. *The National Wetland Plant List*. ERDC/CRREL TR-12-11. Hanover, NH: U.S. Army Corps

USACE. 1987. "Corps of Engineers Wetland Delineation Manual." Technical Report Y-87-1, U.S. Army Corps of Engineers Waterways Experiment Station, Vicksburg, Miss.

USACE 2010. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys and Coast Region (Version 2.0) ERDC/EL TR-10-3 May 2010 U.S. Army Engineer Research and Development Center Environmental, Vicksburg, Miss.





















EXHIBIT  
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EXHIBIT

D-8

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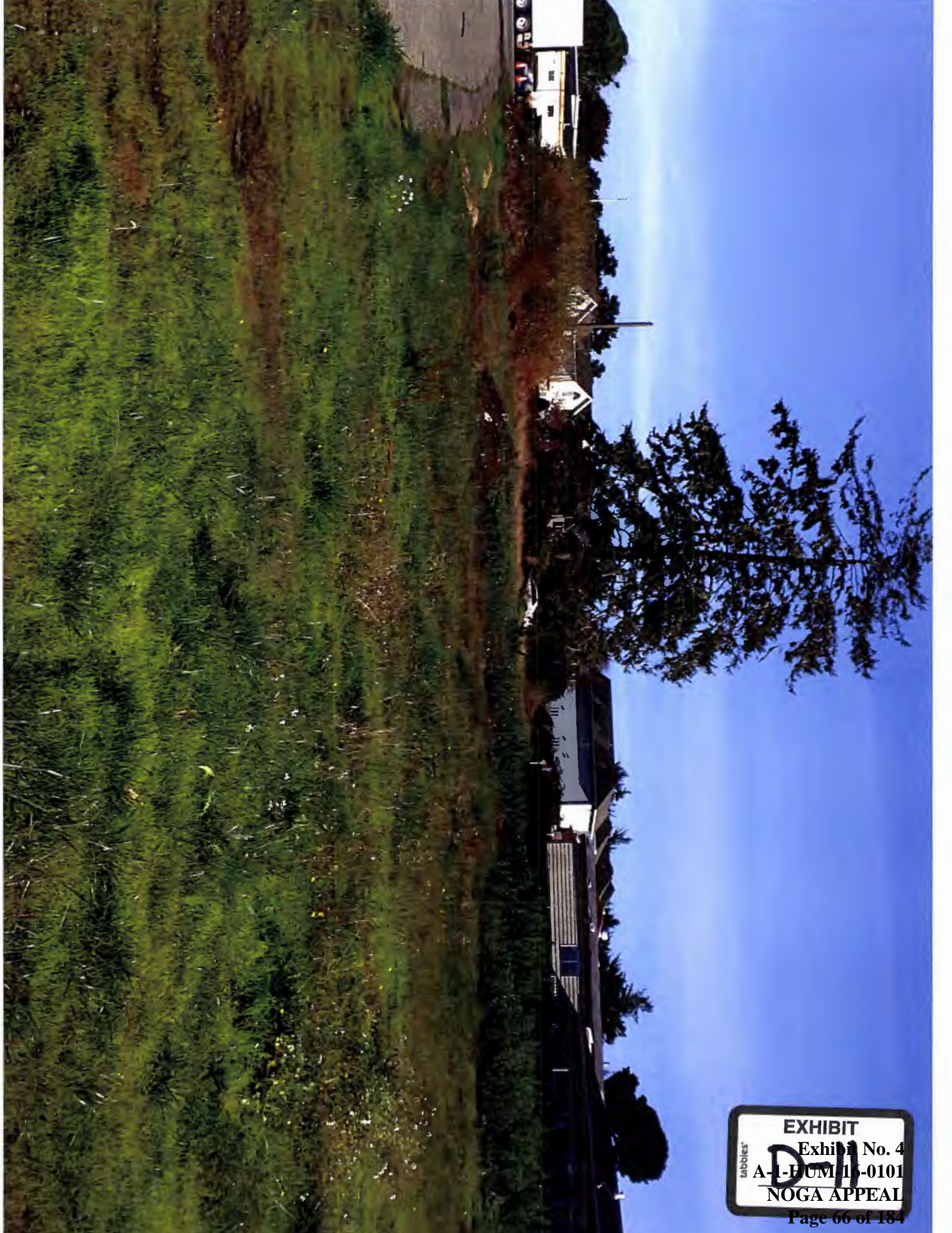






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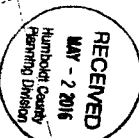


EXHIBIT  
6-0101  
APPEAL



**COUNTY OF HUMBOLDT**  
**PLANNING AND BUILDING DEPARTMENT**  
**CURRENT PLANNING DIVISION**

3015 H Street Eureka CA 95501  
Phone: (707)445-7541 Fax: (707) 268-3792

Hearing Date: July 7, 2016

To: Humboldt County Planning Commission

From: Rob S. Wall, Interim Director of Planning and Building Department

Subject: **Dollar General Coastal Development Permit and Special Permit**  
Application Number 9329  
Case Numbers CDP 14-033, SP 14-049  
Assessor's Parcel Number 305-101-054  
Humboldt Hill Area

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Please contact Karen Meynell, Planner II, at 707-268-3731 or by email at [kmeynell@co.humboldt.ca.us](mailto:kmeynell@co.humboldt.ca.us) if you have any questions about the scheduled public hearing item.



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## AGENDA ITEM TRANSMITTAL

Hearing Date	Subject	Contact
July 7, 2016	Coastal Development Permit and Special Permit	Karen Meynell

**Project:** The proposed project is a Coastal Development Permit to construct a commercial building on a 0.87 acre parcel that is currently vacant. The commercial use of the approximately 9,300 square foot building will be for a retail store which is principally permitted in the Commercial General zoning district. A 150 square foot seasonal isolated wetland was identified near the middle of the parcel. A Special Permit is required to reduce the wetland setback in order to develop the parcel for commercial purposes and to allow for a parking exception that would reduce the number of required parking spaces due to the level of anticipated use. The height of the structure ranges from approximately 22 feet at the front of the store to 15 feet at the rear. The hours of operation will be 8 am to 10 pm, seven days a week. The store will operate with three (3) full time employees approximately 95% of the time. Occasionally there will be up to a maximum of five (5) employees. A dedicated loading space is included in the project proposal. There is no tree removal proposed and only minimal grading is necessary. The parcel is served by Humboldt Community Services District for water and sewer services.

**Project Location:** The project is located in Humboldt County, in the Humboldt Hill area, on the east side of South Broadway, approximately 455 feet north from the intersection of Eich Road and South Broadway, on the property known to be in the Southeast quarter of Section 08 Township 04 North Range 01 West.

**Present Plan Designations:** Commercial General (CG), Humboldt Bay Area Plan (HBAP), Density: N/A, Slope Stability: Low Instability (1)

**Present Zoning:** (CG/W) Commercial General (CG), Coastal Wetlands (W)

**Case Numbers:** CDP 14-033, SP 14-049

**Application Number:** 9329

**Assessor Parcel Number:** 305-101-054

**Applicant**

Dan Dover  
c/o Dollar General  
Cross Development  
5317 Inverrary Drive  
Plano, TX 75093

**Owner**

Cookman-Meyer Partnership  
1920 Freshwater Rd  
Eureka, CA 95503

**Agent**

Dan Dover  
Cross Development  
5317 Inverrary Drive  
Plano, TX 75093

**Environmental Review:** Environmental review is required

**Major Issues:** Wetland setback

**State Appeal Status:** Project is appealable to the California Coastal Commission

## DOLLAR GENERAL COASTAL DEVELOPMENT AND SPECIAL PERMIT

Case Numbers CDP-14-033, SP14-049  
Assessor's Parcel Number 305-101-054-000

### Recommended Commission Action

1. Describe the application as part of the Consent Agenda.
2. Survey the audience for any person who would like to discuss the application.
3. If no one requests discussion, make the following motion to approve the application as a part of the consent agenda:

*Adopt the Mitigated Negative Declaration and to make all of the required findings for approval of the Coastal Development Permit and Special Permit based on evidence in the staff report and public testimony, and adopt the Resolution approving the Dollar General project subject to the recommended conditions.*

**Executive Summary:** The project was initially processed as an administrative project in 2014 when a request for public hearing was received in a timely manner. During public testimony at the hearing on December 2, 2014 two issues were raised which indicated potential conflicts with the use of the site for the proposed commercial purpose. The first was an alleged easement located where the building was proposed that would have required a redesign of the project. The second was a claim of historical (prescriptive) parking and ingress/egress on site for the benefit of neighboring parcels. The Planning Commission requested that staff investigate the existence of the alleged easement and continued the item to the next Planning Commission hearing. The prescriptive parking and ingress/egress claim was not within the purview of the Planning Commission and would need to be resolved as a civil matter. At the continued public hearing the following month the alleged easement was shown to no longer exist and the Planning Commission approved the proposed project.

The project was appealed under the same basis raised at the public hearing: existence of an easement where the proposed building would be constructed and prescriptive rights to parking and ingress/egress. In preparation of the appeal hearing, and as a result of public testimony at the Planning Commission hearing, a representative from Department of Fish and Wildlife visited the site and identified a small isolated wetland near the middle of the parcel. The discovery of the wetland meant the project would need to be re-evaluated in light of the new information and go before the Planning Commission again so the wetland information could be considered. The appeal was subsequently withdrawn and the applicant engaged the services of a biologist.

In May 2015 the applicant submitted a Preliminary Wetland Delineation (Dains, May 6, 2015) followed by a Wetland Protection Plan (Dains, September 15, 2015). The Wetland Delineation identified the wetland as a seasonal isolated wetland occurring on disturbed ground. The Wetland Protection Plan details measures to implement to ensure the protection and rehabilitation of the wetland area. The 150 square foot wetland will be buffered by an area 13 times its size. The minimum setback to parking areas is approximately 16 feet. The wetland and buffer area will be separated from foot and vehicular traffic by a permanent post and cable fence. A concrete curb will encircle the wetland buffer to prevent parking area runoff from entering the wetland. During construction the wetland and buffer will be protected with high visibility fencing and remain undisturbed. After construction the wetland and buffer will be planted with native, locally sourced species and monitored and maintained to ensure the plantings survive.

The project is a Regulated Project under the State Water Board's Phase II Small Municipal Separate Storm Sewer System (MS4) Program. The applicant has requested to postpone the submission of their plan to implement Low Impact Development techniques to comply with the MS4 program until after project approval. This has been made a Conditional of Approval (COA #14).

There are several conditions incorporated into the project to maximize the compatibility with the surrounding neighborhood. Prior to development a parking lot lighting plan and a landscaping plan must be submitted to, and approved by, the Planning Department. The landscaping plan must include Low Impact Development techniques to maximize the retention of storm water on site. Deliveries by truck are restricted to operating hours and the parking lot lights and illuminated signs causing light trespass must be turned off within an hour of business closure. A 6 foot high solid wood fence is required to be installed between the adjacent residential use and this project site.

The applicants are requesting a parking exception to reduce the required parking from 32 spaces to 24 spaces. This reduction is supported by a Trip Generation and Parking Assessment report prepared by Ken Anderson of KD Anderson & Associates, Inc. (October 8, 2014). The report indicates that the anticipated level of use justifies the reduction in parking and is based on historical use at three other Dollar General locations in small towns in California.

Based upon the on-site inspection, a review of Planning Division reference sources and comments from all involved referral agencies, Planning staff has found that the project will not result in a significant impact on the environment as proposed and that the applicant has submitted evidence in support of making all of the required findings for approving the proposed permit per the Recommended Commission Action.

**ALTERNATIVES:** The Planning Commission could elect not to approve the project. This alternative should be implemented if the Commission is unable to make all of the required findings. Planning Division staff has found that the required findings can be made. Consequently, planning staff does not recommend further consideration of this alternative.

**RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF HUMBOLDT**  
**Resolution Number 16-**

**Case Numbers CDP-14-033, SP-14-049**  
**Assessor's Parcel Number 305-101-054-000**

**Makes the required findings for certifying compliance with the California Environmental Quality Act and conditionally approves the Dollar General Coastal Development and Special Permit.**

**WHEREAS**, Dan Dover of Cross Development LLC submitted an application and evidence on behalf of Dollar General in support of approving a Coastal Development Permit and Special Permit for a retail commercial store; and

**WHEREAS**, the County Planning Division has reviewed the submitted application and evidence and has referred the application and evidence to involved reviewing agencies for site inspections, comments and recommendations; and

**WHEREAS**, the Planning Division, the lead agency, has prepared a draft Mitigated Negative Declaration for the subject proposal in accordance with the California Environmental Quality Act (CEQA); and

**WHEREAS**, Attachment 2 in the Planning Division staff report includes evidence in support of making all of the required findings for approving the proposed Coastal Development and Special Permit (Case Numbers CDP-14-033, SP-14-049); and

**WHEREAS**, a public hearing was held on the matter before the Humboldt County Planning Commission on July 7, 2016.

**NOW, THEREFORE**, be it resolved, determined, and ordered by the Planning Commission that:

1. The Planning Commission adopts the proposed Mitigated Negative Declaration in Attachment 4, as required by Section 15074 (b) of the CEQA Guidelines, and finds that there is no substantial evidence that the proposed project will have a significant effect on the environment; and
2. The Planning Commission further makes the findings in Attachment 2 of the Planning Division staff report for Case Numbers CDP-14-033, SP-14-049 based on the submitted evidence; and
3. The Planning Commission approves the Coastal Development and Special Permit applied for as recommended and conditioned in Attachment 1 for Case Numbers CDP-14-033, SP-14-049.

Adopted after review and consideration of all the evidence on July 7, 2016.

The motion was made by Commissioner \_\_\_\_\_ and seconded by Commissioner \_\_\_\_\_.

AYES: Commissioners:

NOES: Commissioners:

ABSTAIN: Commissioners:

ABSENT: Commissioners:

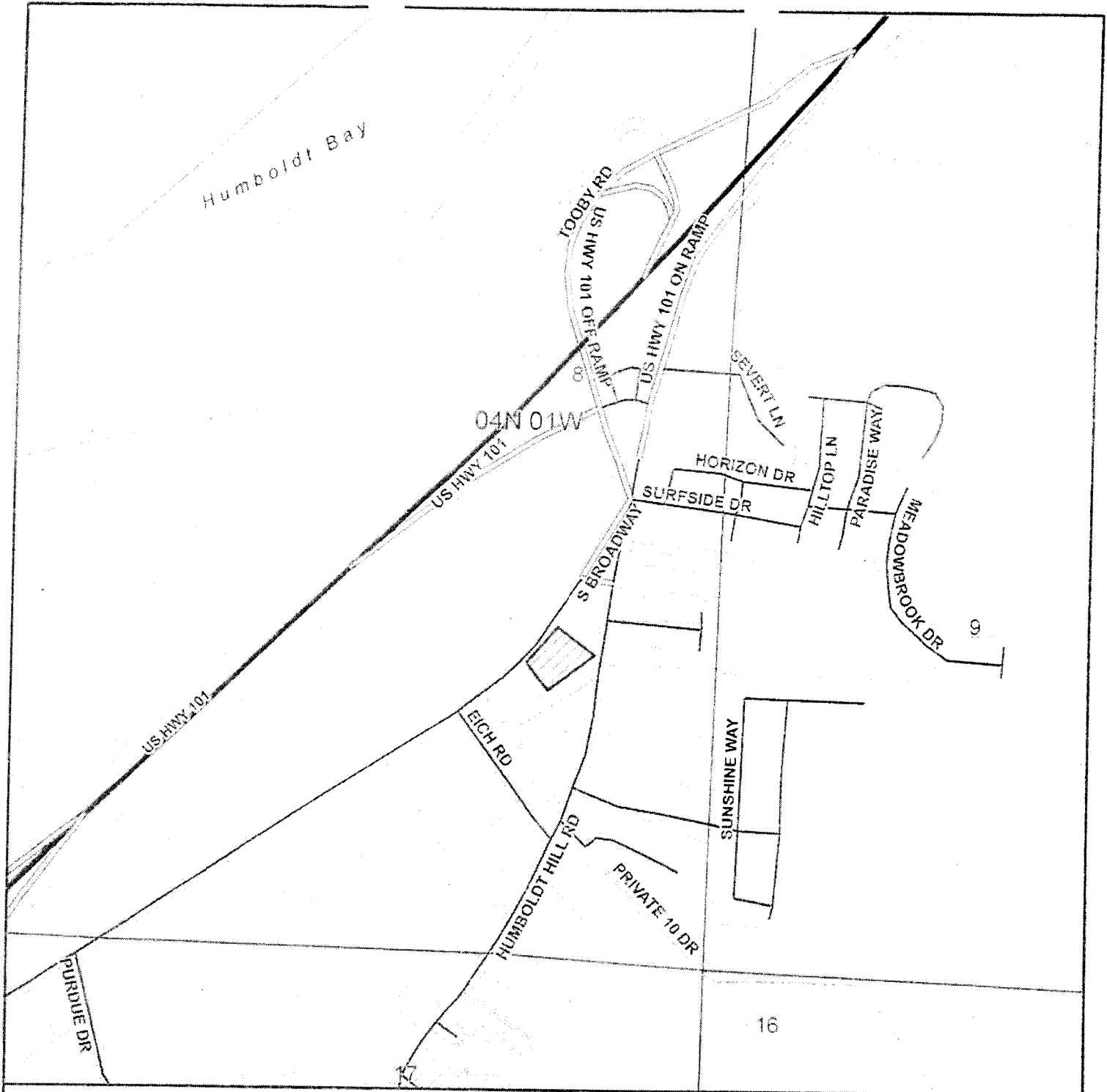
DECISION:

\_\_\_\_\_  
Robert Morris, Chair

I, Suzanne Hegler, Clerk to the Planning Commission of the County of Humboldt, do hereby certify the foregoing to be a true and correct record of the action taken on the above entitled matter by said Commission at a meeting held on the date noted above.

\_\_\_\_\_  
Suzanne Hegler, Clerk





**LOCATION MAP**

**PROPOSED DOLLAR GENERAL  
COASTAL DEVELOPMENT PERMIT  
HUMBOLDT HILL AREA**

**CDP-14-033**

**APN: 305-101-054**

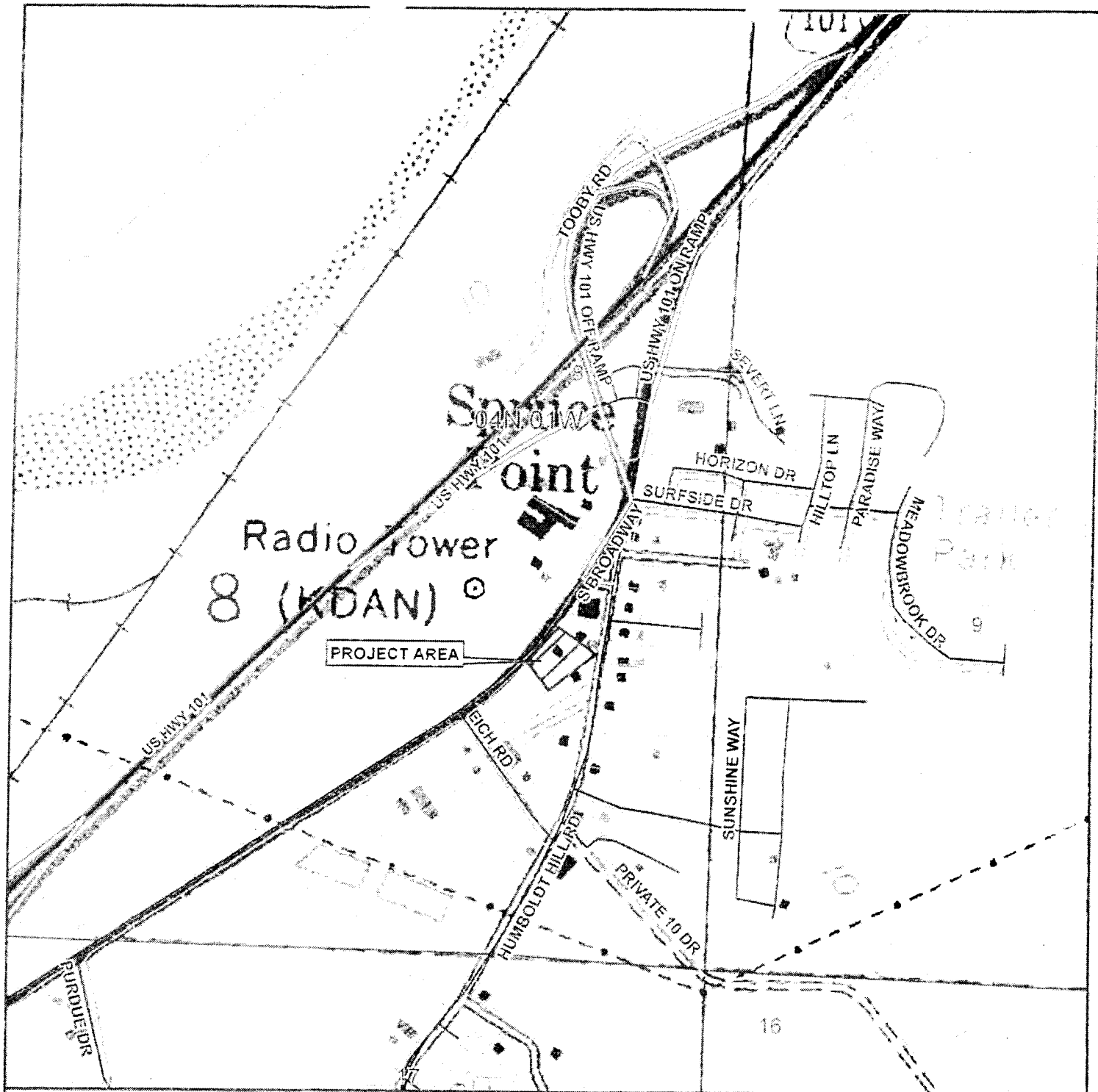
**T04N R01W S08 HB&M (Fields Landing)**

**Project Area =** 

This map is intended for display purposes and should not be used for precise measurement or navigation. Data has not been completely checked for accuracy.



**Exhibit No. 4  
A-1-HUM-16-0101**



TOPO MAP

PROPOSED DOLLAR GENERAL  
COASTAL DEVELOPMENT PERMIT  
HUMBOLDT HILL AREA

CDP-14-033

APN: 305-101-054

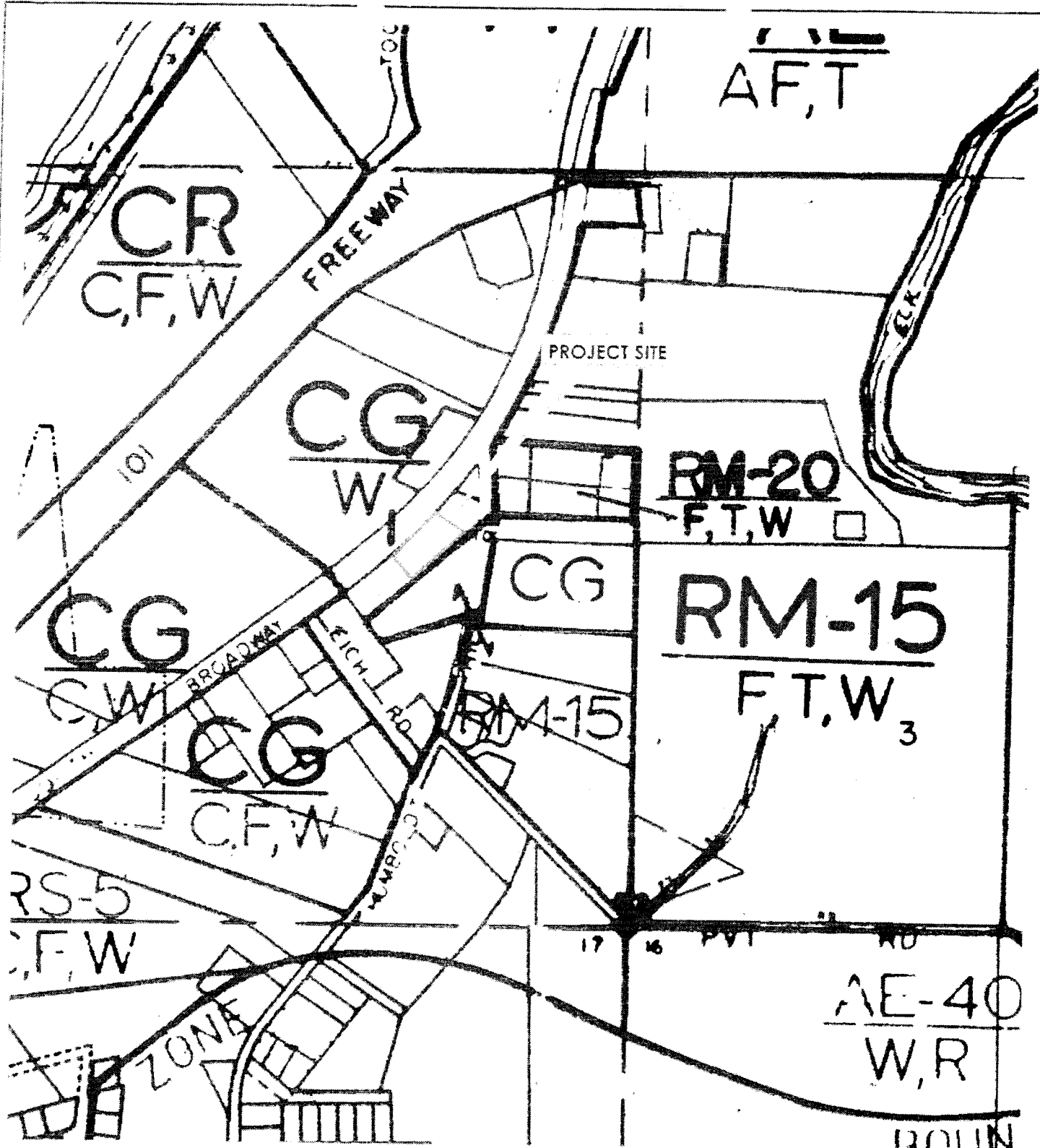
T04N R01W S08 HB&M (Fields Landing)

Project Area = 

This map is intended for display purposes and should not be used for precise measurement or navigation. Data has not been completely checked for accuracy.

0 250 500 750

Exhibit No. 4  
A-1-HUM-16-0101



# ZONING MAP

PROPOSED DOLLAR GENERAL  
COASTAL DEVELOPMENT PERMIT  
HUMBOLDT HILL AREA

CDP-14-033

APN: 305-101-054

T04N R01W S08 HB&M (Fields Landing)

PROJECT AREA =

MAP NOT TO SCALE

CDP 14-033 Dollar General

July 7, 2016

Page 8



Exhibit No. 4

A-1-HUM-16-0101

NOGA APPEAL

Page 76 of 184

305-10

SECTION 5 PARCEL MAP  
THE MAP WAS PREPARED FOR  
ACQUISITION PURPOSES AND  
IS NOT TO BE USED FOR  
THE PURPOSES OF THE 1980  
UNIFORM FEDERAL MAP ACT  
AND THE 1980 FEDERAL MAP  
ACT. THE MAP WAS PREPARED  
FOR THE PURPOSES OF THE  
1980 FEDERAL MAP ACT.

PM442 of PM Bk 4, Pg 55  
PM450 of PM Bk 4, Pg 73  
RS, Bk 11 of surveys, Pg 35  
RS, Bk 12 of surveys, Pg 145  
RS, Bk 22 of surveys, Pg 46  
RS, Bk 23 of surveys, Pg = 140-142  
RS, Bk 30 of surveys, Pg 112  
RS, Bk 31 of surveys, Pg 29  
RS, Bk 31 of surveys, Pg 34  
PM2534 of PM Bk 23, Pgs 135-138  
RS, Bk 61 of surveys, Pg 16  
PM3439 of PM Bk 33, Pgs 73-74

100-402077-301704-409-405-20 00  
 HIGHWAY & TOL TOW FROM  
 S. 100 SEC 4 T. 10N R. 10E  
 & 100N 100W 5000' S &  
 SOUTHWESTERLY 2 1/2 TO IN.  
 MONUMENT OFFSHORE  
 ENGINEER'S STATION 409-405-20 S.C. 100-402077-301704-409-405-20

SEE 125-12-270 PA  
PACIFIC GAS & ELECTRIC  
108-250  
8-7-54

ADP (ml) 6  
752 72 N  
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10 15 2 1 72 N

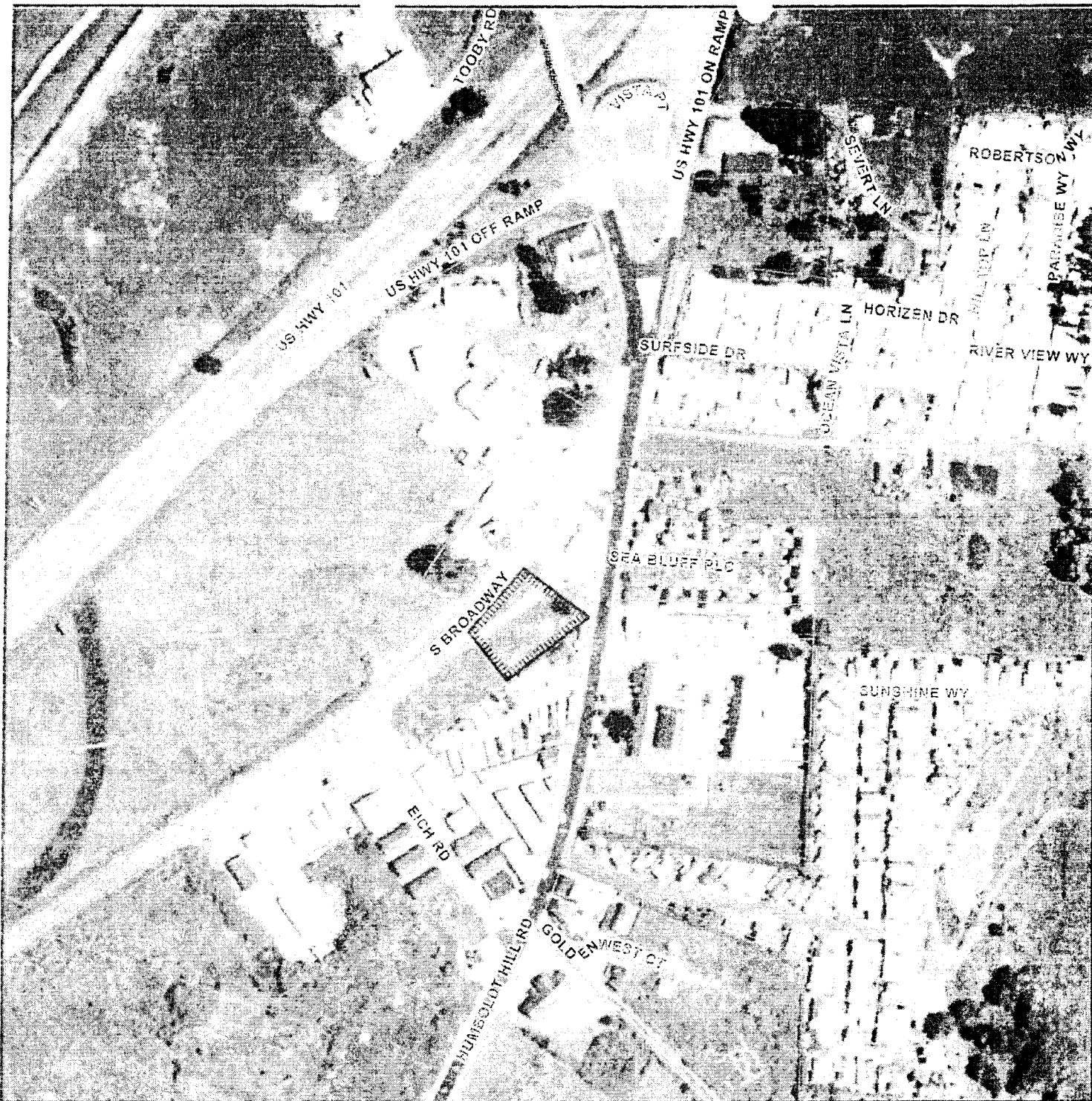
NOTE - Assessor's Block Numbers Shown in Boxes  
Assessor's Parcel Numbers Shown in Circles  
Assessor's Map Bk 305, Pg 10  
County of Humboldt, CA.

PROJECT SITE =

**PROPOSED DOLLAR GENERAL  
COASTAL DEVELOPMENT PERMIT  
HUMBOLDT HILL AREA  
CDP-14-033  
APN: 305-101-054  
T04N R01W S08 HB&M (Fields Landing)**

Exhibit No. 4  
MAI NTUM-16-0101

**NOGA APPEAL**  
**Page 77 of 184**




# AERIAL MAP

PROPOSED DOLLAR GENERAL  
COASTAL DEVELOPMENT PERMIT  
HUMBOLDT HILL AREA

CDP-14-033

APN: 305-101-054

T04N R01W S08 HB&M (Fields Landing)

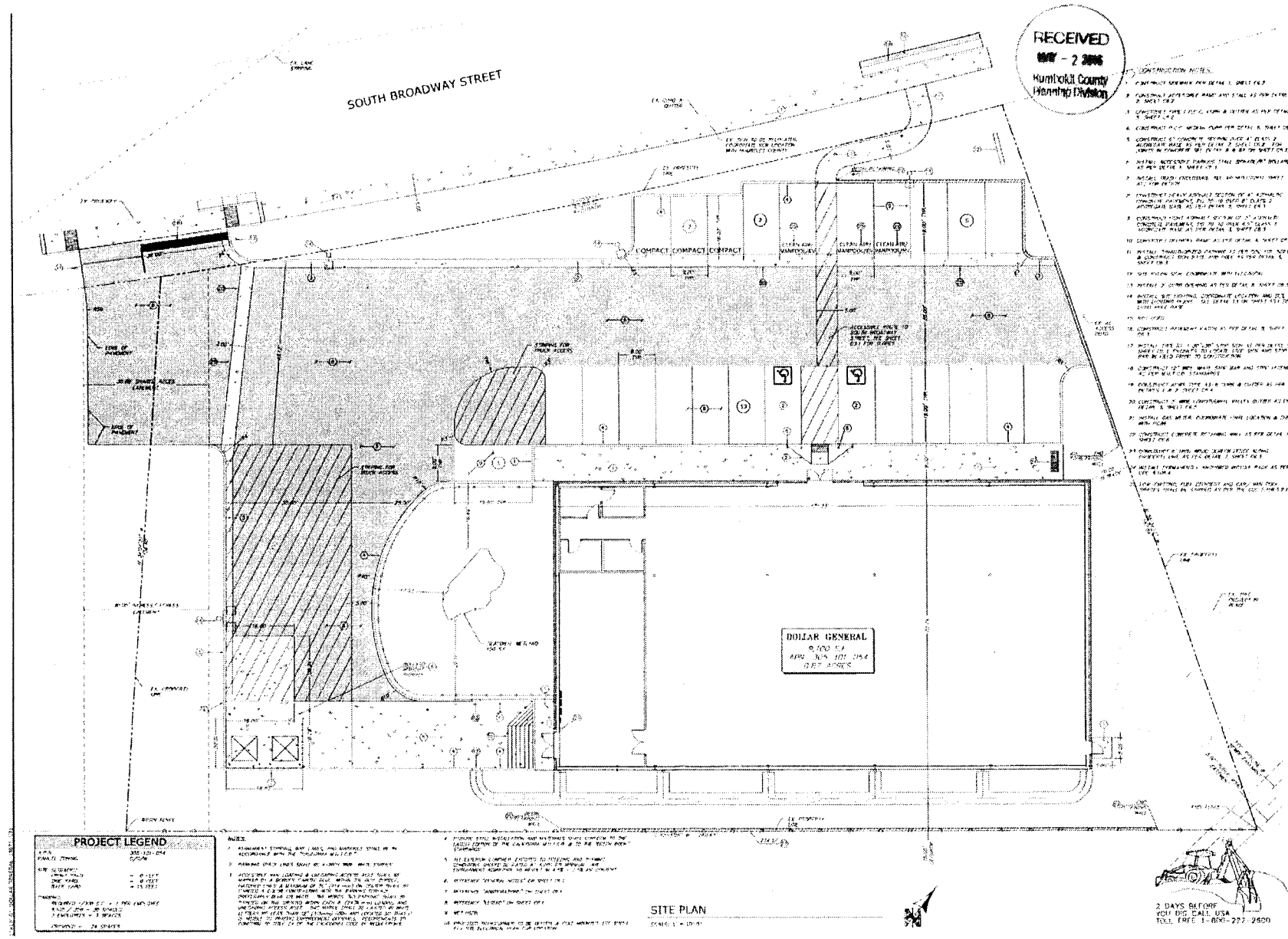
Project Area = 

This map is intended for display purposes and  
should not be used for precise measurement or  
navigation. Data has not been completely checked  
for accuracy.

0 250 500 Feet

Exhibit No. 4  
A-1 HUM-16-0101





**RECEIVED**  
08-07-2016  
Humboldt County  
Planning Division

**TECTONICS  
DESIGN GROUP**

**Dollar General**  
570 South Broadway Street, Eureka, California  
**CROSS DEVELOPMENT, LLC**  
3125 PARISH RIDGE ROAD, GUNNISON, TEXAS

**CONSTRUCTION SET**

**NOTICE**

**2 DAYS BEFORE  
YOU OR CALL USA  
TOLL FREE 1-800-257-2400**

**C2.1**

## ATTACHMENT 1

### CONDITIONS OF APPROVAL

Approval of the Coastal Development and Special Permit is conditioned upon the following terms and requirements which must be fulfilled before a building permit may be issued or use initiated.

1. The applicant shall apply for and obtain an encroachment permit for the commercial driveway. The permit will require the driveway entrance to be surfaced with asphalt concrete or Portland cement concrete. The driveway shall intersect the County road at a 90 degree angle. The driveway grade shall not exceed 2% in the first 20 feet.
2. Applicant will be required to construct a commercial ADA driveway apron; remove the unused driveway drop curb (constructed at the time of the subdivision) and replace with CalTrans Type A2-6 curb and gutter, and construct a 5 foot wide Portland cement concrete sidewalk along the frontage of the lot.
3. The encroachment permit will also include connecting the parking lot drainage into the existing storm drain system within South Broadway. An oil-water filtration system is required prior to discharge into the County storm drain. Per the Development plan the applicant shall prepare shop drawings of the oil-water filtration system and storm water diversion structure for approval. (See also COA #14).
4. The applicant shall comply with the Subdivision's conditions of approval and requirements of the Development Plan for PMS-03-19, on file with the Planning and Building Department, which includes, but is not limited to, construction of a storm water detention system. This system is to be reviewed and inspected by the Department of Public Works (DPW). A fee will be charged by DPW for this review. A copy of the detention construction plan and maintenance plan must be attached and made part of the issuance of any development permit for the lot. (See also COA #14).
5. A total of twenty-four (24) non-tandem, independently accessible parking spaces, including one (1) handicap accessible space, shall be constructed on-site prior to occupancy or before a "final" is issued for the Building Permit. The location of all on-site parking spaces shall appear on the final Building Division Plot Plan. Up to six (6) of the parking spaces may be designated as compact. Compact parking spaces shall be visibly marked with signs and shall be clustered in one section of the parking area. **This requirement shall be clearly identified on the plot plan for building permit.** All parking spaces and access shall be improved with a surface of asphalt or Portland cement and shall be maintained for the life of the project.
6. The project by Code must include a loading space of not less than ten (10) feet wide, sixty (60) feet long and shall contain at least fourteen (14) feet of clearance, or an exception shall be secured in accordance with Section 313-109.1.5.2. Deliveries shall take place during business hours.
7. Site visibility must be maintained at the driveway entrance and at the corners of the lot in conformance with County Code.

8. Applicant shall be responsible to correct any involved drainage problems at the intersection of driveway and the County maintained roadway to the satisfaction of the Department of Public Works, Land Use Division. (See also COA #14).
9. Applicant shall pave, sign and stripe the parking lot.
10. Water and sewer service are available upon payment of applicable fees to Humboldt Community Services District. Water and sewer services shall not be located in a driveway area.
11. Hours of construction activity shall be limited to Monday through Friday from 8:00 am to 6:00 pm, Saturday from 9:00 am to 5:00 pm with no construction activity on Sunday.
12. During construction of the building the applicant shall:
  - a. use dust control techniques when excavating to minimize dust problems on adjacent parcels;
  - b. re-vegetate all disturbed areas prior to winter rain; and
  - c. take all precautions necessary to avoid the encroachment of dirt or debris on adjacent properties.

The plot plan submitted for the Building Permit shall indicate that all ground bared during construction shall be landscaped and/or seeded and mulched prior to October 1st.

13. The applicant shall submit a landscaping plan subject to the review and approval of the Planning Director. All landscaping shall be installed and have its maintenance system in working order prior to occupancy issuance.
14. The applicant shall submit a Drainage Plan for approval by the Department of Public Works that incorporates Low Impact Development techniques into the project design in a manner complementary to the requirements of COA #3 (oil-water filtration) and COA #4 (storm water detention). The Drainage Plan shall comply with the standards of a Regulated Project under the State Water Board's Phase II Small Municipal Separate Storm Sewer System (MS4) Program. Areas identified as treatment areas shall be maintained for the life of the project. The purpose of these combined measures is to maximize the retention of storm water on site such that pollutant-laden runoff from the proposed new parking lot and other impermeable surfaces does not degrade surrounding coastal wetlands and waters.
15. The applicant shall implement all Mitigation Measures set forth in the Mitigated Negative Declaration.
16. The applicant shall submit a soils report with erosion and sediment control measures for review by the Building Inspection Division. Engineered construction plans will be required.
17. The applicant shall submit a Lighting Plan for the project for approval by the Planning and Building Department. The plan shall address the amount of light to be used, minimize glare and off-site impacts of light trespass, and provide for energy conservation by reducing the amount of light during non-business hours while maintaining adequate illumination for security.

18. Signs shall conform to Section 313-87 of the zoning regulations and the County's sight visibility ordinance. A signage plan shall be submitted with the application for Building Permit.
19. **Within five (5) days of the effective date of the approval of this permit**, the applicant shall submit a check to the Planning Division payable to the Humboldt County Recorder in the amount of \$2,260.25. Pursuant to Section 711.4 of the Fish and Game Code, the amount includes the Department of Fish and Wildlife (DFW) fee plus a \$50 document handling fee. This fee is effective through December 31, 2016 at such time the fee will be adjusted pursuant to Section 713 of the Fish and Game Code. Alternatively, the applicant may contact DFW by phone at (916) 651-0603 or through the DFW website at [www.wildlife.ca.gov](http://www.wildlife.ca.gov) for a determination stating the project will have no effect on fish and wildlife. If DFW concurs, a form will be provided exempting the project from the \$2,210.25 fee payment requirement. In this instance, only a copy of the DFW form and the \$50.00 handling fee is required.
20. This project is required to pay for permit processing on a time and material basis as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors. Any and all outstanding Planning fees to cover the processing of the project shall be paid to the Humboldt County Planning Division, 3015 "H" Street, Eureka.
21. A review fee for Conformance with Conditions as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors (currently \$95.00) shall be paid to the Humboldt County Planning Division, 3015 "H" Street, Eureka. This fee is a deposit, and if actual review costs exceed this amount, additional fees will be billed at the County's current burdened hourly rate.
22. The applicant shall submit to the Planning Director annual follow-up reports prepared by a qualified biologist that verifies whether or not: a) the mitigations recommended in the Wetland Protection Plan dated June 5, 2016, prepared by Virginia Dains, Consulting Biologist were adhered to, and b) to assess the success of the restoration plantings and maintenance activities (invasive plant and litter removal and fence maintenance). Surveys shall be conducted for two (2) consecutive years after construction. The report shall prescribe any additional measures required to insure full compliance with the Wetland Protection Plan. A written contract for services and cost estimate for this monitoring work shall be provided to the Department prior to initiation of work. A performance bond may be required by the Planning Director.

**On-going Requirements/Development Restrictions which Must be Satisfied for the Life of the Project:**

1. The project shall be developed and conducted in accordance with the Project Description, Plan of Operations, Project Site Plan and Wetland Protection Plan. Changes other than Minor Deviations to the Plot Plan as provided by Section 312-11.1 shall require a modification of this permit.
2. A six (6) foot high solid wood fence shall be installed at the time of development between the residential and commercial use and be maintained for the life of the development.
3. All new and existing outdoor lighting shall be compatible with the existing setting and directed within the property boundaries. Illuminated signs shall be turned off within one (1) hour of close of business.
4. New utilities shall be installed underground, when feasible.

5. Landscaping shall be maintained for the life of the development in conformance with the approved landscaping plan.

#### **Informational Notes**

1. If cultural resources are encountered during construction activities, the contractor on site shall cease all work in the immediate area and within a 50 foot buffer of the discovery location. A qualified archaeologist as well as the appropriate Tribal Historic Preservation Officer(s) are to be contacted to evaluate the discovery and, in consultation with the applicant and lead agency, develop a treatment plan in any instance where significant impacts cannot be avoided.

The Native American Heritage Commission (NAHC) can provide information regarding the appropriate Tribal point(s) of contact for a specific area; the NAHC can be reached at 916-653-4082. Prehistoric materials may include obsidian or chert flakes, tools, locally darkened midden soils, groundstone artifacts, shellfish or faunal remains, and human burials. If human remains are found, California Health and Safety Code 7050.5 requires that the County Coroner be contacted immediately at 707-445-7242. If the Coroner determines the remains to be Native American, the NAHC will then be contacted by the Coroner to determine appropriate treatment of the remains pursuant to PRC 5097.98. Violators shall be prosecuted in accordance with PRC Section 5097.99.

The applicant is responsible for ensuring compliance with this condition.

2. Gates are not permitted on County right of way for public roads without authorization of the Board of Supervisors. Gates must not create a traffic hazard and must provide an appropriate turnaround in front of the gate (set back approximately 25 feet from the road). Existing gates shall be evaluated for conformance.
3. The applicant is responsible for receiving all necessary permits and/or approvals from other state and local agencies.
4. The Coastal Development Permit and Special Permit shall expire and become null and void at the expiration of one (1) year after all appeal periods have lapsed (see "Effective Date"); except where construction under a valid building permit or use in reliance on the permit has commenced prior to such anniversary date. The period within which construction or use must be commenced may be extended as provided by Section 312-11.3 of the Humboldt County Code.
5. New Development Requires a Permit. Any new development as defined by Section 313-139.6 of the Humboldt County Code (H.C.C.) shall require a Coastal Development Permit and Special Permit or permit modification, except for Minor Deviations from the Plot Plan as provided under Section 312-11.1 of the Zoning Regulations.



## ATTACHMENT 2

### STAFF ANALYSIS OF THE EVIDENCE SUPPORTING THE REQUIRED FINDINGS

**Required Findings:** To approve this project, the Hearing Officer must determine that the applicant has submitted evidence in support of making all of the following required findings.

The Zoning Ordinance, Section 312-17.1 of the Humboldt County Code (Required Findings for All Discretionary Permits) specifies the findings that are required to grant a Coastal Development and Special Permit:

1. The proposed development is in conformance with the County General Plan;
2. The proposed development is consistent with the purposes of the existing zone in which the site is located;
3. The proposed development conforms with all applicable standards and requirements of these regulations; and
4. The proposed development and conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare; or materially injurious to property or improvements in the vicinity.
5. The proposed development does not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law (the midpoint of the density range specified in the plan designation) unless the following written findings are made supported by substantial evidence: 1) the reduction is consistent with the adopted general plan including the housing element; and 2) the remaining sites identified in the housing element are adequate to accommodate the County share of the regional housing need; and 3) the property contains insurmountable physical or environmental limitations and clustering of residential units on the developable portions of the site has been maximized.
6. In addition, the California Environmental Quality Act (CEQA) states that one of the following findings must be made prior to approval of any development which is subject to the regulations of CEQA. The project either:
  - a) is categorically or statutorily exempt; or
  - b) will not have a significant effect on the environment and a negative declaration has been prepared; or
  - c) has had an environmental impact report (EIR) prepared and all significant environmental effects have been eliminated or substantially lessened, or the required findings in Section 15091 of the CEQA Guidelines have been made.

**1. General Plan Consistency.** The following table identifies the evidence which supports finding that the proposed development is in conformance with all applicable policies and standards in the Framework Plan (FP) and the Humboldt Bay Area Plan (HBAP).

Plan Section(s)	Summary of Applicable Goal, Policy or Standard	Evidence which Supports Making the General Plan Conformance Finding
Land Use: §2700 (FP) §4.10 (HBAP)	Commercial General: Principal uses include retail sales, retail services, offices and professional uses.	The project consists of constructing an approximately 9,300 square feet commercial building on a 0.87 acre vacant parcel. The use of the building will be a retail store which is principally permitted in the Commercial General designation.
Housing: §2400 (FP) §3.28 (HBAP)	New housing in the Coastal Zone shall be developed in conformity with the goals, policies and standards of the Humboldt County Housing Element.	This project is for commercial development in a commercial zone. It does not affect Housing Element density targets established in the Humboldt County Housing Element.
Hazards: §3100-§3300(FP) §3.29 (HBAP)	Minimize risks to life and property in areas of high geologic, flood, and fire hazard.	The project site is located in a geologic area designated with low instability. The site has a low fire hazard rating and is within an area of minimal flooding according to FIRM Map # 060060 0950C. All referral agencies have recommended approval or conditional approval of the proposed project.  The parcel is located outside the area of potential tsunami hazard.

<p>Biological Resource §3400 - §3604 (FP) §3.30 (HBAP)</p>	<p>Protect designated sensitive and critical resource habitats.</p>	<p>A site visit by Department of Fish and Wildlife identified a small isolated wetland near the middle of the parcel. The applicant engaged the services of a biologist who submitted a Preliminary Wetland Delineation (Dains, May 6, 2015) followed by a Wetland Protection Plan (Dains, September 15, 2015). The Wetland Delineation identified the wetland as a 150 square foot seasonal isolated wetland occurring on disturbed ground. Section 3.30.B.6.e of the HBAP allows for the relaxation of the 100 foot wetland buffer setback provided the reduction is necessary to allow development of the parcel with the principally permitted use and the maximum feasible setback is maintained sufficient to protect the wetland's habitat values. The Wetland Protection Plan details measures to implement to ensure the protection and rehabilitation of the wetland area. The 150 square foot wetland will be buffered by an area 13 times its size. The minimum setback to parking areas is approximately 16 feet. The wetland and buffer area will be separated from foot and vehicular traffic by a permanent post and cable fence. A concrete curb will encircle the wetland buffer to prevent parking area runoff from entering the wetland. During construction the wetland and buffer will be protected with high visibility fencing and remain undisturbed. After construction the wetland and buffer will be planted with native, locally sourced species and monitored and maintained to ensure the plantings survive.</p> <p>The project is conditioned with standard erosion and sediment controls, an oil-water separator, and LID techniques for natural storm water detention. Therefore, minimal impacts to biological resources and/or sensitive or critical habitats resources are expected.</p>
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Archaeological and Paleontological Resources §3500 (FP) §3.18 (HBAP)	Protect cultural, archeological and paleontological resources.	The project was referred to The Northwest Information Center (NWIC) who recommended further study of the area and for local tribes to be contacted. The planning division also referred to the local tribe, Bear River Band of the Rohnerville Rancheria, who indicated their database does not include any previously recorded sites within the project parcel or in the immediate vicinity. The referral recommends an informational note be added to the conditions for this project in case archaeological resources are uncovered during construction activities. The informational note requires that work is stopped and a qualified archeologist is contacted.
Visual Resource Protection §3540 (FP) §3.40 (HBAP)	Protect and conserve scenic and visual qualities of coastal areas.	The subject parcel is not located within a designated coastal scenic or visual area. The parcel is located on South Broadway which was the old highway before the current US Highway 101 was constructed. The store will be accessed from South Broadway in an area of mixed commercial and residential uses. The proposed retail store has a front height of 22 feet sloping to 15 feet at the rear of the store which is well below the 45 foot maximum height allowed in the zoning district. The area is relatively flat and the view to the bay is interrupted by US Highway 101 as well as other development. The surrounding parcels may have views of the bay from second story windows but views from the street level are not impacted by this development. The commercial use is principally permitted and, with a Special Permit for a parking space reduction, conforms with the development standards of the parcel. Based on the above discussion, staff believes that the proposal would be consistent with the visual resource protection requirements of the Humboldt Bay Area Plan.
Urban Limit Development Policies §3.11 B 2 (c) 2	Development allowed when the carrying capacity of major roads and of coastal access corridors is sufficient for all permitted uses.	The project site will be accessed off South Broadway which was the old highway before the construction of US Highway 101. The Department of Public Works – Lane Use Division was referred and did not have concerns, citing the project's location and proximity to US Highway 101.

**2. The proposed development is consistent with the purposes of the existing zone in which the site is located; and 3. The proposed development conforms to all applicable standards and requirements of these regulations.** The following table identifies the evidence which supports finding that the proposed development is in conformance with all applicable policies and standards in the Humboldt County Coastal Zoning Regulations.

<b>Zoning Section</b>	<b>Summary of Applicable Requirement</b>	<b>Evidence that Supports the Zoning Finding</b>
§ 313-2.2 (HCC) Commercial General	Retail sales and services, Administrative, Office and Professional	The project is for the development of a retail store.
<b>§ 313-2.2 (HCC)</b>	<b>Development Standards</b>	
Minimum Parcel Size	5,000 square feet	The parcel is approximately 0.87 acre.
Lot Width	50 feet	Approximately 205 feet
Maximum Lot Depth	3 x lot width(205) = 615 ft	The depth of the parcel ranges from approximately 160 to 200 feet.
Minimum Yard Setbacks per Zoning	Front: 0 feet Rear: 15 feet Sides: 0 feet	Front: 65 feet Rear: 15 feet South side: 82 feet from edge of ingress/egress easement. North side: 10 feet
Maximum Ground Coverage	None specified	± 25%



<p>313-109.1 Parking</p>	<p><u>Commercial Retail Sales:</u> One parking space for every 300 square feet of gross floor area plus one for each employee.</p> <p><u>Warehouse:</u> The higher of either one parking space for every four employees or one parking space for each 2,500 square feet of gross floor area.</p> <p><u>Exceptions:</u> Exceptions may be granted by the hearing officer based on the following factors: Geographic location of the site; identification as a rural center in the community plan, site specific topographic constraints, historically designated structures, proximity to urban built up areas; and levels of anticipated use.</p> <p><u>Loading Space Required.</u> One loading space is required for each 20,000 square feet of gross floor area or portion thereof.</p>	<p>Using the standard parking ratios for retail store and warehouse, 32 parking spaces would be required. Calculations are below.</p> <p>The applicants have requested a parking exception based on the levels of anticipated use. The applicant provided a parking study demonstrating justification for the exception request. The study is based on historical parking demand at other Dollar General locations throughout California and assumes the full parking requirements are unwarranted. The study is provided as part of the project description included with Attachment 3.</p> <p>Overall, Dollar General requests a reduction of eight spaces for a total of 24 on-site parking spaces. Staff is supportive of this exception based on the level of anticipated use.</p> <p>The loading space requirement is met with one designated loading space located in the southwest area of the parking lot. No loading space exception is requested.</p> <p><u>Parking Calculations</u></p> <p>9,297 total building  <u>-1,003 warehouse</u>  8,294 retail  ÷ 300 One (1) space for every 300 sf  27.6 = 28 spaces for retail</p> <p>Three (3) employees = additional three (3) spaces  28 + 3 = 31 for retail  1,003 warehouse = One (1) space per 2,500 sf  Total = 32 spaces per zoning</p> <p>Plot plan shows 24 spaces including 2 ADA accessible spaces.</p>
<p>Maximum Structure Height</p>	<p>45 feet</p>	<p>Main building = 22 feet max in front sloping to 15 feet in rear.</p>

313-87.3 Signs and Nameplates	In commercial zones signs shall not exceed 300 square feet in the aggregate and shall not be divided into more than six single-faced or double-faced signs.	The project proposes two signs. The first is a double-sided pole mounted sign of approximately 70.7 square feet per side (141.4 square feet total). The height of the pole mounted sign is 21 feet. This sign is proposed to be illuminated. The second sign will be mounted on the building and be approximately 150 square feet and illuminated. Together the signs total 291.5 square feet.
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**4. Public Health, Safety and Welfare:** The following table identifies the evidence which supports finding that the proposed development will not be detrimental to the public health, safety and welfare or materially injurious to properties or improvements in the vicinity.

Code Section	Summary of Applicable Requirement	Evidence that Supports the Required Finding
§312-17.1.4	Proposed development will not be detrimental to the public health, safety and welfare or materially injurious to properties or improvements in the vicinity.	All reviewing referral agencies have approved the proposed development. No detrimental effects to public health, safety and welfare were identified. The proposed development is not expected be detrimental to property values in the vicinity nor pose any kind of public health hazard.

**5. Residential Density Target:** The following table identifies the evidence which supports finding that the proposed project will not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law.

Code Section	Summary of Applicable Requirement	Evidence that Supports the Required Finding
312-17.1.5 Housing Element Densities	The proposed development shall not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law (the midpoint of the density range specified in the plan designation), except where: 1) the reduction is consistent with the adopted general plan including the housing element; and 2) the remaining sites identified in the housing element are adequate to accommodate the County share of the regional housing need; and 3) the property contains insurmountable physical or environmental limitations and clustering of residential units on the developable portions of the site has been maximized.	The parcel is currently planned and zoned for commercial uses. The proposed project will permit the development of a retail store. The parcel was not included in the 2014 Housing Inventory used to determine compliance with Housing Element law. Therefore, the project is in conformance with the standards in the Housing Element.

**6. Environmental Impact.** Please see the attached draft Mitigated Negative Declaration.

As required by the California Environmental Quality Act, the initial study conducted by the Planning and Building Department, Planning Division (Attachment 4) evaluated the project for any adverse effects on the environment. Based on a site inspection, information in the application, and a review of relevant references in the Department, staff has determined that there is no evidence before the Department that the project will have any potential adverse effect, either individually or cumulatively, on the environment. The environmental document on file in the Department includes a detailed discussion of all relevant environmental issues.

**Because the project was found subject to CEQA and a Mitigated Negative Declaration was prepared, the provisions of Section 711.4 of the California Fish and Wildlife Code apply to this project.** The applicant shall submit a check to the Planning Division payable to the Humboldt County Recorder in the amount of \$2,260.25. [Note: In order to comply with the time limits for filing the Notice of Determination per CEQA, this payment will be requested from the applicant prior to hearing and will be held by the Planning Division pending a decision on the permit.] Pursuant to Section 711.4 of the Fish and Wildlife Code, the amount includes the Department of Fish and Wildlife (DFW) fee plus the \$50 document handling fee. This fee is effective through December 31, 2016 at such time the fee will be adjusted pursuant to Section 713 of the Fish and Wildlife Code. Alternatively, the applicant may contact DFW by phone at (916) 651-0603 or through the DFW website at [www.wildlife.ca.gov](http://www.wildlife.ca.gov) for a determination stating the project will have no effect on fish and wildlife. If DFW concurs, a form will be provided exempting the project from the \$2,181.25 fee payment requirement. In this instance, only a copy of the DFW form and the \$50.00 handling fee is required. This requirement appears as Condition #19 of Attachment 1.

### **ATTACHMENT 3**

#### **APPLICANT'S EVIDENCE IN SUPPORT OF THE REQUIRED FINDINGS**

Attachment 3 includes a listing of all written evidence which has been submitted by the applicant in support of making the required findings. The following materials are on file with the Planning Division:

- Application Form (in file)
- Plot Plan (attached)
- Plan of Operation (attached)
- Trip Generation and Parking Assessment (attached)
- Floor plan and elevations (attached)
- Preliminary Wetland Delineation (attached)
- Wetland Protection Plan (attached)





## **Dollar General Humboldt Hills**

### **Plan of Operation**

#### **Project Description:**

1. Dollar General stands for convenience, quality brands and low prices. More than have of our stores serve communities with fewer than 20,000 people – many overlooked by large retailers. We like to build stores close to neighborhoods, so no one has to drive far to find us. Dollar General's successful prototype makes shopping a truly hassle-free experience. We design neighborhood stores with carefully edited merchandise assortments. We don't carry every brand and size, just the most popular ones. We save you time by staying focused on life's simple necessities: laundry detergent, toilet paper, bar soap, shampoo, socks and underwear and maybe a gadget or two. We were one of the first General Merchandise stores to add coolers to our stores, featuring convenience foods such as milk and eggs. Some of the national brands carried are Tide, Crest, Kotex Dove, \*Proctor and Gamble, Clorox, glad, Huggies Tylenol, Ocean Spray, 3M, Bic, Fruit of the Loom and Rexall Drugs. Our permanent Dollar General Store will operate between the hours of 8am and 10pm, 7 days a week. They typically run between 3-5 employees per shift, 95% of the time operating with 3 employees. Deliveries are random and could happen anytime during operating hours.
2. Typically the only byproduct from the daily operation is typical trash.
3. The site has no emissions.
4. The only increase in noise would be the traffic pulling into and out of the site.
5. The Dollar General Store will operate like any other retail store, more trips will be generated to our site thus impacting the adjacent streets. We typically have 10-13 trips per hour so the increase in not significant. Our store uses very little water and thus discharges very little sewer, roughly 250 gallons per day of domestic water usage. The same can be said of our low maintenance landscaping design, this design reduces the amount of water required for landscaping.

# MEMO

**To:** Mr. Joe Dell, Cross Development LLC  
**From:** Ken Anderson, KD Anderson & Associates, Inc.  
**Date:** October 8, 2014  
**Re:** Trip Generation and Parking Generation Assessment for Dollar General Stores

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## Study Overview

**Project Description.** Dollar General Stores is a chain of small to medium sized convenience oriented discount stores that are prevalent on the east coast but have only recently appeared in California. As we understand, the Dollar General Stores are typically stand-alone 9,100 sf retail stores located off of state highways and local "Main Streets" in suburban and rural areas. In many jurisdictions local agencies and the California Department of Transportation (Caltrans) require additional information regarding the trip generation and parking characteristics of Dollar General Stores before deciding whether formal traffic impact studies and parking variances will be required as part of their site design approval or as part of project review under the California Environmental Quality Act (CEQA). This memo transmits the results of our Trip Generation / Parking Generation Assessment that provides that initial information.

**Trip Generation.** Traffic engineers characterize the vehicle movements into and out of a business in terms of "trip ends". Each time a customer or employee travels to a business and then departs one inbound and one outbound trip will be generated. The number of trips associated with new development is estimated based on statistics derived from observation of similar uses. The trip generation forecast for Dollar General Stores has been based on review of trip generation rates published by the Institute of Transportation Engineers (ITE) in *Trip Generation Manual, 9<sup>th</sup> Edition (2012)*, as well as a survey of similar stores conducted in 2011 for the Florida Department of Transportation (FDOT).

**ITE Code 824 Variety Store** most closely approximates the characteristics of Dollar General Stores in terms of store size and characteristics. The Trip Generation Manual notes:

*A variety store is a retail store that sells a broad range of inexpensive items often at a single price. These stores are typically referred to as "dollar stores". Items sold at these stores typically include kitchen supplies, cleaning products, home office supplies, food products, household goods, decorations and toys. These stores are sometimes standalone sites, but they may also be located in small strip shopping centers.*

The Trip Generation Manual notes that the site surveys reported for this use were collected in 2010 in Florida. That is also the data presented in the 2011 FDOT survey.

As noted in Table 1 the typical Dollar General Store is expected to generate approximately 583 daily, 35 a.m. and 63 p.m. peak hour trips measured at the stores driveways. The 2011 FDOT study noted that on

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**KD Anderson & Associates, Inc.**

3853 Taylor Road, Suite G • Loomis, CA 95650 • (916) 660-1555 • Fax (916) 660-1535

average 34% of the trips made to the store are classified as "pass-by" trips drawn from the stream of traffic already passing the site. Thus, we expect the a Dollar General Store will generate 385 "new" daily trips with 23 "new" trips in the a.m. peak hour and 41 "new" trips during the p.m. peak hour.

**TABLE 1**  
**DOLLAR GENERAL STORES TRIP GENERATION RATES / FORECASTS**

Land Use / ITE Code	Unit	Daily	AM Peak Hour			PM Peak Hour		
			In	Out	Total	In	Out	Total
Variety Store (814)	ksf	64.03	50%	50%	3.81-	50%	50%	6.82
Dollar General Stores	9.1 ksf	583	18	17	35	32	31	63
Less Pass-by Trips	<34%>	198	<6>	<6>	<12>	<11>	<11>	<22>
Net New Trips		385	12	11	23	21	20	41
Institute of Transportation Engineers, <i>Trip Generation Manual, 9<sup>th</sup> Edition</i> or Trip Generation Characteristics of Discount/Home Improvement Superstores/Major Distribution Centers and Small Box Stores, Wilbur Smith Associates, February 2, 2011								

**Truck Trips.** The typical store will receive regular deliveries from the Dollar General Stores regional distribution center. Typically 3 full size trucks will visit the store each week, although smaller single unit trucks may visit each day. Some of the full size trucks are expected to be STAA trucks (53') permitted on California highways under the Surface Transportation Authorization Act. Deliveries would not be expected during the a.m. and p.m. peak commute hours.

#### **Parking Generation**

The ITE publication *Parking Generation, 4<sup>th</sup> Edition (2010)* presents the result of parking demand surveys conducted for various land uses. While that source provides guidance for collecting parking demand data and for developing parking generation rates, no specific information has been developed for Dollar General Stores. New parking demand data was developed based on observations at three northern California Dollar General Stores in September 2014.

The results of these surveys are attached and summarized in Table 2. As part of the survey the number of occupied parking spaces was identified by observation on 15 minute intervals for those hours that each store was open. This data was reviewed and the time period with the greatest number of occupied spaces was identified. As noted in Table 2, the maximum number of occupied spaces ranged from 9 to 11 on the weekday, and from 9 to 13 on Saturday. The average for the three stores was determined to be a maximum of 10 occupied spaces on the weekday and 11.33 occupied spaces on Saturday.

Mr. Joe Dell, Cross Development LLC

Memo: Trip Generation and Parking Generation Assessment for Dollar General Stores

October 8, 2014

Page 3

**TABLE 2**  
**DOLLAR GENERAL STORES PARKING DEMAND**

	Gridley, CA		Los Molinos, CA		Orland, CA	
	Thursday 10/2/2014	Saturday 10/4/2014	Thursday 10/2/2014	Saturday 10/4/2014	Thursday 10/2/2014	Saturday 10/4/2014
Building ksf	9.1		9.1		9.1	
Total On-Site Parking Spaces	30		32		29	
Time of Peak Parking Demand	1:00 pm	1:45 pm	3:30 pm	11:00 am	10:45 am	2:45 pm
Maximum Number of Occupied Spaces	9	9	10	12	11	13
Average Maximum Occupied Parking Spaces					10.00	11.33
Average Maximum Occupied Spaces per ksf					1.10	1.25

## **APPENDIX**

### **Parking Survey Results**



# 14-7633-001 Dollar General Parking Study

1480 Highway 99, Gridley, CA 95948

Inventory: 30 Spaces

Thursday, October 02, 2014

Time	Occupancy	Time	Occupancy
8:00 AM	1	3:00 PM	5
8:15 AM	3	3:15 PM	5
8:30 AM	2	3:30 PM	7
8:45 AM	2	3:45 PM	8
9:00 AM	2	4:00 PM	9
9:15 AM	2	4:15 PM	6
9:30 AM	3	4:30 PM	5
9:45 AM	3	4:45 PM	7
10:00 AM	4	5:00 PM	8
10:15 AM	4	5:15 PM	7
10:30 AM	3	5:30 PM	7
10:45 AM	2	5:45 PM	6
11:00 AM	2	6:00 PM	6
11:15 AM	3	6:15 PM	4
11:30 AM	4	6:30 PM	6
11:45 AM	5	6:45 PM	4
12:00 PM	8	7:00 PM	4
12:15 PM	7	7:15 PM	3
12:30 PM	6	7:30 PM	3
12:45 PM	5	7:45 PM	5
1:00 PM	9	8:00 PM	5
1:15 PM	9	8:15 PM	5
1:30 PM	4	8:30 PM	5
1:45 PM	6	8:45 PM	4
2:00 PM	7	9:00 PM	3
2:15 PM	4	9:15 PM	3
2:30 PM	5	9:30 PM	2
2:45 PM	4	9:45 PM	1
		10:00 PM	0

Saturday, October 04, 2014

Time	Occupancy	Time	Occupancy
8:00 AM	1	3:00 PM	6
8:15 AM	3	3:15 PM	3
8:30 AM	3	3:30 PM	5
8:45 AM	3	3:45 PM	7
9:00 AM	3	4:00 PM	7
9:15 AM	3	4:15 PM	6
9:30 AM	3	4:30 PM	9
9:45 AM	3	4:45 PM	9
10:00 AM	2	5:00 PM	8
10:15 AM	3	5:15 PM	7
10:30 AM	2	5:30 PM	6
10:45 AM	3	5:45 PM	5
11:00 AM	8	6:00 PM	6
11:15 AM	4	6:15 PM	8
11:30 AM	2	6:30 PM	3
11:45 AM	3	6:45 PM	4
12:00 PM	4	7:00 PM	4
12:15 PM	3	7:15 PM	5
12:30 PM	3	7:30 PM	5
12:45 PM	5	7:45 PM	4
1:00 PM	5	8:00 PM	5
1:15 PM	5	8:15 PM	5
1:30 PM	4	8:30 PM	4
1:45 PM	9	8:45 PM	4
2:00 PM	8	9:00 PM	3
2:15 PM	5	9:15 PM	3
2:30 PM	5	9:30 PM	1
2:45 PM	6	9:45 PM	1
		10:00 PM	1

# 14-7633-002 Dollar General Parking Study

851 Newville Road, Orland, CA 95963

Inventory: 29 Spaces

Thursday, October 02, 2014

Time	Occupancy	Time	Occupancy
8:00 AM	2	3:00 PM	3
8:15 AM	1	3:15 PM	3
8:30 AM	4	3:30 PM	6
8:45 AM	4	3:45 PM	2
9:00 AM	3	4:00 PM	4
9:15 AM	4	4:15 PM	7
9:30 AM	6	4:30 PM	5
9:45 AM	5	4:45 PM	6
10:00 AM	7	5:00 PM	6
10:15 AM	8	5:15 PM	3
10:30 AM	7	5:30 PM	5
10:45 AM	11	5:45 PM	8
11:00 AM	8	6:00 PM	7
11:15 AM	11	6:15 PM	8
11:30 AM	4	6:30 PM	5
11:45 AM	4	6:45 PM	6
12:00 PM	7	7:00 PM	6
12:15 PM	4	7:15 PM	5
12:30 PM	6	7:30 PM	4
12:45 PM	5	7:45 PM	1
1:00 PM	5	8:00 PM	4
1:15 PM	6	8:15 PM	6
1:30 PM	7	8:30 PM	4
1:45 PM	5	8:45 PM	2
2:00 PM	4	9:00 PM	2
2:15 PM	5	9:15 PM	5
2:30 PM	7	9:30 PM	2
2:45 PM	4	9:45 PM	1
		10:00 PM	1

Saturday, October 04, 2014

Time	Occupancy	Time	Occupancy
8:00 AM	3	3:00 PM	3
8:15 AM	4	3:15 PM	4
8:30 AM	3	3:30 PM	4
8:45 AM	2	3:45 PM	5
9:00 AM	6	4:00 PM	9
9:15 AM	5	4:15 PM	7
9:30 AM	4	4:30 PM	4
9:45 AM	5	4:45 PM	8
10:00 AM	3	5:00 PM	9
10:15 AM	4	5:15 PM	5
10:30 AM	7	5:30 PM	6
10:45 AM	6	5:45 PM	2
11:00 AM	6	6:00 PM	4
11:15 AM	8	6:15 PM	3
11:30 AM	6	6:30 PM	5
11:45 AM	8	6:45 PM	7
12:00 PM	10	7:00 PM	7
12:15 PM	7	7:15 PM	10
12:30 PM	9	7:30 PM	3
12:45 PM	6	7:45 PM	3
1:00 PM	8	8:00 PM	1
1:15 PM	8	8:15 PM	4
1:30 PM	6	8:30 PM	7
1:45 PM	10	8:45 PM	5
2:00 PM	9	9:00 PM	5
2:15 PM	10	9:15 PM	4
2:30 PM	6	9:30 PM	2
2:45 PM	13	9:45 PM	2
		10:00 PM	1

# 14-7633-003 Dollar General Parking Study

7921 Highway 99e, Los Molinos, CA 96055

Inventory: 32 Spaces

Thursday, October 02, 2014

Time	Occupancy	Time	Occupancy
8:00 AM	1	3:00 PM	7
8:15 AM	1	3:15 PM	9
8:30 AM	3	3:30 PM	10
8:45 AM	4	3:45 PM	5
9:00 AM	4	4:00 PM	7
9:15 AM	3	4:15 PM	8
9:30 AM	2	4:30 PM	5
9:45 AM	3	4:45 PM	3
10:00 AM	2	5:00 PM	9
10:15 AM	6	5:15 PM	6
10:30 AM	6	5:30 PM	9
10:45 AM	5	5:45 PM	5
11:00 AM	4	6:00 PM	7
11:15 AM	6	6:15 PM	8
11:30 AM	7	6:30 PM	9
11:45 AM	6	6:45 PM	7
12:00 PM	2	7:00 PM	5
12:15 PM	4	7:15 PM	8
12:30 PM	7	7:30 PM	7
12:45 PM	6	7:45 PM	6
1:00 PM	4	8:00 PM	7
1:15 PM	8	8:15 PM	7
1:30 PM	5	8:30 PM	5
1:45 PM	7	8:45 PM	6
2:00 PM	6	9:00 PM	8
2:15 PM	5	9:15 PM	4
2:30 PM	6	9:30 PM	4
2:45 PM	5	9:45 PM	2
		10:00 PM	2

Saturday, October 04, 2014

Time	Occupancy	Time	Occupancy
8:00 AM	1	3:00 PM	11
8:15 AM	1	3:15 PM	8
8:30 AM	4	3:30 PM	6
8:45 AM	2	3:45 PM	6
9:00 AM	3	4:00 PM	3
9:15 AM	3	4:15 PM	6
9:30 AM	5	4:30 PM	7
9:45 AM	3	4:45 PM	8
10:00 AM	5	5:00 PM	6
10:15 AM	4	5:15 PM	5
10:30 AM	6	5:30 PM	7
10:45 AM	9	5:45 PM	9
11:00 AM	12	6:00 PM	5
11:15 AM	5	6:15 PM	5
11:30 AM	3	6:30 PM	7
11:45 AM	3	6:45 PM	3
12:00 PM	5	7:00 PM	6
12:15 PM	7	7:15 PM	4
12:30 PM	7	7:30 PM	6
12:45 PM	8	7:45 PM	5
1:00 PM	5	8:00 PM	5
1:15 PM	6	8:15 PM	3
1:30 PM	5	8:30 PM	5
1:45 PM	4	8:45 PM	2
2:00 PM	4	9:00 PM	8
2:15 PM	6	9:15 PM	6
2:30 PM	7	9:30 PM	5
2:45 PM	9	9:45 PM	2
		10:00 PM	1



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"HUMBOLDT HILL"  
DOLLAR GENERAL  
EUREKA, CA

PROJECT  
DOLLAR GENERAL  
1500 SHAWWAY ST. #200  
EUREKA, CA 95501  
HUMBOLDT COUNTY

REVISIONS  
NO. DATE  
1 10/06/2014  
2 10/06/2014

DATE: 10/06/2014  
SHEET NO: 14039  
SHEET NAME: FLOOR PLAN  
SCALE: 1/8" = 1'-0"

**FLOOR PLAN KEYED NOTES**

1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.

2. FINISH FLOOR IS 4" THICK CONCRETE ON 8" THICK GRAVEL.

3. ALL WALLS ARE 8" THICK CONCRETE ON 8" THICK GRAVEL.

4. ALL ROOFS ARE 4" THICK CONCRETE ON 8" THICK GRAVEL.

5. ALL ROOFS ARE TO BE FLAT.

6. ALL ROOFS ARE TO BE COVERED WITH 2" THICK POLYURETHANE FOAM INSULATION.

7. ALL ROOFS ARE TO BE COVERED WITH 2" THICK POLYURETHANE FOAM INSULATION.

8. ALL ROOFS ARE TO BE COVERED WITH 2" THICK POLYURETHANE FOAM INSULATION.

9. ALL ROOFS ARE TO BE COVERED WITH 2" THICK POLYURETHANE FOAM INSULATION.

10. ALL ROOFS ARE TO BE COVERED WITH 2" THICK POLYURETHANE FOAM INSULATION.

**GENERAL NOTES**

1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.

2. FINISH FLOOR IS 4" THICK CONCRETE ON 8" THICK GRAVEL.

3. ALL WALLS ARE 8" THICK CONCRETE ON 8" THICK GRAVEL.

4. ALL ROOFS ARE 4" THICK CONCRETE ON 8" THICK GRAVEL.

5. ALL ROOFS ARE TO BE FLAT.

6. ALL ROOFS ARE TO BE COVERED WITH 2" THICK POLYURETHANE FOAM INSULATION.

7. ALL ROOFS ARE TO BE COVERED WITH 2" THICK POLYURETHANE FOAM INSULATION.

8. ALL ROOFS ARE TO BE COVERED WITH 2" THICK POLYURETHANE FOAM INSULATION.

9. ALL ROOFS ARE TO BE COVERED WITH 2" THICK POLYURETHANE FOAM INSULATION.

10. ALL ROOFS ARE TO BE COVERED WITH 2" THICK POLYURETHANE FOAM INSULATION.

**DETAILS**

1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.

2. FINISH FLOOR IS 4" THICK CONCRETE ON 8" THICK GRAVEL.

3. ALL WALLS ARE 8" THICK CONCRETE ON 8" THICK GRAVEL.

4. ALL ROOFS ARE 4" THICK CONCRETE ON 8" THICK GRAVEL.

5. ALL ROOFS ARE TO BE FLAT.

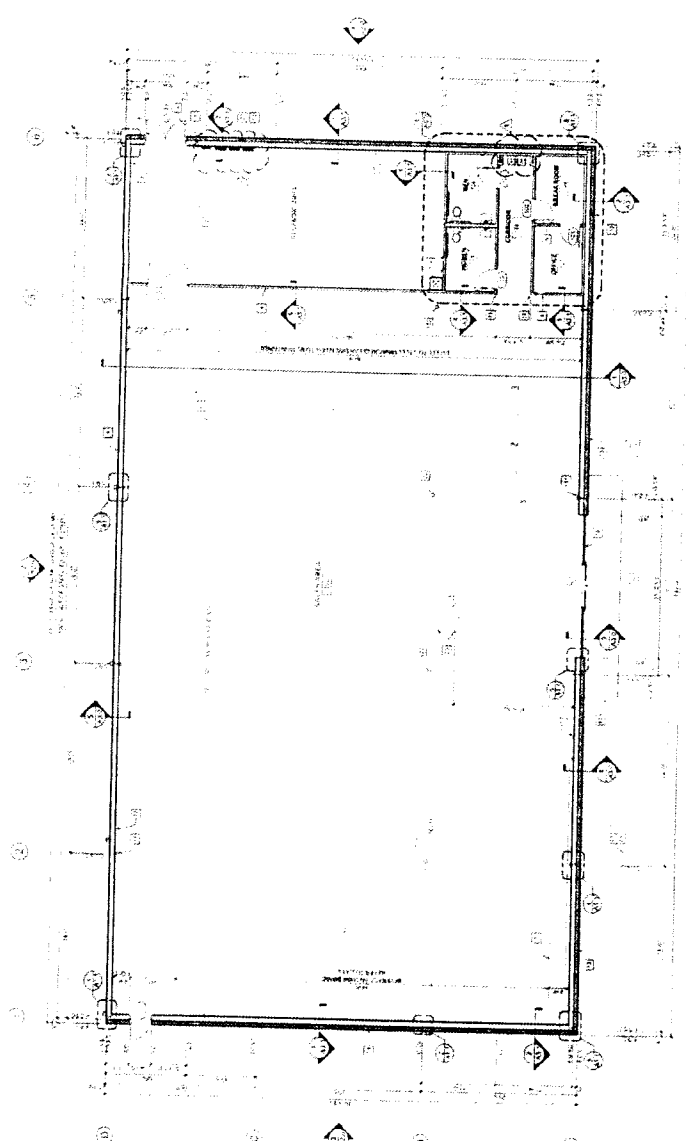
6. ALL ROOFS ARE TO BE COVERED WITH 2" THICK POLYURETHANE FOAM INSULATION.

7. ALL ROOFS ARE TO BE COVERED WITH 2" THICK POLYURETHANE FOAM INSULATION.

8. ALL ROOFS ARE TO BE COVERED WITH 2" THICK POLYURETHANE FOAM INSULATION.

9. ALL ROOFS ARE TO BE COVERED WITH 2" THICK POLYURETHANE FOAM INSULATION.

10. ALL ROOFS ARE TO BE COVERED WITH 2" THICK POLYURETHANE FOAM INSULATION.



1 FLOOR PLAN  
SCALE: 1/8" = 1'-0"

**SECTION 1: WALL, FLOOR AND CEILING**

1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.

2. FINISH FLOOR IS 4" THICK CONCRETE ON 8" THICK GRAVEL.

3. ALL WALLS ARE 8" THICK CONCRETE ON 8" THICK GRAVEL.

4. ALL ROOFS ARE 4" THICK CONCRETE ON 8" THICK GRAVEL.

5. ALL ROOFS ARE TO BE FLAT.

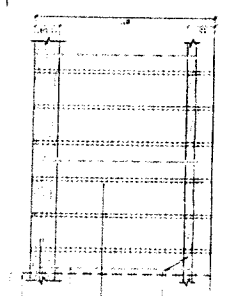
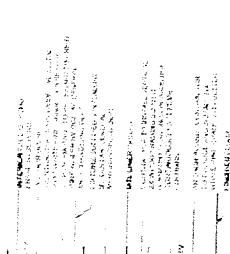
6. ALL ROOFS ARE TO BE COVERED WITH 2" THICK POLYURETHANE FOAM INSULATION.

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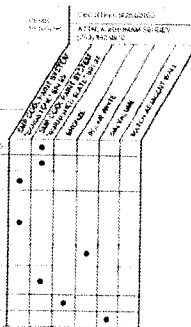
10. ALL ROOFS ARE TO BE COVERED WITH 2" THICK POLYURETHANE FOAM INSULATION.



2 ANCHOR BOLT DETAIL  
SCALE: 1/8" = 1'-0"



July 7, 2016



4 RIGHT ELEVATION  
SCALE: 1/8" = 1'-0"

M 16 010



**Preliminary Wetland Delineation  
Cross Development Site  
5707 South Broadway (Humboldt Hill) Eureka, CA**

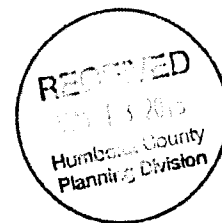
**Prepared for:**

**Cross Development LLC  
5317 Inverrary Drive  
Plano, TX 75093**

**Prepared by:**

**Virginia Dains  
Consulting Biologist  
3371 Ayres Holmes Road  
Auburn, CA 95602  
viriniadains@gmail.com  
530-888-9180**

**May 6, 2015**



## Background

Cross Development LLC is examining the development potential of 0.87 acre parcel (APN: 305-101-054) located in the Humboldt Hill area of Eureka, Humboldt County, CA for commercial uses. The potential presence or absence of "wetlands" on the property was examined due to its location adjacent to extensive wetlands identified in the National Wetland Inventory (NWI) and County records. The property is zoned as General Commercial/Wetland given its proximity to low lying areas of Humboldt Bay. This preliminary wetland delineation represents the results of biological records search, field investigations, and detailed mapping based on the several waters and wetlands jurisdictions as described below.

### Waters and Wetland Jurisdictions

Waters (including wetlands) are defined differently by various agencies. "Waters of the United States" including wetlands are identified in this project as those under jurisdiction of the U.S. Army Corps of Engineers (USACE). "Waters of the State" are under jurisdiction of the California Coastal Commission (CCC), the State Water Resources Control Board (WRCB), and the California Department of Fish and Wildlife (DFW). Many of these jurisdictions overlap. All state agencies recognize and accept the USACE definition of waters and wetlands, but "Waters of the State" may extend beyond the lines of federal jurisdiction to monitor and protect resources important to each agency's mission.

Jurisdictional areas examined for this delineation include:

- Waters of the US (USACE) & Waters of the State (DFW 1600)
- Waters of the US-Special Aquatic Sites- Wetlands (USACE)
- Waters of the State --CCC- one parameter wetlands within the Coastal Zone
- Waters of the State --CCC & DFW riparian vegetation associated with perennial, intermittent, or ephemeral channels in the Coastal Zone
- Waters of the State --DFW - riparian vegetation outside of the coastal zone that is associated with perennial, intermittent, or ephemeral channels, or ephemeral channels that are not under Corps jurisdiction
- Waters of the State -- WRCB -- any ponds, ditches, channels with surface water that may be man-made and/or isolated and not under Corps jurisdiction

### Waters of the United States

The discharge of dredged or fill material in "Waters of the United States" is regulated by the US Army Corps of Engineers under authorization by section 404 of the Clean Water Act of 1972. A subset of "Waters of the US", referred to as special aquatic sites, includes wetlands that are identified by application of the USACE wetland delineation manual (USACE 1987) and, for this survey, the 2010 Regional Supplement for Western Mountains, Valleys, and Coast Region (USACE 2010). Both of these manuals use a 3-parameter approach to the identification of

wetlands where hydrophytic vegetation, hydric soils, and wetland hydrology must be present in a normal year to be included. The USACE defines waters under its jurisdiction as:

**40 CFR 230.3(s)** *The term waters of the United States means:*

1. *All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;*
2. *All interstate waters including interstate wetlands;*
3. *All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie pot holes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:*
  - (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or*
  - (ii) (From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or*
  - (iii) Which are used or could be used for industrial purposes by industries in interstate commerce;*
4. *All impoundments of waters otherwise defined as waters of the United States under this definition;*
5. *Tributaries of waters identified in paragraphs (s)(1) through (4) of this section;*
6. *The territorial sea;*
7. *Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (s)(1) through (6) of this section; waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.*

**Waters of the State**

**California Coastal Commission**

The California Coastal Commission wetlands were mapped within the limits of the coastal zone. The South Broadway, Humboldt Hill, property is found within the coastal zone as defined by the CCC and is under the administrative jurisdiction of the City of Eureka's Local Coastal Program. The California State Coastal Commission defines wetlands by the CCC Administrative Regulations (Section 13577 (b)) as:

*Wetlands are lands where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent or drastic fluctuations of*

*surface water levels, wave action, water flow, turbidity or high concentrations of salt or other substance in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deepwater habitats. (14 CCR Section 13577, 1994).*

The Commission's one-parameter definition is similar to the USFWS wetlands classification system, which states that wetlands must have one or more of the following three attributes:

*(1) At least periodically the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.*

### **California Water Resources Control Board**

The California Water Resources Control Board includes as "Waters of the State" as "any surface water or groundwater, including saline waters, within the boundaries of the state" (Water Code Section 13050(e)). These include:

- *All "waters of the United States"*
- *All surface waters that are not "waters of the United States", e.g. non-jurisdictional wetlands (including isolated wetlands)*
- *Groundwater*
- *Territorial seas*

### **State of California Department of Fish and Wildlife**

The State of California Department of Fish and Wildlife regulates water resources under Section 1600-1616 of the California Fish and Wildlife Code. Section 1602 which states:

*"An entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake."*

CDFW jurisdiction includes ephemeral, intermittent and perennial watercourses and extends:

*"bank to bank limits in unvegetated streams or outer edge of riparian community where present" (CDFW 1994).*

## **Project Description**

The Cross Development site is located at 5707 South Broadway Street in the Spruce Point area of Humboldt Hill (Eureka, CA). Figure 1 (General Location Map, attached) shows the location of the property on the east side of South Broadway Street (Sec 8 T4N R1W) a few hundred yards southwest of its junction with Humboldt Hill Road. The property is being proposed for the location of a Dollar General store. Development of the 0.87 acre parcel will include a 9,100 square foot building site, parking for 30 vehicles, traffic access to Humboldt Hill Road and the commercial property to the north, a detention pond, sidewalk, curb and gutter, and open space retention for conservation of a mature Sitka spruce.

## **Methods**

Field surveys of the approximate 1 acre site were conducted on February 25, 2015. Reconnaissance surveys of the entire site were conducted by walking the property and making detailed observations of vegetation and landforms. Global positioning system (GPS) mapping was conducted using Trimble GeoXH recording device with data post processing correcting to sub-meter accuracy (table 1). A list of plant species observed in the survey area and their status as wetland indicator species (Lichvar 2012) is attached as Table 2.

The determination of wetland boundaries were based on the jurisdictional criteria. Data sheets which document the criteria for inclusion as "wetland" or "upland" were recorded at representative locations and are attached.

Field observations were supplemented with wetland classification (Cowardin et al 1979) mapping from the National Wetlands Inventory (USFWS 2015), regional soil mapping (McLaughlin and Harradine 1965), and the National Hydric Soils list (NRCS 2012).

Field conditions during the late February survey were dry in comparison with regional averages. Significant precipitation fell during the first two weeks of February, the two weeks prior to the field survey were dry. Conditions in January 2015 were also dry, 1.3 inches received in the month compared to the average January precipitation of 6.5 inches (WRCC 2015).

Representative photos of the survey area are attached.  
The qualifications of the author are attached.

## **Findings**

### **Physical Setting and Land Use**

The Cross Development site is found on the southwest facing slope of Spruce Hill at 13 to 15 feet in elevation. The regional land use is a mix of residential and commercial properties that lie

Preliminary Wetland Delineation  
Cross Development Parcel, Humboldt Hill, Eureka, CA



adjacent to undeveloped grazing lands associated with the drainage ways of Buhne Slough. The National Wetland Inventory (NWI 2015) shows large contiguous Palustrine Emergent wetlands adjacent to the property in low-lying areas associated with the drainages of Buhne Slough. The NWI mapping does not include this development parcel or the adjacent residential and commercial properties to the north and east. The parcel is highly disturbed by the dumping of fill, asphalt scrap, off road vehicle traffic and parking. The following sections describe general observations of vegetation, soil and the hydrology of the site.

## Vegetation

The property is vegetated with a mix of ruderal herbs, horticultural introductions, and common native species. Tall fescue (*Festuca arundinacea*) and sweet vernal grass (*Anthoxanthum odoratum*), two introduced grasses, dominate much of the eastern portion of the site. Extensive patches of wild radish (*Raphanus sativus*) and mats of California blackberry (*Rubus ursinus*) and the horticultural multiflora rose (*Rosa multiflora* var. *carnea*) cover the remainder of the site. Isolated individuals of native perennial tufted hairgrass (*Deschampsia cespitosa*), Hooker's willow (*Salix hookeriana*), and soft rush (*Juncus effusus*) are found as part of the overall mosaic of vegetation but do not occur as remnants of natural vegetation. Several horticultural species including grape hyacinth, daffodil, cultivated iris, cotoneaster, Spanish heather, pampas grass, English ivy, Freesia, and Amaryllis are found on the site as escapes from cultivation and are representative of the disturbed nature of the vegetation.

## Soils

Soils in the survey area are generally mapped in Figure 2 (attached). There is no modern soil survey available for the Eureka area. An agricultural soil survey done by McLaughlin and Harradine (1965) is the source of soil information used in this document and does not include recent urban/residential land use changes in the area. The soil series described in this early document may or may not concur with established series descriptions of the same name described from other regions.

The project site and adjacent land at elevations near sea level or along major drainages are mapped as Bayside series soils (Aeric Fluvaquents). These soils are found in depressional areas on floodplains formed in basin positions adjacent to small streams and in the reclaimed tidal marsh flats around Humboldt Bay. These soils have poor sub-soil drainage that limits agriculture to pasturelands, much of which is clayey and poorly drained and gives rise to much of the mapped wetlands along the lower alluvial terraces of Buhne Slough. Bayside series soils are included on the list of hydric soils (NRCS 2012).

The disturbed nature of the project site suggests that significant change in soil conditions have been made since the general soil survey was completed in 1965. The site is also elevated about the floodplains of Buhne Slough. It located on the south side of Spruce Hill at an elevation of 12-15 feet. Bayside soil may underlie the disturbed ground, though characteristics of this series were not observed on site. Aerated sandy loam surface horizons support thick weedy vegetative growth over much of the site. Hookton series soils which are mapped at higher elevations on stratified seaside terraces form the adjacent

prominence of Spruce Hill are more similar to the observed conditions. Wetlands associated with Hookton soils in springs and seeps emerging from the layered strata.

## Hydrology

The South Broadway parcel receives local runoff from adjacent residential and commercial properties. There are no organized drainages, channels or swales. Overland flow is diverted around fill piles and off-road vehicle tracts. Prior land disturbances have left unnatural topography that does not coalesce into drainage patterns. There are no seeps or springs as could be expected at the physiographic contact with stratified substrates. Some nuisance water may enter the site from the adjacent mobile home park or commercial development, but precipitation is the only significant source of hydrology for the parcel. Runoff from the parcel is intercepted by South Broadway Street and directed along the road frontage to a manmade channel running southwesterly under the street to join the regional drainage of Buhne Slough. Buhne Slough enters Humboldt Bay through a tide gate south of King Salmon Avenue west of the small community of King Salmon.

## Findings: Wetlands Type and Extent

A single isolated seasonal wetland 149 square feet in extent was found on the South Broadway development site (Figure 3: Wetland Delineation Map). No other jurisdictional waters or waters of the state, Coastal Commission and DFW, were present.

The seasonal wetland is formed in a small depression excavated 10- 12 inches into the local topography. It is likely that it is an artifact of previous earthwork or other disturbance. It is not connected to an organized drainage nor does it have an outlet that feeds the regional drainage network. The depression is generally steep sided (40% slope) and does not support a gradation in vegetation, soil, or hydrology that could support one-parameter wetlands.

The basin of the depression is largely unvegetated, but the sides and rim of the basin support hydrophytic herbs and shrubs primarily Hookers willow (*Salix hookeriana*), soft rush (*Juncus effusus*), and creeping buttercup (*Ranunculus repens*). Outside of the wetland area these species are replaced by facultative upland (FACU) species including sweet vernal grass (*Anthoxanthum odoratum*), and tangles of California blackberry (*Rubus ursinus*) and multiflora rose (*Rosa multiflora*) that dominate much of the site.

The underlying soil in the basin suggested development under saturated conditions showing hydromorphic indicators of a depleted matrix with low chroma colors and concentration mottling within the upper 6 inches. Soil in the basin was still saturated to 2 within inches of the surface after 2 weeks of dry weather preceding the field survey. Water stained leaves were observed in the basin and were recorded as secondary indicator of wetland hydrology.

The uplands surrounding the seasonal wetland basin had brown soils that were not saturated or mottled and which sloped gently towards the mapped wetland.

Field data sheets describing the boundary of this seasonal wetland are attached (Delineation Data Sheets).

## **Summary**

Preliminary findings of February 2015 wetland mapping on the 0.86 acre Cross Development site off South Broadway Street in Humboldt Hill describe a small (149 sq. ft.) isolated seasonal wetland occurring in disturbed ground. This information can be used to plan work efforts for avoidance and minimization if possible, or mitigation of impacts to this habitat as necessary.

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## **Attachments**

**Figure 1: General Location Map**

**Figure 2: Soils Map**

**Figure 3: Wetland Delineation Map**

**Table 1: Post processed GPS accuracy**

**Table 2: List of Plants Observed**

**Delineation Data Sheet: DP wet**

**Delineation Data Sheet: DP up**

**Site Photos**

**Resume of the Author: Virginia Dains**



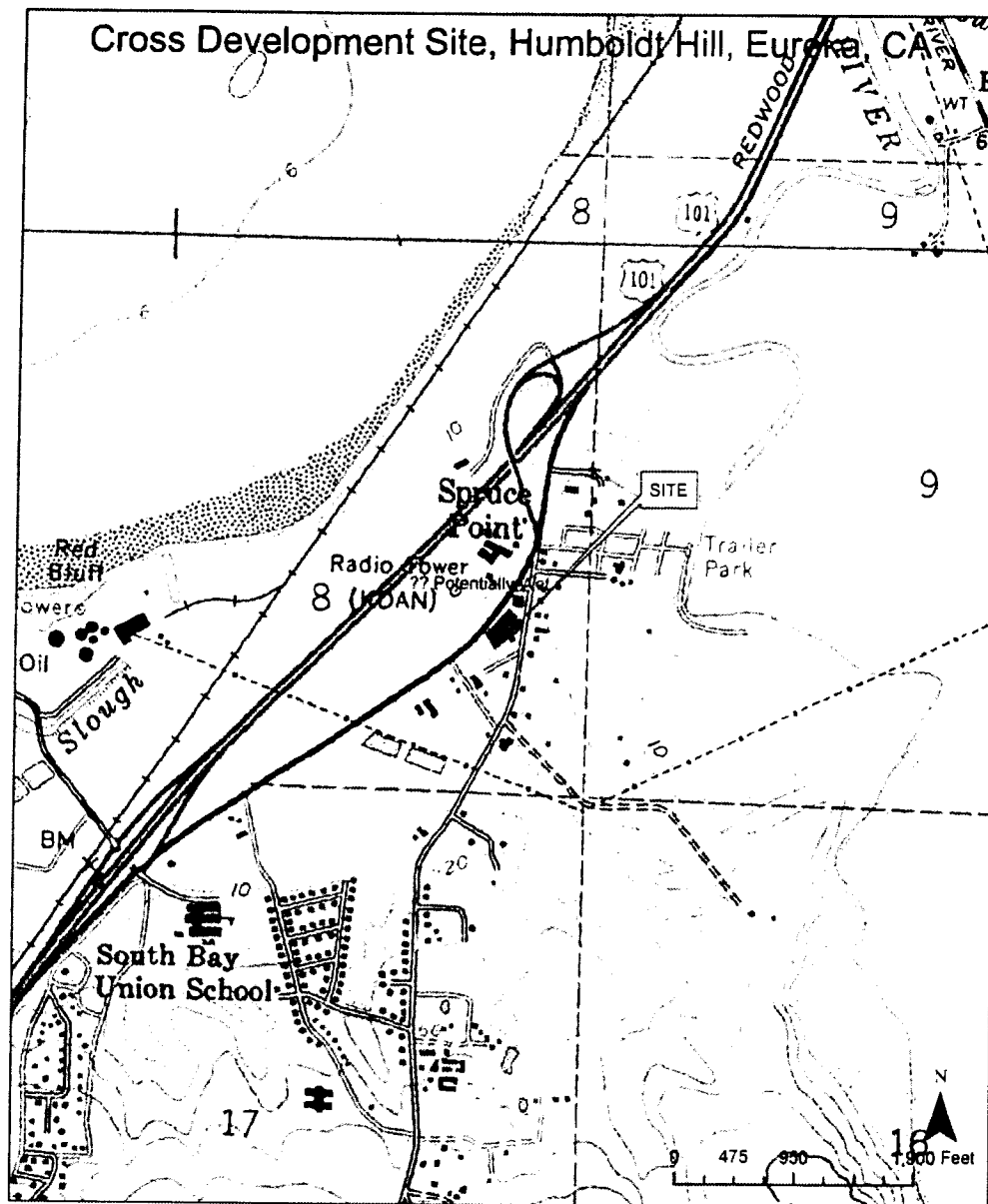


Figure 1 General Location Map (from USGS Fields Landing 7 ½ minute topographic map)

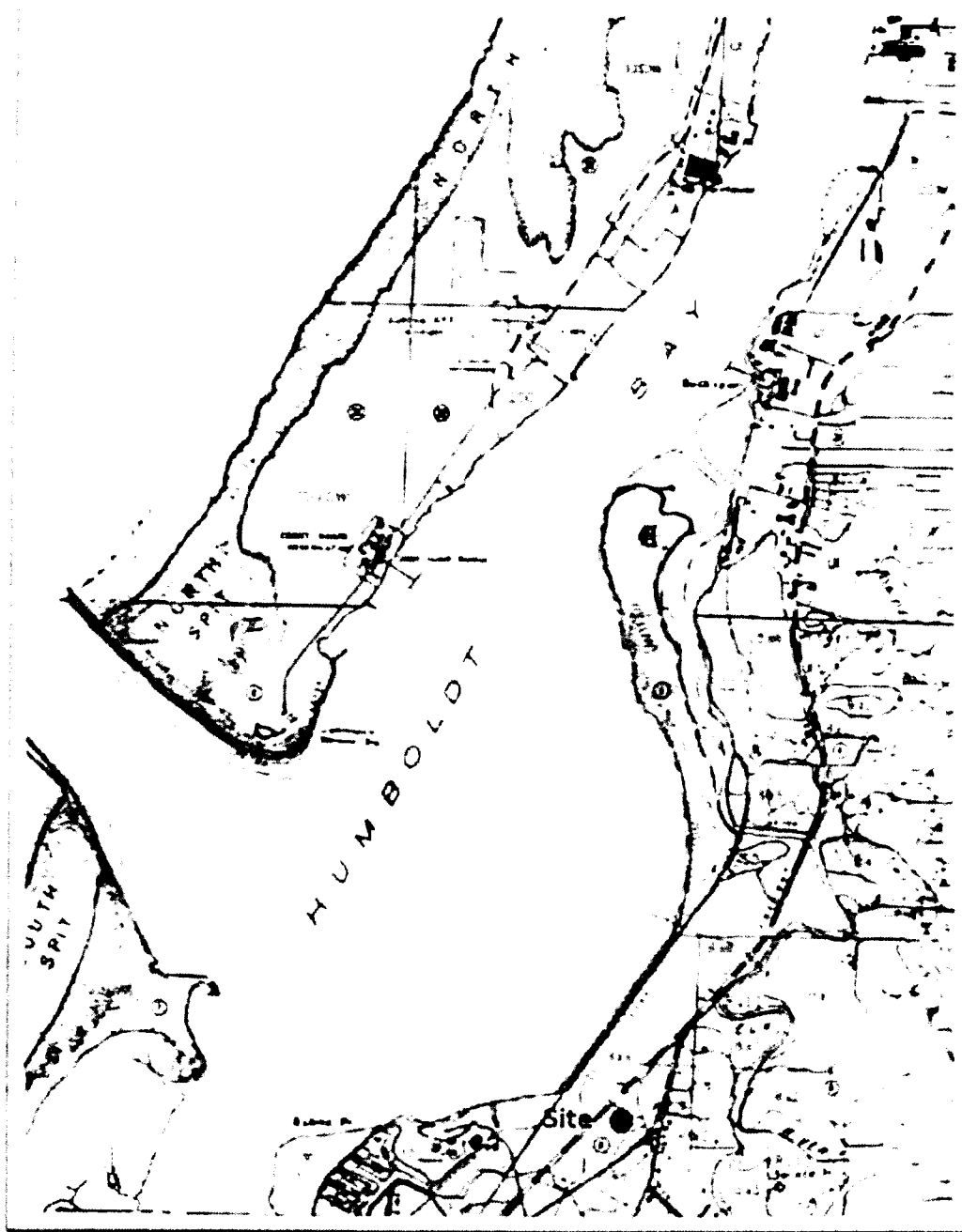


Figure 2 Soils Map (McLaughlin and Harradine 1965)

Site Key: Ba2-Bayside silty clay loam, poorly drained, 0-3 % slopes, Ba3--Bayside silty clay loam, imperfectly drained, 0-3 % slopes, Ba4--Bayside silty clay loam, imperfectly drained, shallow overwash, 0-3% slopes, Ba6--Bayside silty clay loam, very poorly drained, 0-3% slopes, Ba7- Bayside silty clay loam, imperfectly to poorly drained, 0-9% slopes

Preliminary Wetland Delineation  
Cross Development Parcel, Humboldt Hill, Eureka, CA

Attachment **Exhibit No. 4**  
**A-1-HUM-16-0101**  
**NOGA APPEAL**  
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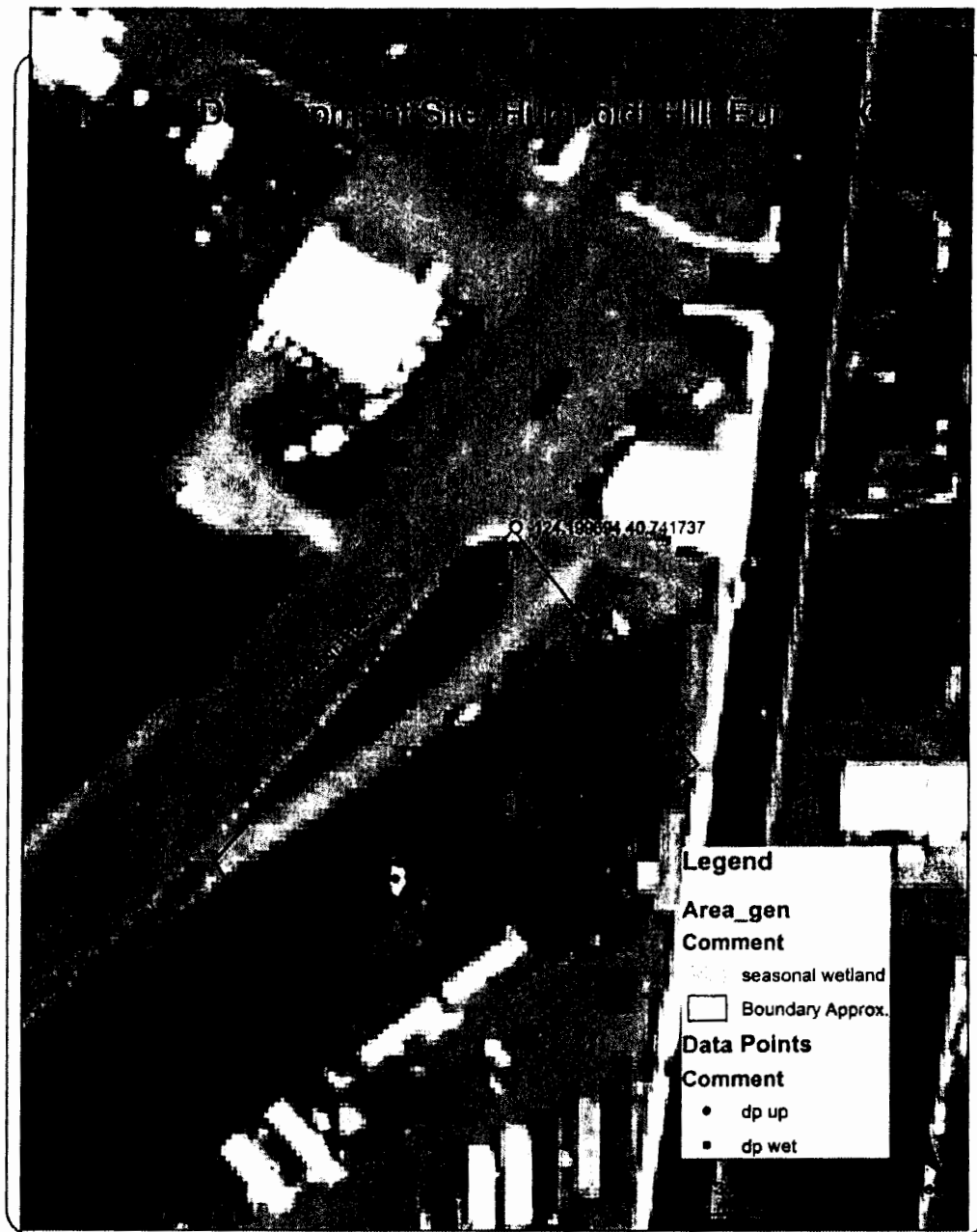


Figure 3 Wetland Delineation Map

Preliminary Wetland Delineation  
Cross Development Parcel, Humboldt Hill, Eureka, CA

Table 1 Estimated Accuracies for Corrected GPS Positions for Humboldt Hill Post Processing

Range	Percentage
0-5cm	-
5-15cm	80.30%
15-30cm	9.09%
30-50cm	10.61%
0.5-1m	-
1-2m	-
2-5m	-
>5m	

Table 2 Plant Species Observed At Humboldt Hill Dollar General Development Site And Their Status As Wetland Indicator Species

Scientific Name	Common Name	Wetland Indicator (Lichvar 2012)
<i>Achillea millefolium</i>	yarrow	FACU
<i>Amarillis</i> sp.	Amarillis	
<i>Anagallis arvensis</i>	scarlet pimpernel	
<i>Anthoxanthum odoratum</i>	sweet vernal grass	FACU
<i>Simphyotrichum chilense</i>	Pacific American Aster	FAC
<i>Baccharis pilularis</i>	coyote brush	
<i>Bellis perennis</i>	English daisy	
<i>Brassica rapa</i>	field mustard	
<i>Cortaderia selloana</i>	pampas grass	FACU
<i>Cotoneaster</i> sp.	cotoneaster	
<i>Cyperus eragrostis</i>	tall flatsedge	FACW
<i>Daucus carota</i>	carrot	FACU
<i>Deschampsia cespitosa</i>	tufted hair-grass	FACW
<i>Epilobium ciliatum</i>	willowherb	FACW
<i>Erica lusitanica</i>	Spanish heather	
<i>Festuca arundinacea</i>	tall fescue	FAC
<i>Foeniculum vulgare</i>	fennel	
<i>Freesia</i> sp.	freesia	
<i>Geranium dissectum</i>	cut-leaved geranium	
<i>Hedera helix</i>	English ivy	
<i>Holcus lanatus</i>	common velvetgrass	FAC
<i>Iris</i> sp.	Garden iris	
<i>Juncus effusus</i>	common bog rush	FACW
<i>Juncus lesueurii</i>	Salt marsh rush	FACW
<i>Linum usitatissimum</i>	common flax	
<i>Lotus corniculatus</i>	bird's-foot trefoil	FAC
<i>Lupinus rivularis</i>	riverbank lupine	FAC
<i>Medicago polymorpha</i>	California burclover	FACU
<i>Muscari</i> sp.	Grape hyacinth	
<i>Narcissus</i> sp.	Daffodil	
<i>Oxalis pes-capra</i>	Creeping wood-sorrel	
<i>Picea sitchensis</i>	Sitka spruce	FAC
<i>Helminthotheca echioides</i>	Akan Asante	FAC
<i>Plantago lanceolata</i>	long-leaf plantain	FACU
<i>Polystichum munitum</i>	Sword fern	FACU
<i>Ranunculus repens</i>	Creeping buttercup	FAC
<i>Raphanus sativus</i>	wild radish	
<i>Rosa multiflora</i> var. <i>carnea</i>	Multiflora rose	FACU
<i>Rubus ursinus</i>	California blackberry	FACU
<i>Rumex acetosella</i>	common sheep sorrel	FACU
<i>Rumex occidentalis</i>	Western dock	FACW
<i>Rumex crispus</i>	curly dock	FAC
<i>Salix hookeriana</i>	Hooker's willow	FACW
<i>Senecio vulgaris</i>	common groundsel	FACU
<i>Sonchus arvensis</i>	perennial sow thistle	FACU
<i>Stachys ajugoides</i> var. <i>rigida</i>	rigid hedge-nettle	OBL
<i>Taraxacum officinale</i>	common dandelion	FACU
<i>Vicia americana</i>	purple vetch	

Preliminary Wetland Delineation  
Cross Development Parcel, Humboldt Hill, Eureka, CA

Attachments  
**Exhibit No. 4**  
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**NOGA APPEAL**  
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Scientific Name	Common Name	Wetland Indicator (Lichvar 2012)
Vicia hirsuta	hairy vetch	
Vulpia myuros	rattail fescue	FACU

**\*Wetland Indicator Status Codes (Lichvar 2012)**

Code	Rating	Comment
Blank	Upland	Plants not listed in the official wetland plant list are assumed to be upland species.
OBL	Obligate Wetland	Occurs almost always (estimated probability 99%) under natural conditions in wetlands.
FACW	Facultative Wetland	Usually occurs in wetlands (estimated probability 67%-99%), but occasionally found in non-wetlands.
FAC	Facultative	Equally likely to occur in wetlands or non-wetlands (estimated probability 34%-66%).
FACU	Facultative Upland	Usually occurs in non-wetlands (estimated probability 67%-99%), but occasionally found on wetlands (estimated probability 1%-33%).
UPL	Obligate Upland	Occurs in wetlands in another region, but occurs almost always (estimated probability 99%) under natural conditions in non-wetlands in the regions specified.

**WETLAND DETERMINATION DATA FORM - Western Mountains, Valleys, and Coast Region**

Project/Site: 5707 South Broadway City/County: Eureka/Humboldt Sampling Date: 2.25.15  
 Applicant/Owner: Cross Development State: CA Sampling Point: DP wet  
 Investigator(s): Virginia Davis Section, Township, Range: Sec. 8, T4N R1W  
 Landform (Hillslope, terrace, etc.): \_\_\_\_\_ Local relief (concave, convex, none): Concave Slope (%): 45  
 Subregion (LRR): NW Forest and Coast Lat: 124.199942 Long: 40.741134 Datum: NAD83  
 Soil Map Unit Name: Bayside Silty Clay loam NWI classification: None  
 Are climatic/hydrologic conditions on the site typical for this time of year? Yes \_\_\_\_\_ No X (If no, explain in Remarks.)  
 Are Vegetation X, Soil X, or Hydrology \_\_\_\_\_ significantly disturbed? Are "Normal Circumstances" present? Yes \_\_\_\_\_ No X  
 Are Vegetation \_\_\_\_\_, Soil \_\_\_\_\_, or Hydrology \_\_\_\_\_ naturally problematic? (If needed, explain any answers in Remarks.)

**SUMMARY OF FINDINGS** - Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes <u>X</u>	No _____	Is the Sampled Area within a Wetland? Yes <u>X</u> No _____
Hydric Soil Present?	Yes <u>X</u>	No _____	
Wetland Hydrology Present?	Yes <u>X</u>	No _____	
Remarks: <u>Very dry January and February, Soil is mixed fill/disturbed</u>			

**VEGETATION** - Use scientific names of plants.

Time Stratum (Plot size: _____)	Absolute % Cover	Dominant Species?	Indicator Status	Dominance Test worksheet: Number of Dominant Species That Are OBL, FACW, or FAC: <u>2</u> (A)
1. _____				
2. _____				
3. _____				Percent of Dominant Species That Are OBL, FACW, or FAC: <u>50</u> (AB)
4. _____				
Shrub/Small Shrub Stratum (Plot size: <u>3m</u> )				Prevalence Index worksheet:
1. <u>Salix hookeriana</u>	<u>25</u>	<u>X</u>	<u>FACW</u>	Total % Cover of: _____ Multiplied by:
2. <u>Salix</u>				OBL species <u>0</u> x 1 = <u>0</u>
3. _____				FACW species <u>28</u> x 2 = <u>56</u>
4. _____				FAC species <u>15</u> x 3 = <u>45</u>
5. _____				FACU species <u>23</u> x 4 = <u>92</u>
Herb Stratum (Plot size: <u>3m</u> )				UPL species <u>0</u> x 5 = <u>0</u>
1. <u>Juncus effusus</u>	<u>3</u>		<u>FACW</u>	Column Totals: <u>66</u> (A) <u>193</u> (B)
2. <u>Rumex acetosella</u>	<u>5</u>		<u>FACW</u>	Prevalence Index = 8/A = <u>2.92</u>
3. <u>Ranunculus repens</u>	<u>15</u>	<u>X</u>	<u>FAC</u>	Hydrophytic Vegetation Indicators:
4. <u>Arthrocnemum adactyum</u>	<u>3</u>		<u>FACU</u>	1 - Rapid Test for Hydrophytic Vegetation
5. _____				2 - Dominance Test is >50%
6. _____				<u>X</u> 3 - Prevalence Index is >3.0
7. _____				4 - Morphological Adaptations (Provide supporting data in Remarks or on a separate sheet)
8. _____				5 - Wetland Non-Vascular Plants
9. _____				Problematic Hydrophytic Vegetation (Explain)
10. _____				Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic
11. _____				Hydrophytic Vegetation Present? Yes <u>X</u> No _____
Woody Vine Stratum (Plot size: <u>3m</u> )				
1. <u>Rubus ursinus</u>	<u>8</u>	<u>X</u>	<u>FACW</u>	
2. <u>Rosa multiflora</u>	<u>7</u>	<u>X</u>	<u>FACW</u>	
% Bare Ground in Herb Stratum: <u>74</u>	<u>15</u>			
Remarks: <u>34 x 2 = 5.2</u> <u>15 x 2 = 3</u> <u>2.13</u> <u>7.5</u>				

US Army Corps of Engineers

Western Mountains, Valleys, and Coast - Version 2.0

Preliminary Wetland Delineation  
 Cross Development Parcel, Humboldt Hill, Eureka, CA

Attachments  
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[illegible]

Wetland Hydrology Indicators:		Secondary Indicators (2 or more required)	
<u>Primary Indicators (minimum of one required; check all that apply)</u>		<u>Secondary Indicators (2 or more required)</u>	
<input type="checkbox"/> Surface Water (A1)	<input type="checkbox"/> Water-Stained Leaves (B9) (except MLRA 1, 2, 4A, and 4B)	<input checked="" type="checkbox"/> Water-Stained Leaves (B9) (MLRA 1, 2, 4A, and 4B)	
<input type="checkbox"/> High Water Table (A2)	<input type="checkbox"/> Salt Crust (B11)	<input checked="" type="checkbox"/> Drainage Patterns (B10)	
<input checked="" type="checkbox"/> Saturation (A3)	<input type="checkbox"/> Aquatic Invertebrates (B13)	<input type="checkbox"/> Dry-Season Water Table (C2)	
<input type="checkbox"/> Water Marks (B1)	<input type="checkbox"/> Hydrogen Sulfide Odor (C1)	<input type="checkbox"/> Saturation Visible on Aerial Imagery (C8)	
<input type="checkbox"/> Sediment Deposits (B2)	<input type="checkbox"/> Oxidized Rhizospheres along Living Roots (C3)	<input type="checkbox"/> Geomorphic Position (D2)	
<input type="checkbox"/> Drift Deposits (B3)	<input type="checkbox"/> Presence of Reduced Iron (C4)	<input type="checkbox"/> Shallow Aquitard (D3)	
<input type="checkbox"/> Algal Mat or Crust (B4)	<input type="checkbox"/> Recent Iron Reduction in Tilled Soils (C6)	<input type="checkbox"/> FAC-Neutral Test (D5)	
<input type="checkbox"/> Iron Deposits (B5)	<input type="checkbox"/> Stunted or Stressed Plants (D1) (LRR A)	<input type="checkbox"/> Raised Ant Mounds (D6) (LRR A)	
<input type="checkbox"/> Surface Soil Cracks (B6)	<input type="checkbox"/> Other (Explain in Remarks)	<input type="checkbox"/> Frost-Heave Hummocks (D7)	
<input type="checkbox"/> Inundation Visible on Aerial Imagery (B7)			
<input type="checkbox"/> Sparsely Vegetated Concave Surface (B8)			
<b>Field Observations:</b> Surface Water Present? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Depth (inches): _____ Water Table Present? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Depth (inches): _____ Saturation Present? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Depth (inches): <u>2"</u>		Wetland Hydrology Present? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:			
Remarks: Saturation observed near soil surface. depression and water stained leaves			

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**WETLAND DETERMINATION DATA FORM - Western Mountains, Valleys, and Coast Region**

Project/Site: 5707 South Broadway City/County: Eureka, Humboldt Sampling Date: 2.25.15  
 Applicant/Owner: Cross Development State: CA Sampling Point: DP up  
 Investigator(s): Virginia Dains Section, Township, Range: Sec 8 T4N R1W  
 Landform (hill slope, terrace, etc.): hillslope Local relief (concave, convex, none): sloping Slope (%): 10%  
 Subregion (LRR): NW Forest and Coast Lat: 40.741172 Long: 124.199945 Datum: NAD83  
 Soil Map Unit Name: Bayside Silty Clay Lam NWI classification: none  
 Are climatic / hydrologic conditions on the site typical for this time of year? Yes ☐ No ☒ (If no, explain in Remarks.)  
 Are Vegetation ☐ Soil ☒ or Hydrology ☐ significantly disturbed? Are "Normal Circumstances" present? Yes ☐ No ☒  
 Are Vegetation ☐ Soil ☐ or Hydrology ☐ naturally problematic? (If needed, explain any answers in Remarks.)

**SUMMARY OF FINDINGS** - Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Is the Sampled Area within a Wetland?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Hydric Soil Present?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Wetland Hydrology Present?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Remarks: <u>Very Dry January and February Site is mixed fill. Not typical Bayside</u>			

**VEGETATION** - Use scientific names of plants.

Tree Stratum (Plot size: _____)	Absolute % Cover	Dominant Species?	Indicator Status	Dominance Test worksheet: Number of Dominant Species That Are OBL, FACW, or FAC: <u>1</u> (A)
1. _____	_____	_____	_____	
2. _____	_____	_____	_____	
3. _____	_____	_____	_____	
4. _____	_____	_____	_____	
= Total Cover				Percent of Dominant Species That Are OBL, FACW, or FAC: <u>25</u> (WB)
Seedling/Shrub Stratum (Plot size: _____)	Absolute % Cover	Dominant Species?	Indicator Status	Prevalence Index worksheet: Total % Cover of _____ Multiply by:
1. _____	_____	_____	_____	
2. _____	_____	_____	_____	FACW species <u>7</u> x 2 = <u>14</u>
3. _____	_____	_____	_____	FAC species <u>5</u> x 3 = <u>15</u>
4. _____	_____	_____	_____	FACU species <u>38</u> x 4 = <u>152</u>
5. _____	_____	_____	_____	UPL species <u>15</u> x 5 = <u>75</u>
= Total Cover				Column Totals: <u>80</u> (A) <u>271</u> (B)
Prevalence Index = B/A = <u>3.39</u>				Hydrophytic Vegetation Indicators: 1 - Rapid Test for Hydrophytic Vegetation 2 - Dominance Test is > 50% 3 - Prevalence Index is > 3.0 4 - Morphological Adaptations (Provide supporting data in Remarks or on a separate sheet) 5 - Wetland Non-Vascular Plants Problematic Hydrophytic Vegetation (Explain) Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.
Herb Stratum (Plot size: <u>3m</u> )	Absolute % Cover	Dominant Species?	Indicator Status	
1. <u>Juncus effusus</u>	<u>7</u>	<u>X</u>	<u>FACW</u>	
2. <u>Aster chilensis (Symphyotrichum)</u>	<u>5</u>	<u>X</u>	<u>FACU</u>	
3. <u>Anthoxanthum odoratum</u>	<u>5</u>	<u>X</u>	<u>FACU</u>	
4. <u>Geranium dissectum</u>	<u>15</u>	<u>X</u>	<u>UPL</u>	
5. <u>Stachys ajacoides</u>	<u>15</u>	<u>X</u>	<u>OBL</u>	
= Total Cover				Hydrophytic Vegetation Present? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Woody Vine Stratum (Plot size: <u>3m</u> )	Absolute % Cover	Dominant Species?	Indicator Status	
1. <u>Rubus ursinus</u>	<u>15</u>	<u>X</u>	<u>FACU</u>	
2. <u>Rosa multiflora</u>	<u>18</u>	<u>X</u>	<u>FACU</u>	
= Total Cover				
% Bare Ground in Herb Stratum <u>40</u>				
Remarks: <u>47 x .2 = 9.4</u>				

Preliminary Wetland Delineation  
 Cross Development Parcel, Humboldt Hill, Eureka, CA

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Sampling Point: DP up

## HYDROLOGY

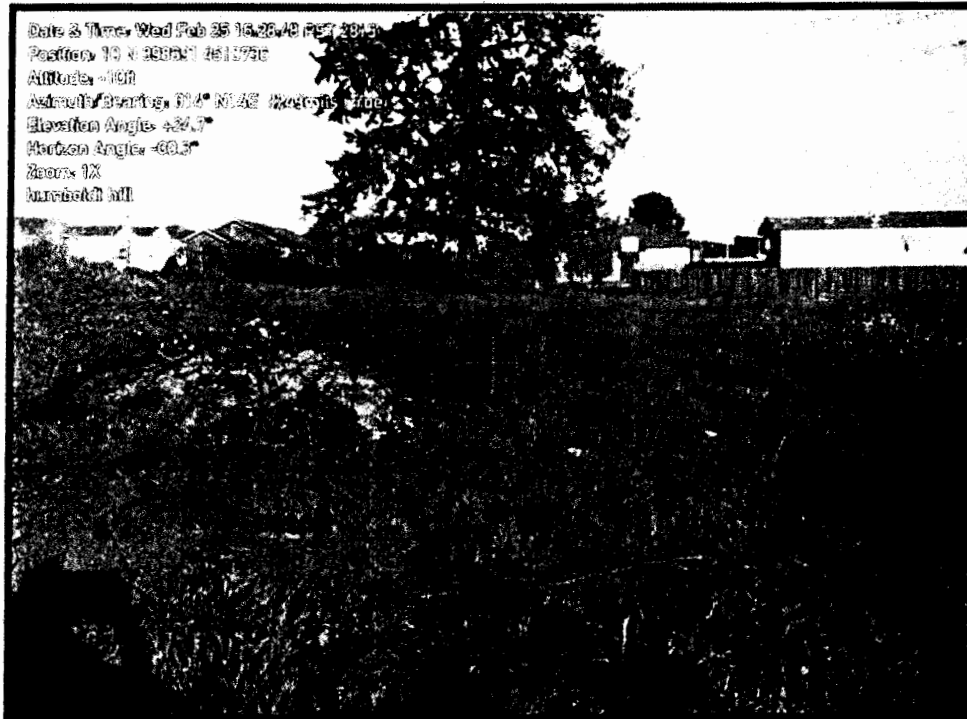
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**Cross Development Site Photos  
February 25, 2015**



**Photo 1**

**Northeast property corner showing mature Sitka spruce, mounds of fill covered with California blackberry, multiflora rose in foreground along with scrap asphalt, sweet vernal grass and ornamentals.**



## Photo 2

Looking southeast across property. Willows associated with the seasonal wetland are shown in the upper right corner. Foreground vegetation is sweet vernal grass, vetch. A large patch of wild mustard (white flowers) is in the middle distance.



**Photo 3**

**Hooker's willow growing outside of the seasonal wetland basin overgrown with California blackberry (FACU).**



**Photo 4**

**Dominant cover type in the lower half of the property is a mix of California black berry and multiflora rose, both Facultative Upland species (FACU). Taken near the upland data point.**



**Photo 5**

**Hooker's willow and Soft rush (*Juncus effusus*) facultative wetland species (FACW) mark the rim of the seasonal wetland depression. Chilean aster flowering in the lower right corner (FAC).**





**Photo 6**

Seasonal wetland bottom of the depression showing water-stained leaves (a secondary hydrology indicator). Broadleaf plant is creeping buttercup (*Ranunculus repens*) a Facultative (FAC) rated hydrophytic species. Bottom of basin is largely unvegetated.



### Photo 7

From the edge of the seasonal wetland looking over the remainder of the site. White flowers are wild radish, yellow flowers are mustard, mounded vegetation is multiflora rose. Isolated tussocks of soft rush (*Juncus effusus*) are mixed with sweet vernal grass, blackberry and rose.

**VIRGINIA DAINS**  
**Biological Resource Consulting**

**3371 AYRES HOLMES ROAD, AUBURN CA 95602**  
**530-888-9180 / virginiadains@gmail.com**

**EDUCATION**

M.S. Biology (Plant Ecology), 1992, California State University, Sacramento, Thesis Topic:  
"The Water Relations of *Alnus rhombifolia*"  
B.S. Biology (Field Biology), 1978, California Polytechnic State University, San Luis Obispo

2012 CRAM Wetlands Riverine and Vernal Pool certified.

**EXPERIENCE** Biological Consulting contracts since 1979 include:

**Special-status plant surveys** throughout California and western Nevada. Projects were conducted for state, federal, or private concerns and include GPS field mapping, mitigation measures, and conservation guidelines.

**Wetland delineations** in the Arid West and Western Mountains regions assessing riparian, seasonal wetland, vernal pools, alkaline, mountain meadow, seeps and discharge wetland habitats in California and Nevada.

**Wetland delineation training** assistant for U.S. Army Corps of Engineers training classes.

**Wetland Plant Identification Instructor** for EPA, US FWS, and California Native Plant Society.

**Wetland mitigation** design and implementation of constructed seasonal wetlands, coastal meadow, salt and brackish marsh habitats.

**ARCView GIS** proficient, field GPS data collection and post processing.

**Other Experience:** Vegetation mapping with remote sensing, forage inventory, residual dry matter monitoring, grazing prescriptions, noxious weed mapping, Workshop leader on Vernal Pools, Backcountry Naturalist for The Nature Conservancy wilderness tours; Mt. St. Helens vegetation recovery researcher 1983-present.

**Wetland Protection Plan**  
**Cross Development Site**  
**5707 South Broadway (Humboldt Hill) Eureka, CA**

**Prepared for:**

**Cross Development LLC**  
**5317 Inverrary Drive**  
**Plano, TX 75093**



**Prepared by:**

**Virginia Dains**  
**Consulting Biologist**  
**3371 Ayres Holmes Road**  
**Auburn, CA 95602**  
**viriniadains@gmail.com**  
**530-888-9180**

**Revised June 05, 2016**

### Project Description, Goals, and Objectives

The purpose of this Wetland Protection Plan is to detail the means by which a single seasonal wetland of approximately 150 square feet in extent will be retained on an 0.87 acre parcel that is being considered for commercial development (Figure 1). The parcel is found within the coastal zone as defined by the CCC and is under the administrative jurisdiction of the City of Eureka's Local Coastal Program. The proposed site is found in the Humboldt Hill area of Eureka, CA. Mapping of this wetland was conducted according to the guidelines of the US Army Corps of Engineers wetland delineation manual and supplements (USACE 1987 and 2010) and the California Coastal Commission (CCC 1994). A delineation report was submitted to Humboldt County for documentation and Eureka field office of the Corps of Engineers for verification (Dains 2015).

The goals outlined within this plan are to protect the existing wetland during and after development of the site, and to enhance buffer conditions to favor native wetland species. The objective will be to maintain a shaded seasonal wetland with native herb and shrub canopy layers. The wetland will continue to function for groundwater percolation and will retain escape cover with seasonally moist soils, foraging opportunities for seed and fruit eating birds, and nesting opportunities for songbirds.

### Existing Site Conditions

The parcel is highly disturbed by the dumping of fill, asphalt scrap, off road vehicle traffic and parking. Vegetation consists of a mix of ruderal herbs, horticultural introductions, and common native species. Tall fescue (*Festuca arundinacea*) and sweet vernal grass (*Anthoxanthum odoratum*), two introduced grasses, dominate much of the eastern portion of the site. Extensive patches of wild radish (*Raphanus sativus*) and mats of California blackberry (*Rubus ursinus*) and the horticultural multiflora rose (*Rosa multiflora* var. *carnea*) cover the remainder of the site. Isolated individuals of native perennial tufted hairgrass (*Deschampsia cespitosa*), Hooker's willow (*Salix hookeriana*), and soft rush (*Juncus effusus*) are found as part of the overall mosaic of vegetation but do not occur as remnants of natural vegetation. Several horticultural species including grape hyacinth, daffodil, cultivated iris, cotoneaster, Spanish heather, pampas grass, English ivy, Freesia, and Amaryllis are found on the site as escapes from cultivation and are representative of the disturbed nature of the vegetation.

The basin of the wetland depression is largely unvegetated, but the sides and rim of the basin support hydrophytic herbs and shrubs primarily Hookers willow (*Salix hookeriana*), soft rush (*Juncus effusus*), and the invasive creeping buttercup (*Ranunculus repens*). Uplands surrounding the wetland are dominated by facultative upland (FACU) species including introduced sweet vernal grass (*Anthoxanthum odoratum*), and mats of California blackberry (*Rubus ursinus*) and invasive multiflora rose (*Rosa multiflora*).



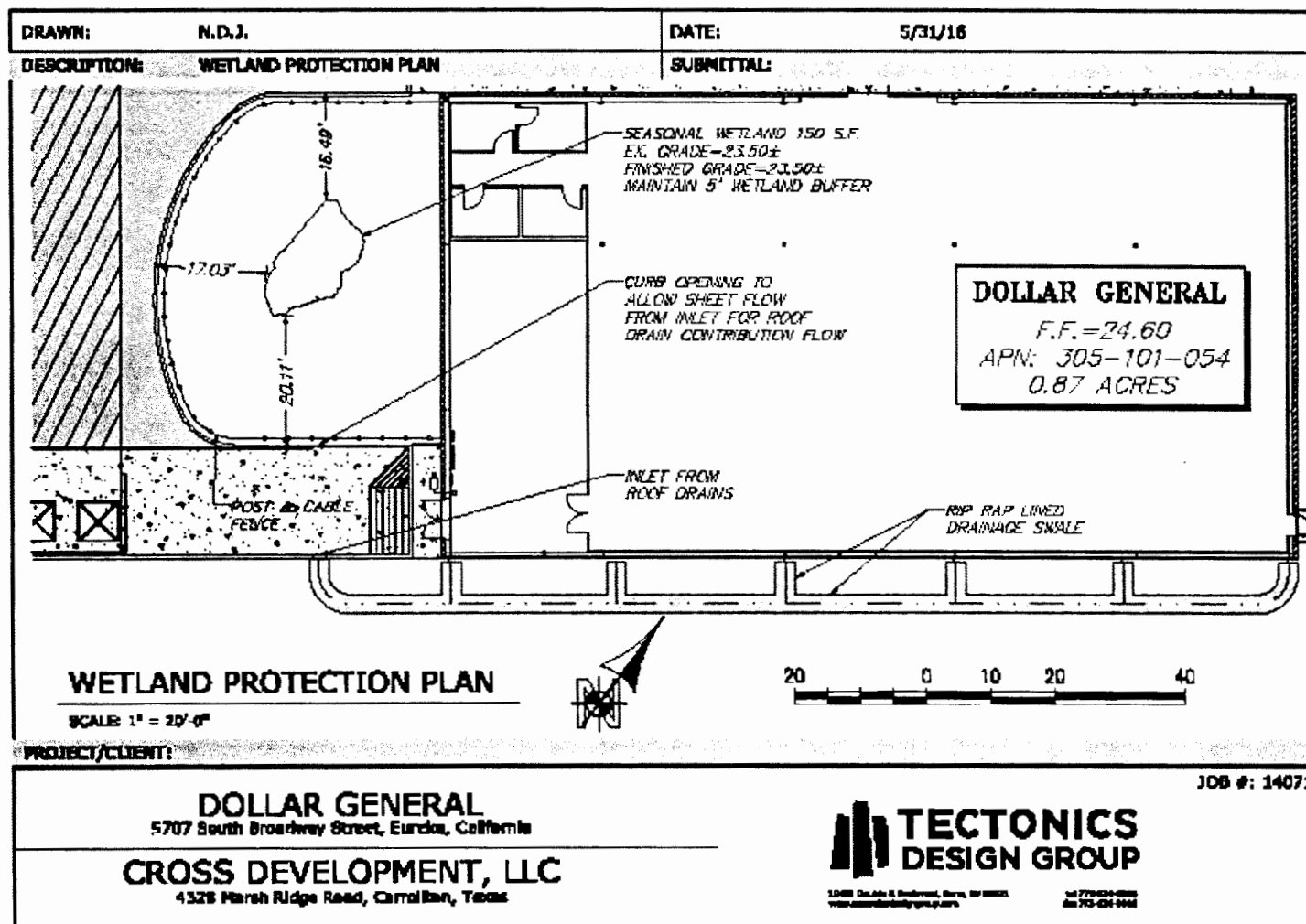


Figure 1 Wetland Protection Area

### Site Protection

A revegetation biologist or ecologist will be responsible for the protection and enhancement of the wetland and its buffer.

The seasonal wetland will be protected by a vegetated buffer 13 times its area with setbacks from the development of 16.49 ft. to the north, 17.03 ft. to the west, and 20.11 ft. to the south. The total buffer area and wetland area is approximately 1,889 sq. ft. (0.04 acres) in extent. The buffer size was determined by the maximum feasible set-aside for avoidance. Biologically the buffer size is mitigated by the minimal size and depth of the wetland, the lack of native plants or biologically significant habitat in its current surroundings, the low susceptibility of the level ground to erosion, and the minimal potential for significant wildlife use in the existing wetland.

The hydrology of the wetland set-aside will be driven by direct precipitation, some adjacent run-off from sidewalks, and augmented by roof runoff which is channeled from the rear of the building into a vegetated swale and which overflows into the wetland area through curb openings (figure 1).

Prior to construction the wetland and its buffer will be identified and protected with high visibility rope and posts. Grading plans shall identify this area as Sensitive Habitat. The land surface elevation of the wetland and its upland boundary will remain undisturbed. Small topographic changes in the buffer area will be made to maintain internal drainage towards the wetland. A biological monitor will visit the site during construction to ensure the protection measures are effective.

After construction the wetland and its buffer will be separated from foot and vehicle traffic areas by a simple post and cable fence as well as a concrete curb to prevent runoff from the parking area entering the wetland.

### Site Preparation

After grading and construction of the developed area is complete, the wetland and its buffer area will be weeded and prepared for replanting. Some native species will be retained. Hookers willow adjacent to the wetland along with bog Rush (*Juncus effusus*) will remain. Other native species that may be present in or adjacent to the wetland will be incorporated in the revegetation plan as they are encountered. Native California blackberry will be removed from the buffer since this species is found in direct association with multiflora rose, an invasive species, and can quickly overgrow restoration plantings. Some earthwork within the buffer may be required to refine contours within the watershed before planting.

### Implementation

Restoration of the buffer area shall begin concurrently with the completion of construction.

Plant species appropriate for buffer protection and enhancement of the seasonal wetland are listed in Table 1. Other natives may be used at the discretion of the biologist in charge. A planting plan is shown in Figure 2.

All planting material will be locally obtained and inspected for health and viability before being introduced to the site. One- or five-gallon shrubs will be obtained depending on the quality and availability. Bare root stock or small container plants of herbaceous species such as bog rush, tufted hair grass, or California aster will be planted during the fall prior to the rainy season. Some native plant material may be rescued from on-site and held in temporary nurseries on-site to be transplanted into the buffer area after construction. Soil amendments will be avoided unless specific conditions, such as sand, dense clay, or rubble are encountered in the planting area. Fertilizers are more likely to encourage the establishment of weedy introduced species than benefit native transplants. A 6-8 inch woodchip mulch may be used to limit weeds around container plantings.

Timing of planting should coincide with fall and winter rains. If construction is not completed before the rainy season and restoration is postponed to the spring or summer, irrigation will be prescribed on a twice monthly basis. The entire wetland area will be soaked to ensure establishment of revegetation stock. No permanent or temporary irrigation will be installed.

Table 1 Native Plants for Buffer Enhancement

Growth Form	Function	Species	Wetland Rating*	Planting Density	Count
Trees/large Shrubs	Cover, deciduous insect forage	Hookers willow <i>Salix hookeriana</i>	FACW	Present on site/conserved	1+
Trees/large Shrubs	Cover, Evergreen, Attracts birds	Wax-myrtle <i>(Morella californica)</i>	FAC	10 ft. centers	3-5
Shrubs	Flowers attract hummingbirds, fruits provide additional forage	Red-flowering Currant <i>(Ribes sanguineum)</i>	FAC	8 ft centers	3-5
Perennial Herbs	Low cover, green mulch	Tufted hairgrass <i>(Deschampsia cespitosa)</i>	FACW	1 ft. centers	1,500
Perennial Herbs	Surface shade	Bog rush <i>(Juncus effusus)</i>	FACW	2' centers present on site	3-5
Perennial Herb/sub-shrub	Insect forage, attracts birds and pollinators	Riverbank lupine <i>(Lupinus rivularis)</i>	FACW	1.5 ft. centers	5-7
Perennial Herb/sub-shrub	Insect forage, attracts birds and pollinators	California aster <i>(Aster chilensis)</i>	FAC	1.5 ft centers	5-7

\*Wetland Indicator Status Codes (Lichvar 2012)

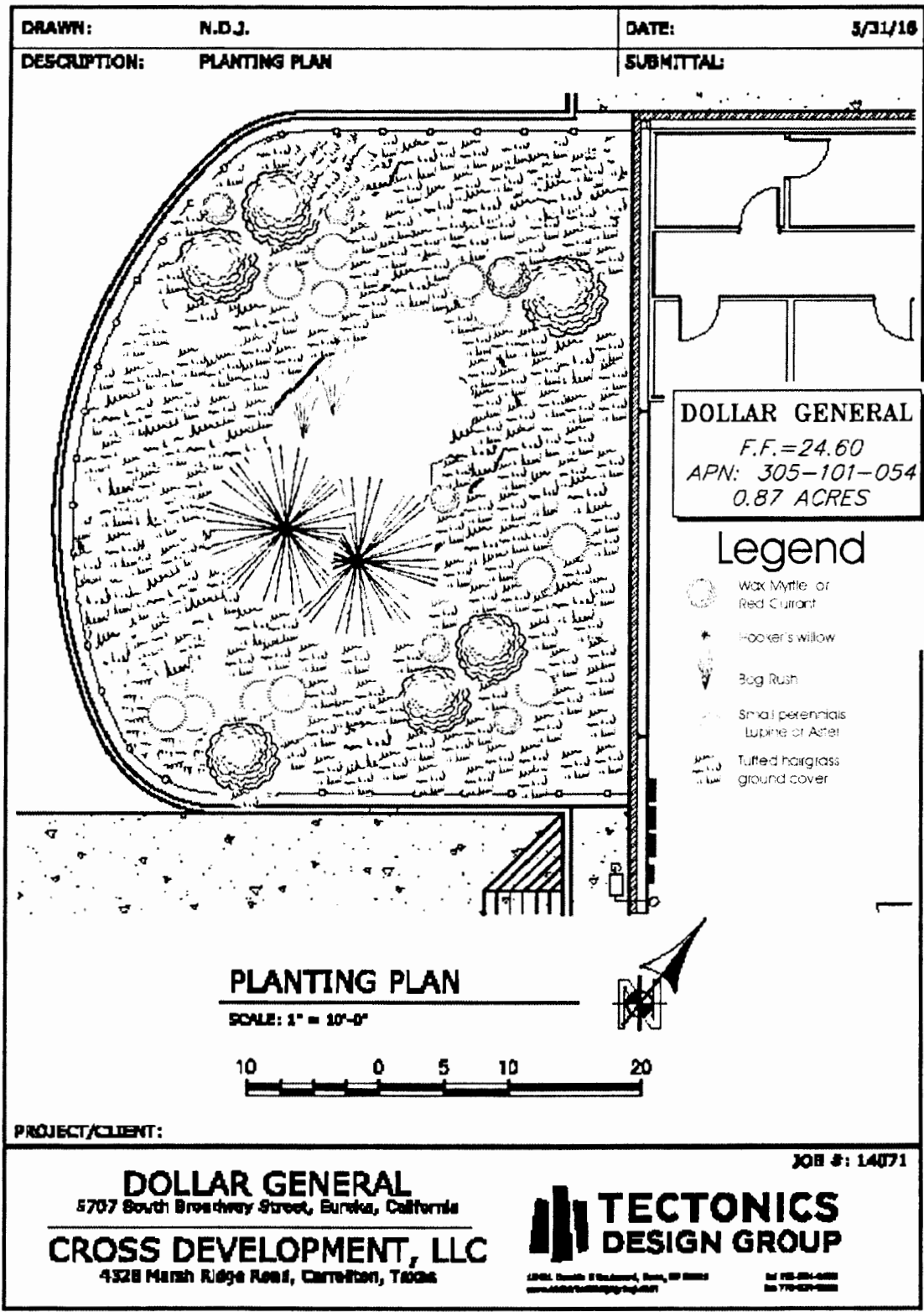


Figure 2 Planting Plan

### **Maintenance Plan**

Short term maintenance for two growing seasons will be the responsibility of the revegetation/restoration contractor. Maintenance will include: weeding, assessing the need for dry season irrigation of plantings, survivorship and replanting as needed to develop a perennial ground cover of native species.

Long term maintenance will be the responsibility of the project proponent or their responsible party. Long term maintenance will be folded into the general maintenance requirements for other landscaping on the site. These will include routine weed and litter removal, and maintenance of the protective fencing.

### **Summary**

The goal of protecting on-site a small seasonal wetland with the objective of maintaining shaded seasonally wet habitat is described in this document. Means for protection prior to, during and after construction are given. Habitat improvements through installation of native shrubs and perennial herbs are planned. The timeline for this project is concurrent with the construction of the commercial development. Two year monitoring of restoration plantings with the goals of developing perennial ground cover is described and long term maintenance.



## References

- CCC 1994 Procedural Guidance for the Review of Wetland Projects in California's Coastal Zone. State of California, California Coastal Commission, June 15, 1994. Accessed online: <http://www.coastal.ca.gov/wetrev/wetttitle.html>
- Dains, Virginia 2015 Preliminary Wetland Delineation Cross Development Site 5707 South Broadway (Humboldt Hill) Eureka, CA Prepared for: Cross Development LLC, 5317 Inverrary Drive, Plano, TX 75093. Prepared by: Virginia Dains, Consulting Biologist, 3371 Ayres Holmes Road, Auburn, CA 95602. June 6, 2016
- Lichvar, R.W. 2012. *The National Wetland Plant List*. ERDC/CRREL TR-12-11. Hanover, NH: U.S. Army Corps
- USACE. 1987. "Corps of Engineers Wetland Delineation Manual." Technical Report Y-87-1, U.S. Army Corps of Engineers Waterways Experiment Station, Vicksburg, Miss.
- USACE 2010. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys and Coast Region (Version 2.0) ERDC/EL TR-10-3 May 2010 U.S. Army Engineer Research and Development Center Environmental, Vicksburg, Miss.

**ATTACHMENT 4**  
**INITIAL STUDY AND DRAFT MITIGATED NEGATIVE DECLARATION**

**Notice of Completion & Environmental Document Transmittal**

Mail to: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613  
 For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

SCH #

**Project Title:** Dollar General Coastal Development Permit

Lead Agency: Humboldt County Planning and Building Department

Contact Person: Karen Meynell, Planner II

Mailing Address: 3015 H Street

Phone: 707-445-7541

City: Eureka

Zip: 95501

County: Humboldt

**Project Location:** County: Humboldt

City/Nearest Community: Humboldt Hill

Cross Streets: South Broadway and Eich Road

Zip Code: 95503

Longitude/Latitude (degrees, minutes and seconds): 40 ° 44 ' 28 " N / -124 ° 11 ' 60 " W Total Acres: 0.87

Assessor's Parcel No.: 305-101-054-000

Section: SE 1/4 08 Twp.: 04 N

Range: 01 W

Base: Humboldt

Within 2 Miles: State Hwy #: 101

Waterways: Humboldt Bay

Airports: N/A

Railways: NW Pacific RR

Schools: South Bay Elementary

**Document Type:**CEQA: ☐ NOP☐ Draft EIRNEPA: ☐ NOIOther: ☐ Joint Document☐ Early Cons☐ Supplement/Subsequent EIR☐ EA☐ Final Document☐ Neg Dec

(Prior SCH No.)

☐ Draft EIS☐ Other:☒ Mit Neg Dec

Other:

☐ FONSI**Local Action Type:**☐ General Plan Update☐ Specific Plan☐ Rezone☐ Annexation☐ General Plan Amendment☐ Master Plan☐ Prezone☐ Redevelopment☐ General Plan Element☐ Planned Unit Development☐ Use Permit☒ Coastal Permit☐ Community Plan☐ Site Plan☐ Land Division (Subdivision, etc.)☐ Other:**Development Type:**☐ Residential: Units

Acres

☐ Office: Sq.ft.

Acres

Employees

☐ Transportation: Type☒ Commercial: Sq.ft. 9,300

Acres 0.87

Employees 5 max

☐ Mining: Mineral☐ Industrial: Sq.ft.

Acres

Employees

☐ Power: Type

MW

☐ Educational:☐ Waste Treatment: Type

MGD

☐ Recreational:☐ Hazardous Waste: Type☐ Water Facilities: Type

MGD

☐ Other:**Project Issues Discussed in Document:**☐ Aesthetic/Visual☐ Fiscal☐ Recreation/Parks☐ Vegetation☐ Agricultural Land☐ Flood Plain/Flooding☐ Schools/Universities☐ Water Quality☐ Air Quality☐ Forest Land/Fire Hazard☐ Septic Systems☐ Water Supply/Groundwater☐ Archeological/Historical☐ Geologic/Seismic☐ Sewer Capacity☒ Wetland/Riparian☒ Biological Resources☐ Minerals☐ Soil Erosion/Compaction/Grading☐ Growth Inducement☒ Coastal Zone☐ Noise☐ Solid Waste☐ Land Use☒ Drainage/Absorption☐ Population/Housing Balance☐ Toxic/Hazardous☐ Cumulative Effects☐ Economic/Jobs☐ Public Services/Facilities☐ Traffic/Circulation☐ Other:**Present Land Use/Zoning/General Plan Designation:**

Present Land Use = vacant. Zoning and General Plan = Commercial General

**Project Description:** (please use a separate page if necessary)

Construction of a 9,300 square foot retail variety store on a 0.87 acre parcel that is currently vacant. A 150 square foot seasonal isolated wetland was identified near the middle of the parcel. A Special Permit is required to reduce the wetland setback in order to develop the parcel for commercial purposes. In addition, a parking exception is required to allow a reduction in the number of required parking spaces due to the level of anticipated use. A dedicated loading space is included. The parcel has public water and sewer service and there is no tree removal proposed.

Note: The State Clearinghouse will assign identification numbers for all new projects. If a SCH number already exists for a project (e.g. Notice of Preparation previous draft document) please fill in.

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## Reviewing Agencies Checklist

Lead Agencies may recommend State Clearinghouse distribution by marking agencies below with an "X".  
If you have already sent your document to the agency please denote that with an "S".

<input type="checkbox"/> Air Resources Board	<input type="checkbox"/> Office of Historic Preservation
<input type="checkbox"/> Boating & Waterways, Department of	<input type="checkbox"/> Office of Public School Construction
<input type="checkbox"/> California Emergency Management Agency	<input type="checkbox"/> Parks & Recreation, Department of
<input type="checkbox"/> California Highway Patrol	<input type="checkbox"/> Pesticide Regulation, Department of
<input type="checkbox"/> Caltrans District # _____	<input type="checkbox"/> Public Utilities Commission
<input type="checkbox"/> Caltrans Division of Aeronautics	<input checked="" type="checkbox"/> Regional WQCB # <u>1</u>
<input type="checkbox"/> Caltrans Planning	<input type="checkbox"/> Resources Agency
<input type="checkbox"/> Central Valley Flood Protection Board	<input type="checkbox"/> Resources Recycling and Recovery, Department of
<input type="checkbox"/> Coachella Valley Mtns. Conservancy	<input type="checkbox"/> S.F. Bay Conservation & Development Comm.
<input checked="" type="checkbox"/> Coastal Commission	<input type="checkbox"/> San Gabriel & Lower L.A. Rivers & Mtns. Conservancy
<input type="checkbox"/> Colorado River Board	<input type="checkbox"/> San Joaquin River Conservancy
<input type="checkbox"/> Conservation, Department of	<input type="checkbox"/> Santa Monica Mtns. Conservancy
<input type="checkbox"/> Corrections, Department of	<input type="checkbox"/> State Lands Commission
<input type="checkbox"/> Delta Protection Commission	<input type="checkbox"/> SWRCB: Clean Water Grants
<input type="checkbox"/> Education, Department of	<input type="checkbox"/> SWRCB: Water Quality
<input type="checkbox"/> Energy Commission	<input type="checkbox"/> SWRCB: Water Rights
<input checked="" type="checkbox"/> Fish & Game Region # <u>1</u>	<input type="checkbox"/> Tahoe Regional Planning Agency
<input type="checkbox"/> Food & Agriculture, Department of	<input type="checkbox"/> Toxic Substances Control, Department of
<input type="checkbox"/> Forestry and Fire Protection, Department of	<input type="checkbox"/> Water Resources, Department of
<input type="checkbox"/> General Services, Department of	
<input type="checkbox"/> Health Services, Department of	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Housing & Community Development	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Native American Heritage Commission	

### Local Public Review Period (to be filled in by lead agency)

Starting Date May 11, 2016 Ending Date June 13, 2016

### Lead Agency (Complete if applicable):

Consulting Firm: _____	Applicant: <u>Cross Development/ Joe Dell</u>
Address: _____	Address: <u>5317 Inverrary Drive</u>
City/State/Zip: _____	City/State/Zip: <u>Plano TX 75093</u>
Contact: _____	Phone: <u>903-771-9444</u>
Phone: _____	

Signature of Lead Agency Representative: Karen Mayhew Date: 5/10/16

Authority cited: Section 21083, Public Resources Code. Reference: Section 21161, Public Resources Code.

### **Draft Mitigated Negative Declaration**

1. Project title: Dollar General Coastal Development Permit
2. Lead agency name and address: Humboldt County Planning and Building Department, 3015 H Street, Eureka, CA 95501; Phone: (707) 445-7541; Fax (707) 268-3792
3. Contact person and phone number: Karen Meynell, Planner II, Phone: 707-268-3731
4. Project location: The project is located in Humboldt County, in the Humboldt Hill area, on the east side of South Broadway, approximately 455 feet north from the intersection of Eich Road and South Broadway, on the property known to be in the Southeast quarter of Section 08 Township 04 North Range 01 West .
5. Project sponsor's name and address: Joe Dell, Cross Development, 5317 Inverrary Drive, Plano, TX 75093.
6. General plan designation: Commercial General (CG) Humboldt Bay Area Plan (HBAP)
7. Zoning: Commercial General (CG) with a Coastal Wetlands (W) combining zone
8. Description of project: Construction of a 9,300 square foot retail variety store on a 0.87 acre parcel that is currently vacant. A 150 square foot seasonal isolated wetland was identified near the middle of the parcel. A Special Permit is required to reduce the wetland setback in order to develop the parcel for commercial purposes. In addition, a parking exception is required to allow a reduction in the number of required parking spaces due to the level of anticipated use. A dedicated loading space is included. The parcel has public water and sewer services and there is no tree removal proposed.
9. Other public agencies whose approval may be required (e.g., permits, financing approval, or participation agreement.): Department of Fish and Wildlife, Army Corps of Engineers, Department of Public Works, Department of Environmental Health.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, but none of these affects are considered to be Potentially Significant Impacts as indicated by the checklist on the following pages.

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Aesthetics                      | <input type="checkbox"/> Agriculture and Forestry Resources | <input type="checkbox"/> Air Quality                        |
| <input checked="" type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources                 | <input type="checkbox"/> Geology / Soils                    |
| <input type="checkbox"/> Greenhouse Gas Emissions        | <input type="checkbox"/> Hazards & Hazardous Materials      | <input type="checkbox"/> Hydrology / Water Quality          |
| <input type="checkbox"/> Land Use / Planning             | <input type="checkbox"/> Mineral Resources                  | <input type="checkbox"/> Noise                              |
| <input type="checkbox"/> Population / Housing            | <input type="checkbox"/> Public Services                    | <input type="checkbox"/> Recreation                         |
| <input type="checkbox"/> Transportation / Traffic        | <input type="checkbox"/> Utilities / Service Systems        | <input type="checkbox"/> Mandatory Findings of Significance |

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

- ☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- ☒ I find that although the proposed project COULD have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- ☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- ☐ I find that the proposed project MAY have a potentially significant impact or potentially significant unless mitigated impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- ☐ I find that although the proposed project COULD have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Karen Meynell  
Signature

5/10/16  
Date

Karen Meynell, Planner II  
Printed Name

Humboldt County Planning and Building Dept.  
For



## EVALUATION OF ENVIRONMENTAL IMPACTS:

- 1) A brief explanation is required for all answers except No Impact answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A No Impact answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A No Impact answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).
- 2) All answers must take into account the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
- 3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. Potentially Significant Impact is appropriate if there is substantial evidence that an effect may be significant. If there are one or more Potentially Significant Impact entries when the determination is made, an EIR is required.
- 4) Negative Declaration: Less Than Significant With Mitigation Incorporated applies where the incorporation of mitigation measures has reduced an effect from Potentially Significant Impact to a Less Than Significant Impact. The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section 17, Earlier Analyses may be cross-referenced).
- 5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:
  - a) Earlier Analysis Used. Identify and state where they are available for review.
  - b) Impacts Adequately Addresses. Identify which effects from the above checklist were within the scope of and adequately analyze in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
  - c) Mitigation Measures. For effects that are Less Than Significant with Mitigation Measures describe the mitigation measures which they address site-specific conditions for the project.
- 6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plan, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
- 7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
- 8) This is only a suggested form, and lead agencies are free to use different formats, however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.
- 9) The explanation of each issue identify:
  - a) The significant criteria or threshold, if any, used to evaluate each question; and
  - b) The mitigation measure identified, if any, to reduce the impact to less than significant.

	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
<b>1. AESTHETICS.</b> Would the project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>1. AESTHETICS</b></p> <p><u>Finding:</u> The project will not have a substantial adverse effect on a scenic vista; nor will it substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway; nor will it substantially degrade the existing visual character or quality of the site and its surroundings; or create a significant new source of substantial light or glare which would adversely affect day or nighttime views in the area.</p> <p><u>Discussion:</u> The project site is not located within or along an area designated by the County or other governmental agency as a scenic vista. The parcel is in the Coastal Zone; however it is not in a Coastal Scenic or View area. The parcel is currently undeveloped. The proposed variety store will be located in the flat field the makes up the middle of the parcel where no trees are required to be removed. The site is located on South Broadway, the old state highway. The maximum height of the proposed building will be 22 feet. The proposed parking lot lighting would be shielded downward, and of low intensity and non-intrusive. There is no indication that the project would impact the aesthetic qualities of the area.</p>				
<b>2. AGRICULTURE AND FORESTRY RESOURCES.</b> In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
c) Conflict with existing zoning for, or cause rezoning of, forest and (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>2. AGRICULTURE AND FORESTRY RESOURCES</b> <u>Finding:</u> The project will not significantly impact or convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use; nor will it significantly conflict with existing zoning for agricultural use, or a Williamson Act contract; nor will it conflict with existing zoning for, or cause rezoning of, forest and timberland, or timberland zoned Timberland Production; nor will it significantly involve other changes in the existing environment which, due to their location or nature, could result in conversion of farmland, to non-agricultural use. <u>Discussion:</u> The subject property is not within a Williamson Act contract. The site is not designated as unique farmland or farmland of statewide significance. The parcel is relatively flat and no trees will be removed. The parcel is bordered on both sides by other vacant commercial lots as well as a trailer park type residential lot to the rear. The parcel is zoned for commercial development. A retail variety store is a principally permitted use within Commercial General zone district. The Department finds no evidence that the proposed project that is consistent with the planned build-out of the area will have a significant impact on agricultural or forestry resources.				
<b>3. AIR QUALITY.</b> Where available, the significant criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potenti ally Signific ant	Potentially Significant Unless Mitigation Incorp.	Less Than Significa nt Impact	No Impact
<b>3. AIR QUALITY.</b> <p><u>Finding:</u> The project will <u>not</u> significantly conflict with or obstruct implementation of the applicable air quality plan; significantly violate any air quality standard or contribute substantially to an existing or projected air quality violation; significantly result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors); expose sensitive receptors to substantial pollutant concentrations; nor will it create objectionable odors affecting a substantial number of people.</p> <p><u>Discussion:</u> According to the North Coast Unified Air Quality Management District (NCUAQMD), all of Humboldt County is in non-attainment of the State's PM-10 (particulate matter of 10 microns in size) standard, but complies with all other State and Federal air quality standards. The most significant contributors to PM-10 are residential wood burning stoves. The parking lot and ingress/egress will be paved thereby not generating dust from vehicles. The proposed store will not generate an increase in vehicle trips as the store patrons will either visit the proposed store for needed merchandise or travel to the next nearest store to obtain same merchandise. The Department finds no evidence that the project that is consistent with the planned build-out of the area will have a significant adverse impact on air quality.</p>				
<b>4. BIOLOGICAL RESOURCES.</b> Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

#### 4. BIOLOGICAL RESOURCES: POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATED

**Finding:** Without mitigation there is a possibility that the project as proposed could have a significant adverse impact on: federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means; conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; or conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

**Discussion:** According to the Preliminary Wetland Delineation prepared by Virginia Dains (May 2015), there is a 150 square foot coastal wetland within the vicinity of the project site. The seasonal wetland was likely formed from previous earthwork or other disturbance at the site. It is not connected to an organized drainage nor does it have an outlet that feeds the regional drainage network. The wetland formed in a small depression excavated 10 to 12 inches with a steep slope of 40%. The construction of the 9,300 square foot retail store and associated parking will occur outside the delineation of the wetland boundary but within the standard buffer as described in the Humboldt Bay Area Plan Section 3.30.6(c). The standard buffer of 100 feet in urban areas will be reduced to allow for development of the site for the principally permitted commercial use. The buffer has been maximized to the greatest extent feasible to ensure new development does not adversely affect the wetland habitat values. The setback buffer varies between 16 to 20 feet, averaging approximately 17 feet of buffer. Mitigation measures identified in Section 3.30.6(f) are included with this project. The wetland will be protected by a vegetated buffer thirteen times its area with a minimum setback from the parking area of 16 feet. The total area of wetland and buffer is approximately 1,890 square feet.

Based on the above, County Staff finds that with mitigation, the project as proposed will have a less than significant impact on the Biological Resources of the neighborhood.

##### Mitigation Measure #1:

Prior to construction the wetland and buffer shall be identified and protected with a high visibility rope and post fencing. The grading plans and construction plans shall identify this area as "Sensitive Habitat". The land surface elevation of the wetland and its upland boundary shall remain undisturbed. Small topographic changes in the buffer area necessary for internal drainage may be made using hand tools only.

##### Mitigation Measure #2

A biological monitor will visit the site during construction to ensure the protection measures are effective.

##### Mitigation Measure #3:

After construction the wetland and the buffer shall be separated from foot and vehicle traffic by a permanent post and cable fence. A concrete curb shall encircle the wetland buffer to prevent parking area runoff from entering the wetland.

##### Mitigation Measure #4:

The applicant shall submit a complete planting plan for the riparian and wetland areas, including but not limited to trees and shrubs such as willow, wax-myrtle and red flowering currant. A post and cable fence shall be installed along the wetland buffer to delineate the boundary. The plan shall be reviewed

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	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
and approved by the Planning Division and the Department of Fish and Wildlife.				
<b>Mitigation Measure #5:</b> A Notice of Development Plan shall be recorded noting the wetland area and buffer as "unbuildable".				
<b>Mitigation Measure #6:</b> The applicant is responsible for on-going maintenance of the restoration plantings, which shall include routine weed and litter removal and maintenance of protective fencing. The applicant shall establish a two year monitoring plan with the goals of developing perennial ground cover and long term maintenance.				
<b>5. CULTURAL RESOURCES.</b> Would the project:	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>5. CULTURAL RESOURCES.</b> <p><u>Finding:</u> The project will not cause a substantial adverse change in the significance of a historical resource as defined in Sec. 15064.5; will not cause a substantial adverse change in the significance of an archaeological resource pursuant to Sec. 15064.5; will not directly or indirectly destroy a unique paleontological resource or site or unique geologic feature; and with mitigation will less than significantly disturb any human remains, including those interred outside of formal cemeteries.</p> <p><u>Discussion:</u> The project was referred to the Northwest Information Center (NWIC) as well as the Bear River Band of the Rohnerville Rancheria, the Blue Lake Rancheria and the Wiyot Tribe. The NWIC recommended further study and that local tribes be contacted. The referral response from Blue Lake Rancheria indicated the proposed project is not within their tribal area. Bear River indicated their database does not include any previously recorded sites within the project parcel or in the immediate vicinity. They recommended that inadvertent discovery protocol language be added to the conditions of approval in case archaeological resources are uncovered during construction activities. The informational note requires that work is stopped and a qualified archeologist is contacted. The Wiyot Tribe did not respond to project referral. The County's standard condition regarding the applicant's responsibility should remains or artifacts be unearthed during any development has been added as an on-going Requirement.</p>				
<b>6. GEOLOGY AND SOILS.</b> Would the project:	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
<b>START HERE</b>				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				

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	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>6. : GEOLOGY AND SOILS: No Impact</b></p> <p><u>Finding:</u> The project will not expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving: rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault, strong seismic ground shaking, seismic-related ground failure, including liquefaction and landslides; will not be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property; and will not have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water.</p> <p><u>Discussion:</u> According to the Alquist-Priolo Earthquake Fault Zoning Map and Framework Plan Geologic Hazards map, the project site is not located on or near a known fault. The nearest Alquist-Priolo zone is located approximately 2 miles to the south. According to the Framework Plan Geologic Hazards map, the parcel has a rating of low instability soils. The Building Inspection Division will require a soil report per California Building Code and erosion and sediment control designed by a licensed person per county grading ordinance due to the commercial nature of the project. The Uniform Building Code requires all structures in Humboldt County to be built in accordance with Zone 4, the most restrictive zone. The area is characterized with a mix of commercial and residential uses. The Building Inspection Division did not identify any concerns with regards to site suitability for commercial development. The Department finds no evidence that the project will have a significant adverse impact with regards to geology and soils.</p>				
<b>7. GREENHOUSE GAS EMISSIONS.</b> Would the project:	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact

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	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

#### 7. GREENHOUSE GAS EMISSIONS: NO IMPACT

Finding: The project will not generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment, or conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases.

Discussion: The proposed project will authorize the construction of a commercial retail store, however, the impacts associated with this development in an area planned and zoned for this type of use is not anticipated to generate a significant amount of greenhouse gases, nor conflict with any plan or policy regulating such gases

8. HAZARDS AND HAZARDOUS MATERIALS. Would the project:	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

#### 8. HAZARDS AND HAZARDOUS MATERIALS: NO IMPACT

Finding: The project will not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials; will not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment; will not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school; will not be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment; will not result in a safety hazard for people residing or working in the project area; and, for a project within the vicinity of a private airstrip, will not result in a safety hazard for people residing or working in the project area; or impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, the project will not significantly result in a safety hazard for people residing or working in the project area. The project will not create a significant exposure of people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.

Discussion: The project site is not included on a list of hazardous material sites, nor does the proposed project involve routine transport, use or disposal of hazardous materials. The project site is over two miles away from the nearest airport, Arcata/Eureka Airport. There are no private airstrips within the vicinity of the project site. The site is not within an area governed by an Airport/Land Use Compatibility matrix. Development consistent with the County's adopted Airport land use plan will not result in unanticipated risk to the occupants of the site. The Department finds no evidence that the construction of a retail variety store will create, or expose people or property to, hazardous materials, or impair implementation of, or physically interfere with, an adopted emergency response plan. The site is within the Humboldt #1 Fire Protection District for fire protection. Development of the site will require compliance with the Uniform Fire Code and Uniform Building Code. According to the Fire Hazard map, the parcel is located in a low fire hazard area. Humboldt #1 Fire Protection District approved the proposed development. For these reasons, the Planning Division expects that the minor subdivision will not result in significant impacts in terms of hazardous materials.

9. HYDROLOGY AND WATER QUALITY. Would the project:	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## 9: HYDROLOGY AND WATER QUALITY: NO IMPACT

**Finding:** The project will not violate any water quality standards or waste discharge requirements nor degrade water quality. The project will not substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted). It will not create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff. It will not place housing within a 100-year flood hazard area as mapped on a Federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map; will not place within a 100-year flood hazard area structures which would impede or redirect flood flows; and will not expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam; or inundation by seiche, tsunami, or mudflow.

**Discussion:** There is no evidence in the record that the project will create or contribute to any violations of waste discharge requirements.

The parcel is well outside any dam or levee inundation area, and outside the areas subject to tsunami run-up. According to the Flood Insurance Rate Maps (Panel 785 B), the parcel is within Flood Zone C, which is defined as areas of minimal flooding, and is outside the 100- and 500-year floodplains.

The County Division of Environmental Health has already reviewed and approved the proposed project. As mentioned above, the Department finds no evidence indicating that the subdivision will violate any water quality or waste discharge standards.

## 9: c), d), f) HYDROLOGY AND WATER QUALITY: LESS THAN SIGNIFICANT IMPACT

**Finding:** The project could substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site; or substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site; or otherwise substantially degrade water quality.

**Discussion:** The project includes the construction of a 9,300 square foot retail store and parking area. County policy dictates that parking lots and parking spaces shall be paved resulting in an increase in runoff. Furthermore, the roof area of the commercial building will generate runoff as well. The project is located in the MS4 area and will be required to install Low Impact Development (LID) techniques. Additional detention facilities and an oil/water separator to handle parking lot runoff could be required following Public Works final approval of the drainage analysis. Mitigation Measure #7 is linked to a Condition of Approval giving Public Works ultimate control over the design of the drainage improvements proposed.

### Mitigation Measure #7

The applicant shall submit a drainage and LID plan to the Planning Department for review and approval. The Planning Department and the Land Use Division of Public Works will review the plan and may require modifications or alteration.

10. LAND USE AND PLANNING. Would the project:	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>10: LAND USE AND PLANNING</b> <u>Finding:</u> The project will not divide an existing established community; nor will it conflict with any land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect; nor will it conflict with any applicable habitat conservation plan or natural community conservation plan. <u>Discussion:</u> The project would authorize a retail variety store on a parcel zoned for Commercial General. The use is principally permitted and the parcel meets the minimum parcel size requirement. There are no habitat conservation or natural community conservation plans proposed or adopted for this area. The proposed project is consistent with a comprehensive view of the Community Plan and Framework General Plan, as it concerns land use, circulation, hazards and resources, biological resources, hydrology and water quality, public facilities and development timing. The Department finds there is no evidence that the project will result in significant adverse impact with regard to land use and planning.				
<b>11. MINERAL RESOURCES.</b> Would the project:	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>11: MINERAL RESOURCES</b> <u>Finding:</u> The project will not result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state; and will not result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan. <u>Discussion:</u> The project does not involve extraction of mineral resources. The project site is not, nor is it adjacent to, a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan. The Department finds there is no evidence that the project will result in a significant adverse impact on mineral resources.				
<b>12. NOISE.</b> Would the project result in:	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## 12: NOISE: NO IMPACT

**Finding:** The project will not significantly result in exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies; nor will it significantly result in the exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels; nor result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project; nor result in a temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, the project will not significantly expose people residing or working in the project area to excessive noise levels. For a project within the vicinity of a private airstrip, the project will not expose people residing or working in the project area to excessive noise levels.

**Discussion:** The Framework Plan Noise Matrix cites exterior noise levels of 80 LdN or less as "normally acceptable in areas planned and zoned for commercial development". Given that the project involves the construction of the principally permitted use, and that the project is located on South Broadway which is the old state highway, and that US Highway 101 is only 775 feet from the project site, no change in the noise baseline is expected. The majority of development on neighboring parcels is fairly noise tolerate and includes a mini-storage, cabinet shop and convenience store. While there is a manufactured home park to the rear of the parcel, the project is conditioned to protect the area from additional noise contributors, such as idling delivery trucks. There are no indications that the project will result in permanent increases in noise and ground vibrations that would exceed levels allowed by the LCP or the Framework General Plan. Based on the above, the Department finds no evidence that the project will result in a significant adverse noise impact.

13: POPULATION AND HOUSING. Would the project:	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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**13: POPULATION AND HOUSING**

Finding: The project will less than significantly induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure); will not displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere; and will not displace substantial numbers of people, necessitating the construction of replacement housing elsewhere.

Discussion: The project will allow for the construction of a retail variety store. The property is commercially zoned yet has remained vacant. The Humboldt Hill residential community, in the meantime, has increased in size. The construction of the store will serve the residents of Humboldt Hill but will not contribute to or take away from the residential population. The Department finds no evidence that the project will result in a significant adverse impact on population and housing.

<b>14. PUBLIC SERVICES.</b>	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
i. Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii. Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii. Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv. Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
v. Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**14: PUBLIC SERVICES**

Finding: The project will not result in a substantial adverse physical impact with regards to the provision of new or physically altered governmental facilities; and will not result in the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services: fire protection, police protection, schools, parks, other public facilities.

Discussion: The parcel will be accessed via South Broadway which historically was the old state highway. Minimal improvements will be required along the road frontage. The Humboldt #1 Fire Protection District did not identify any fire protection issues. The Department finds no evidence that the project will result in a significant adverse impact on public services.

<b>15. RECREATION.</b>	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
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a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

#### 15: RECREATION

Finding: The project will not significantly increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial adverse physical deterioration of the facility would occur or be accelerated; nor does it include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.

Discussion: The project does not include recreational facilities. The Department finds no evidence that the project will require construction or expansion of recreational facilities which might have an adverse physical effect on the environment.

16. TRANSPORTATION/TRAFFIC. Would the project:	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**16.: TRANSPORTATION/TRAFFIC: NO IMPACT**

**Finding:** The project will **not** cause a significant increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections); nor will it exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways; nor will a change in air traffic patterns result including either an increase in traffic levels or a change in location that results in substantial safety risks. The project will not result in inadequate emergency access; nor conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities.

**Discussion:** The property is accessed by South Broadway which was the old state highway. The Land Use Division of Public Works has recommended standard conditions of approval including the improvement of the encroachments. All work to be done within the road right of way requires an encroachment permit from Public Works. The parking plan has been reviewed by the Department and allows for emergency access.

The Department finds there is no evidence that the project will exceed the level of service standard, will result in a change in air traffic patterns, will result in inadequate emergency access, inadequate access to nearby uses or inadequate parking capacity; or will conflict with adopted policies supporting transportation. The project site is well south of the Arcata/Eureka Airport, the closest airport.

<b>17. UTILITIES AND SERVICE SYSTEMS.</b> Would the project:	<b>Potentially Significant</b>	<b>Potentially Significant Unless Mitigation Incorp.</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## 17: UTILITIES AND SERVICE SYSTEMS

**Finding:** The project will not: exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board; require or result in the construction of new water or wastewater treatment facilities or new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effect; have insufficient water supplies available to serve the project from existing entitlements and resources. The project will: result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments; be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs; comply with federal, state, and local statutes and regulations related to solid waste.

**Discussion:** The Department finds there is no evidence that the project will be inconsistent with the planned build-out of the area or will result in a significant adverse to utilities and service systems.

The project will be served by Humboldt Community Services District and they will be able to serve the new commercial building upon the payment of the appropriate fees. The Department of Environmental Health has recommended approval of the project. There is no evidence that the project in its entirety will exceed wastewater treatment facilities or require additional water or wastewater facilities other than what is proposed. The project is not expected to generate unusually high solid waste needs other than those commonly found accompanying most commercial uses. The area is served with electricity and natural gas from PG&E. The parcel currently drains towards Humboldt Bay. The applicant will be required to provide a complete drainage plan. The Department finds the project impact to be insignificant.

18. MANDATORY FINDINGS OF SIGNIFICANCE.	Potentially Significant	Potentially Significant Unless Mitigation Incorp.	Less Than Significant Impact	No Impact
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

#### **18: a) MANDATORY FINDINGS OF SIGNIFICANCE: LESS THAN SIGNIFICANT**

Finding: The project has a less than significant potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory.

Discussion: The proposed project is a commercial development on a parcel planned and zoned for commercial development. Staff finds no evidence that the proposed project will significantly degrade the quality of the environment.

#### **18: MANDATORY FINDINGS OF SIGNIFICANCE**

Finding: The project does not have impacts that are individually limited, but cumulatively considerable ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects), nor will it result in the potential to have significant environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly.

Discussion: Based on the project as described in the administrative record, comments from reviewing agencies, a review of the applicable regulations, and discussed herein, the Department finds there is no significant evidence to indicate the proposed project as mitigated:

- Will have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)
- Will have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly.

#### **19. DISCUSSION OF MITIGATION MEASURES, MONITORING, AND REPORTING PROGRAM**

See attached Mitigation Measures, Monitoring and Report Program.

#### **20. EARLIER ANALYSES.**

Earlier analysis may be used where, pursuant to the tiering, program EIR, or other CEQA process, one or more effects have been adequately analyzed in an earlier EIR or negative declaration. Section 16063(c)(3)(D). In this case a discussion should identify the following on attached sheets:

a) Earlier analyses used. Identify earlier analyses and state where they are available for review.

No earlier analysis used.

b) Impacts adequately addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measure based on a the earlier analysis.

See 20.a above

c) Mitigation measures. For effects that are "Less than Significant with Mitigation Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.



## 19: MITIGAION MEASURES, MONTORING AND REPORTING PROGRAM

The following table lists the required mitigation measures, including the method of verification, monitoring schedule, and the responsible party.

Resource(s)	Measure No.	Summary of Mitigation Measure	Method of Verification	Monitoring Schedule	Responsible Party
<b>Biological</b>	1	Prior to construction the wetland and buffer shall be identified and protected with a high visibility rope and post fencing. The grading plans and construction plans shall identify this area as "Sensitive Habitat". The land surface elevation of the wetland and its upland boundary shall remain undisturbed. Small topographic changes in the buffer area necessary for internal drainage may be made using hand tools only.	Reviewed prior to building permit issuance	Prior to building permit approval	Applicant
<b>Biological</b>	2	A biological monitor will visit the site during construction to ensure the protection measures are effective.	Reviewed prior to building permit issuance	Prior to beginning construction and monthly thereafter	Applicant
<b>Biological</b>	3	After construction the wetland and the buffer shall be separated from foot and vehicle traffic by a permanent post and cable fence. A concrete curb shall encircle the wetland buffer to prevent parking area runoff from entering the wetland.	Reviewed prior to building permit final or certificate of occupancy	Prior to building permit final.	Applicant
<b>Biological</b>	4	The applicant shall submit a complete planting plan for the riparian and wetland areas, including but not limited to trees and shrubs such as willow, wax-myrtle and red flowering currant. A post and cable fence shall be installed along the wetland buffer to delineate the boundary. The plan shall be reviewed and approved by the Planning Division and the Department of Fish and Wildlife.	Reviewed prior to building permit issuance.	Prior to building permit final or certificate of occupancy	Applicant
<b>Biological</b>	5	A Notice of Development Plan shall be recorded noting the wetland area and buffer as "unbuildable".	Reviewed prior to building permit issuance.	Prior to building permit issuance.	Applicant
<b>Biological</b>	6	The applicant is responsible for on-going maintenance of the restoration plantings, which shall include routine weed and litter removal and maintenance of protective fencing. The applicant shall establish a two year monitoring plan with the goals of developing perennial ground cover and long term maintenance.	Reviewed prior to building permit issuance	Monitoring to be conducted by a qualified biologist annually for two (2) years following construction	Applicant
<b>Hydrology and Water Quality</b>	7	The applicant shall submit a drainage and LID plan to the Planning Department for review and approval. The Planning Department and the Land Use Division of Public Works will review the plan and may require modifications or alteration.	Reviewed prior to building permit issuance	Prior to building permit issuance	Applicant

## ATTACHMENT 5

### REFERRAL AGENCY COMMENTS AND RECOMMENDATIONS

The project was referred to the following agencies for review and comment. Those agencies that provided written comments are checked off.

Referral Agency	Response	Recommendation	Attached	On File
County Building Inspection Division	✓	Conditional Approval		✓
Public Works Land Use Division	✓	Conditional Approval	✓	
Department of Environmental Health	✓	Approval		✓
Humboldt CSD	✓	Conditional Approval		✓
Humboldt #1 Fire Protection Dist.	✓	Approval		✓
California Coastal Commission	✓	Responded with comments	✓	
Department of Fish and Wildlife				
NWIC	✓	Contact local tribe		✓
Wiyot Tribe		No response		
Blue Lake Rancheria	✓	Not in tribal area		✓
Bear River Band	✓	Conditional Approval		✓
RWQCB		No response		



ARCATA-EUREKA AIRPORT TERMINAL  
McKINLEYVILLE  
FAX 839-3596

AVIATION 839-5401

DEPARTMENT OF PUBLIC WORKS

COUNTY OF HUMBOLDT

MAILING ADDRESS: 1106 SECOND STREET, EUREKA, CA 95501-0579  
AREA CODE 707

PUBLIC WORKS BUILDING  
SECOND & L ST., EUREKA  
FAX 445-7409

ADMINISTRATION	445-7491	NATURAL RESOURCES	445-7741
BUSINESS	445-7652	NATURAL RESOURCES PLANNING	267-9540
ENGINEERING	445-7377	PARKS	445-7651
FACILITY MAINTENANCE	445-7493	ROADS & EQUIPMENT MAINTENANCE	445-7421

CLARK COMPLEX  
HARRIS & H ST., EUREKA  
FAX 445-7388

LAND USE 445-7205

LAND USE DIVISION MEMORANDUM

TO: Karen Meynell, Planner

VIA: Robert W. Bronkall, Deputy Director

FROM: Kenneth Freed, Senior Engineering Technician

DATE: 09/11/2014

RE: DOLLAR GENERAL CDP-14-033; APN 305-101-054

This project is for the commercial development of APN 305-101-054. The Department will be requiring frontage improvements to be constructed under an encroachment permit. The parking lot has been evaluated and appears to provide good circulation. [reference: County Code sections 313-109.1.6.1 & 313-109.1.3.2.5]

The subject property has deferred pedestrian and storm water improvements that were conditioned as part of Subdivision PMS 03-19. The deferred improvements need to be completed at the time that the lot is developed.

Our review of this project is limited to what is shown on the submitted plot plan. If other facilities not shown on the plot plan will be constructed, contact this Department immediately for approval before construction. This Department has regulations regarding facilities such as retaining walls, fence site visibility, drainage culverts, and parking lanes within the County right of way. This Department has included general statements for facilities that may not be included on the plot plan.

The following conditions are recommended:

- (1) Applicant must apply for and obtain an encroachment permit for the commercial driveway. The permit will require the driveway entrance to be surfaced with asphalt concrete or Portland cement concrete. The driveway shall intersect the County road at a 90° angle. The driveway grade shall not exceed 2% in the first 20 feet. [reference: County Code sections 313-109.1.3.2.5 and 411-51 (b)(3)]
- (2) Applicant will be required to construct a commercial ADA driveway apron; remove the unused driveway drop curb (constructed at the time of the subdivision) and replace with CalTrans Type A2-6 curb and gutter, and construct a 5' wide Portland cement concrete sidewalk along the frontage of the lot.

The encroachment permit will also include connecting the parking lot drainage into the existing storm drain system within South Broadway. An oil-water filtration system is required prior to discharge into the County storm drain. Per the Development plan applicant shall prepare shop drawings of the oil-water filtration system and storm water diversion structure for approval.

(3) Applicant shall comply with the Subdivision's conditions of approval and requirements of the Development Plan for PMS 03-19, on file with the Planning and Building Department, which include but is not limited to construction of a storm water detention system. This system is to be reviewed and inspected by Planning and Building staff. Planning and Building must verify that the detention system complies with PMS 03-19. A copy of the detention construction plan and maintenance plan must be attached and made a part of the issuance of any development permit for the lot.

(4) All parking must be developed on-site. All parking required by Code must be constructed prior to occupancy of building or "final" issued for building permit. [reference: County Code section 313-109.1 et seq.]

(5) Site visibility must be maintained at the driveway approach in conformance with County Code. (Section 341-1 et seq.)

(6) Applicant shall be responsible to correct any involved drainage problems at the intersection of the residential driveway and the County maintained roadway to the satisfaction of this Department.

(7) Applicant shall pave, sign, and stripe the parking lot. [reference: County Code section 313-109.1.3.2.5 ]

**Informational Notes (not a requirement):**

1. Gates are not permitted on County right of way for public roads without authorization of the Board of Supervisors. Gates must not create a traffic hazard and must provide an appropriate turnaround in front of the gate (set back approximately 25 feet from the road). Existing gates shall be evaluated for conformance.

// END //

**CALIFORNIA COASTAL COMMISSION**

NORTH COAST DISTRICT OFFICE  
1385 EIGHTH STREET • SUITE 130  
ARCATA, CA 95521  
VOICE (707) 826-8950  
FACSIMILE (707) 826-8960



August 28, 2014

Emily Benvie, Planner  
Humboldt County Planning and Building Dept.  
3015 H Street  
Eureka, CA 95501

RE: Comments on CDP 14-033 (Dollar General) to develop a 0.87-acre vacant parcel with a 9,300-sq.-ft. commercial building and associated parking lot.

Dear Emily:

We received the subject referral on August 14, 2014 and offer the following comments. In your analysis of the proposed development's consistency with the certified Humboldt Bay Area Plan (HBAP) and coastal zoning regulations (CZR), please consider the following:

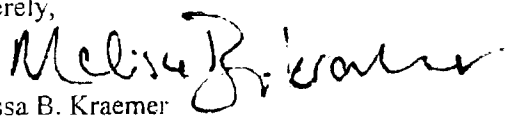
1. Appealability. Pursuant to PRC §30603(a)(2), County approval of the proposed development may be appealed to the Coastal Commission if the development is located within 100 feet of any wetland. Because of the prevalence of known wetlands in the project vicinity, as well as the "Coastal Wetland Area" combining zone that applies to the property, it is important for the County to verify the project's appealability status to ensure it is correct in that there are no wetlands within 100 feet of the perimeter of the proposed development footprint.
2. Low Impact Development. We recommend requiring incorporation of LID techniques into the design of the proposed development to maximize the retention of stormwater on site such that, consistent with the policies of HBAP Section 3.30, pollutant-laden runoff from the proposed new parking lot and other impermeable surfaces would not degrade surrounding coastal wetlands and waters. Examples of appropriate LID techniques for the proposed project may include (though not necessarily be limited to): (1) reducing the amount of proposed hardscape, e.g., through requiring that appropriately sized grassy swales and vegetated islands be incorporated into the parking lot design to capture and infiltrate surrounding stormwater runoff, (2) requiring the use of porous pavement rather than traditional asphalt for the proposed parking lot, (3) requiring preservation of native vegetation, and (4) requiring that the building be designed for roof runoff to biofiltrate into vegetated areas on site. If you have any questions about LID or specific techniques, we would be happy to provide additional information and resources.

Thank you for the opportunity to provide comments on the proposed application. If you have any questions, please contact me at (707) 826-8950.



Emily Benvie  
Page 2

Sincerely,

  
Melissa B. Kraemer  
Coastal Planner

Cc: Planning Commission Clerk, Humboldt County Planning and Building Dept.

## FLOYD LAW FIRM

Attorneys:

Bradford C Floyd  
Carlton D. Floyd

819 Seventh Street  
Eureka, California 95501  
Telephone: (707) 445-9754  
Facsimile: (707) 445-5915  
E-mail: [bcfloyd@floydlawfirm.net](mailto:bcfloyd@floydlawfirm.net)

October 27, 2016

Humboldt County Board of Supervisors  
825 Fifth Street, Room  
Eureka, CA 95501

**Re: Dollar General - Eich Road, Humboldt Hill area;  
Coastal Development Permit, Special Permit  
Application Number 9329, Case Number CDP-14-033/ SP-14-049**

Dear Supervisors:

As you may recall from previous correspondence dated August 25, 2016, I represent Dan and Kelly Noga, the owners of property adjacent to the proposed development of the Dollar General store, which is the subject of this agenda item. The Nogas are the owners of the Country Club Market located at 5667 S. Broadway and the vacant land which is situated between the Country Club Market and the site for the proposed Dollar General store. In the August 25 correspondence I set forth in detail our objections to the issuance of a special permit. Since that time, I have learned of additional reasons why the Board of Supervisors should grant the Nogas' appeal in this matter and deny the special permit requested by applicant, or, in the alternative, send this matter back to the Planning Commission for reconsideration.

The Humboldt Bay Area Plan of the Humboldt County Local Coastal Program ("HBAP") addresses, among other things, wetlands, such as the wetlands identified on the lot Cross Development/Dollar General is seeking a special permit on. For your convenience in reviewing the code sections of the HBAP that apply, I have enclosed the Cover Page of the HBAP and the applicable code sections, namely, Chapter 3.30.B.6, pages 47-48.

Specifically, HBAP 3.30.B.6 addresses Wetland Buffer Areas. HBAP 3.30.B.6 restricts all land use or development in areas adjacent to coastal wetlands in the Wetland Buffer Areas<sup>1</sup>. The Wetland Buffer Areas require a setback of between 100-200 feet from the identified wetland, if the new development is outside an urban limit line. (HBAP 3.30.B.6.d.)

HBAP 3.30.B.6.e provides a variance for setbacks of less than 100-200 feet in both urban and rural areas when the prescribed buffer would prohibit development of the site for principle use for which it was designated. However, if a variance of the Wetland Buffer Areas less than 100 feet is allowed by County, then two additional conditions are imposed by the HBAP. First, the reduction in the setback shall still retain the maximum setback feasible; second, the mitigation measures set forth in HBAP 3.30.B.6.f, as well as any additional measures the County may impose, "shall" be included. These mandatory mitigation measures are set forth verbatim below:

---

<sup>1</sup>Wetland Buffer Area is defined in HBAP 3.30.B.6.a.



- f. (1) Not more than 25% of the lot surface shall be effectively impervious.
- (2) The release rate of storm runoff to adjacent wetlands shall not exceed the natural rate of storm runoff for a 50 year storm of 10 minute duration.
- (3) Storm water outfalls, culverts, gutters, and the like shall be dissipated.
- (4) Septic systems or alternative waste disposal systems must meet standards of the Humboldt-Del Norte Health Department and the Regional Water Quality Control Board.
- (5) Areas disturbed during construction, grading, etc., within 100 feet of the mean high water line, shall be restored to original contours and sufficiently and promptly replanted with vegetation naturally occurring in the immediate area.
- (6) Development and construction shall minimize cut and fill operations and erosion and sedimentation potentials through construction of temporary and permanent sediment basins, sediment basins, seeding or planting bare soil, diversion of runoff away from graded areas and areas heavily used during construction, and, when feasible, avoidance of grading during the rainy season (November through April).

The issuance of the special permit to the applicant clearly violates HBAP 3.30.B.6.e, and f. For instance, the lot size of the subject lot is only .87 acres or 37,897 square feet. The building alone is 9,300 square feet which is over 24% of the lot size. The sidewalk and curb along the front of the building are 920 square feet. When the square footage of the building, sidewalk and curb are added together (10,220 square feet) this equals 27% of the lot size—a clear violation of HBAP 3.30.B.6.e, and f.(1). But it gets worse. When the square footage of parking lot, roadside curbs, gutters and the loading zone (all of which include surfaces effectively impervious to water) are added in, then over 80% of the parcel size would have impervious surfaces.

The permit approved by the Commission allows for a 16-foot setback from identified and designated wetland on the subject parcel for new development. Since new development will occur in the 100-200 foot wetland buffer “Not more than 25% of the lot surface shall be effectively impervious” (HBAP 3.30.B.6.f.1)—in fact over 80% of the lot surface would be effectively impervious.

In addition, nothing in the special permit approved by the Commission addresses the other mitigation measures that “shall” be included if new development is going to take place in the wetland buffer. (HBAP 3.30.B.6.f.(2)-(6).) These mitigation measures likewise need to be addressed before a special permit is issued involving new development in a wetland buffer.

Based upon the foregoing, Mr. and Mrs. Noga respectfully request the Board deny the special permit approved in this matter by the Planning Commission. In the alternative, the Board could send this matter back to the Commission requiring it address the mandatory mitigation measures outlined in HBAP 3.30.B.6.f. (1)-(6). These mitigation measures make it impossible for Cross Development/Dollar General to develop this property.

Respectfully submitted,



AGENDA ITEM NO.

## COUNTY OF HUMBOLDT

Hearing Date: November 15, 2016

To: Board of Supervisors

From: Kevin R. Hamblin, Interim Director, Planning and Building Department *EH*

Subject:

Appeal of Planning Commission Approval of the Dollar General Coastal Development and Special Permit  
Case Number CDP-14-033AA, SP-14-049AA  
Assessor Parcel Number 305-101-054  
Humboldt Hill area

### RECOMMENDATIONS:

That the Board of Supervisors:

1. Open the public hearing and receive the staff report and public comment.
2. Based on the findings in the staff report and testimony received about the project, deny the appeal, uphold the Planning Commission's approval of the project, making the findings in Resolution 16-\_\_\_\_\_ (Attachment A) for the Dollar General Coastal Development and Special Permit application subject to the modified conditions of approval in Exhibit A to Attachment A.
3. Direct the Clerk of the Board to give notice of the decision to the appellant, the project applicant, the agent and any other interested party.
4. Close the public hearing.

Prepared by \_\_\_\_\_  
Karen Meynell, Planner

CAO Approval *Cheryl Dillingham*

REVIEW: Auditor \_\_\_\_\_ County Counsel *WZ* Human Resources \_\_\_\_\_ Other \_\_\_\_\_

TYPE OF ITEM:  
☐ Consent  
☐ Departmental  
☒ Public Hearing  
☐ Other \_\_\_\_\_

PREVIOUS ACTION/REFERRAL:

Board Order No. L-2; L-3

Meeting of: 9/6/2016; 10/11/2016

### BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor  
Seconded by Supervisor

Ayes  
Nays  
Abstain  
Absent

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

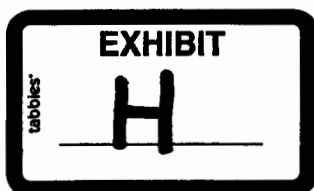
Dated: \_\_\_\_\_ Exhibit No. 4

By: \_\_\_\_\_ A-1-HUM-16-0101

Kathy Hayes, Clerk of the Board

NOGA APPEAL

Page 172 of 184



**SOURCE OF FUNDING:** Fees submitted by the appellant are deposited into Planning and Building Department Current Planning Revenue Account 1100-277-608000. Any costs incurred by this appeal that exceed the applicant's appeal fee will be covered by the Current Planning Division's FY 2015-16 General Fund Allocation.

**DISCUSSION:**

This staff report is supplemental to the staff report for the Dollar General Appeal originally scheduled for September 6, 2016 and continued to October 11, 2016. At that meeting, because Dollar General's representative was not able to attend due to illness the Board agreed to open and continue the public hearing on this matter to November 15, 2016.

The Supplemental Report includes an expanded discussion of conformance with the Wetland Buffer provisions in Section 3.30B.6.f of the Humboldt Bay Area Plan (HBAP) along with revised Condition of Approval #23 which incorporates these required mitigations into the project approval. These documents along with an updated Resolution are included as attachments to this report.

Refer to the Board Reports from September 6 and October 11 for a full discussion of the appeal.

**FINANCIAL IMPACT:** There may be an effect on the General Fund. The appellant has paid in full the appeal fee associated with this appeal. Any costs incurred by this appeal that exceed the applicant's appeal fee will be covered by the Current Planning Division's FY 2016-17 General Fund Allocation.

**OTHER AGENCY INVOLVEMENT:** The project was referred to the applicable referral agencies for comments and recommendations. The Draft Mitigated Negative Declaration was circulated to State agencies pursuant to the California Environmental Quality Act.

**ALTERNATIVES TO STAFF RECOMMENDATIONS:** The Board of Supervisors can uphold the appeal and deny the project. This alternative should be implemented if the Board is unable to make all of the required findings. Planning Division staff has found that the required findings can be made. Consequently, staff does not recommend further consideration of this alternative.

**ATTACHMENTS:**

The referenced materials have been previously provided to the Clerk of the Board and are available for public review.

Attachment A	Updated Resolution
	Exhibit A - Revised Conditions of Approval
Attachment B	Expanded discussion of Wetland Buffer provisions

**ATTACHMENT A**  
**Updated Resolution**



**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA**  
**Certified copy of portion of proceedings; Meeting on November 15, 2016**

RESOLUTION No. \_\_\_\_-\_\_\_\_

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT DENYING THE APPEAL AND AFFIRMING  
THE DECISION OF THE PLANNING COMMISSION ON THE DOLLAR GENERAL PROJECT FILE #305-101-054; CASE #  
CDP-14-033AA AND SP-14-049AA

**WHEREAS, Dan Dover** of Cross Development submitted an application and evidence on behalf of Dollar General in support of approving a Coastal Development Permit and Special Permit for a commercial retail store; and

**WHEREAS,** the Planning and Building Department – Planning Division has reviewed the submitted application and evidence and has referred the application and evidence to involved reviewing agencies for site inspections, comments and recommendations; and

**WHEREAS,** the Planning Division, the lead agency, has prepared a Mitigated Negative Declaration for the subject proposal in accordance with the California Environmental Quality Act (CEQA); and

**WHEREAS,** the Planning Commission staff report includes evidence in support of making all of the required findings for approving CDP-14-033 and SP-14-049; and

**WHEREAS,** the Planning Commission held a public hearing on July 7, 2016 during which they considered the Mitigated Negative Declaration and received staff reports, accepted public comment, and deliberated on the proposed project;

**WHEREAS,** the Planning Commission, in conformance with Sections 15090 and 15091 of the State CEQA Guidelines, (a) reviewed and found that the Mitigated Negative Declaration in Attachment C has been completed in compliance with CEQA and reflects the Lead Agency's independent judgment and analysis; (b) it has reviewed and considered the information contained in the Mitigated Negative Declaration for the project; and (c) the proposed project, as conditioned and mitigated, will not have a significant effect on the environment;

**WHEREAS,** The Planning Commission made the findings in the Planning Division staff report for Case Nos.: CDP-14-033 and SP-14-049 based on the submitted evidence;

**WHEREAS,** The Planning Commission conditionally approved the Coastal Development Permit and Special Permit as recommended in the Planning Division staff report for Case Nos.: CDP-14-033 and SP-14-049; File No. APN: 305-101-054;

**WHEREAS,** On July 20, 2016, the Planning Commission approval was appealed by Dan and Kelly Noga;

**WHEREAS,** the Board of Supervisors originally scheduled the matter for hearing on September 6, 2016, continued the hearing to October 11, 2016, and opened and continued the public hearing to November 15, 2016 at which time the Board held a public hearing on the project and considered the issues of appeal and staff recommendations;

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA**  
**Certified copy of portion of proceedings; Meeting on November 15, 2016**

**NOW, THEREFORE**, be it resolved, determined, and ordered by the Board of Supervisors that:

1. The Board of Supervisors denies the appeal in full, upholds the Planning Commission approval of the project, adopts the Mitigated Negative Declaration (Attachment C to the December 6, 2016 Board Staff Report) and adopts the Planning Commission's findings and approves the Dollar General Application (Case Nos.: CDP-14-033 and SP-14-049; File No. APN: 305-101-054) with the incorporation of the expanded discussion of the Wetland Buffer provisions as set forth in Attachment B, subject to the conditions of approval, including the addition of Condition of Approval #23 in Exhibit A hereto.

DATED: November 15, 2016

\_\_\_\_\_  
MARK LOVELACE, Chair  
Humboldt County Board of Supervisors

Adopted on motion by Supervisor  
and the following vote:

, seconded by Supervisor

AYES:            Supervisors:  
NOES:           Supervisors:  
ABSENT:        Supervisors:  
ABSTAIN:       Supervisors:

STATE OF CALIFORNIA    )  
County of Humboldt      )

I, Kathy Hayes, Clerk of the Board of Supervisors of the County of Humboldt, State of California do hereby certify the foregoing to be a full, true, and correct copy of the original made in the above-titled matter by said Board of Supervisors at a meeting held in Eureka, California as the same now appears of record in my office.

In Witness Whereof, I have hereunto set  
my hand and affixed the Seal of said  
Board of Supervisors.

KATHY HAYES  
Clerk of the Board of Supervisors of  
the County of Humboldt, State of California

**EXHIBIT A**

**Revised Conditions of Approval**

## CONDITIONS OF APPROVAL

Approval of the Coastal Development and Special Permit is conditioned upon the following terms and requirements which must be fulfilled before a building permit may be issued or use initiated.

1. The applicant shall apply for and obtain an encroachment permit for the commercial driveway. The permit will require the driveway entrance to be surfaced with asphalt concrete or Portland cement concrete. The driveway shall intersect the County road at a 90 degree angle. The driveway grade shall not exceed 2% in the first 20 feet.
2. Applicant will be required to construct a commercial ADA driveway apron; remove the unused driveway drop curb (constructed at the time of the subdivision) and replace with CalTrans Type A2-6 curb and gutter, and construct a 5 foot wide Portland cement concrete sidewalk along the frontage of the lot.
3. The encroachment permit will also include connecting the parking lot drainage into the existing storm drain system within South Broadway. An oil-water filtration system is required prior to discharge into the County storm drain. Per the Development plan the applicant shall prepare shop drawings of the oil-water filtration system and storm water diversion structure for approval. (See also COA #14).
4. The applicant shall comply with the Subdivision's conditions of approval and requirements of the Development Plan for PMS-03-19, on file with the Planning and Building Department, which includes, but is not limited to, construction of a storm water detention system. This system is to be reviewed and inspected by the Department of Public Works (DPW). A fee will be charged by DPW for this review. A copy of the detention construction plan and maintenance plan must be attached and made part of the issuance of any development permit for the lot. (See also COA #14).
5. A total of twenty-four (24) non-tandem, independently accessible parking spaces, including one (1) handicap accessible space, shall be constructed on-site prior to occupancy or before a "final" is issued for the Building Permit. The location of all on-site parking spaces shall appear on the final Building Division Plot Plan. Up to six (6) of the parking spaces may be designated as compact. Compact parking spaces shall be visibly marked with signs and shall be clustered in one section of the parking area. **This requirement shall be clearly identified on the plot plan for building permit.** All parking spaces and access shall be improved with a surface of asphalt or Portland cement and shall be maintained for the life of the project.
6. The project by Code must include a loading space of not less than ten (10) feet wide, sixty (60) feet long and shall contain at least fourteen (14) feet of clearance, or an exception shall be secured in accordance with Section 313-109.1.5.2. Deliveries shall take place during business hours.
7. Site visibility must be maintained at the driveway entrance and at the corners of the lot in conformance with County Code.
8. Applicant shall be responsible to correct any involved drainage problems at the intersection of driveway and the County maintained roadway to the satisfaction of the Department of Public Works, Land Use Division. (See also COA #14).
9. Applicant shall pave, sign and stripe the parking lot.

10. Water and sewer service are available upon payment of applicable fees to Humboldt Community Services District. Water and sewer services shall not be located in a driveway area.
11. Hours of construction activity shall be limited to Monday through Friday from 8:00 am to 6:00 pm, Saturday from 9:00 am to 5:00 pm with no construction activity on Sunday.
12. During construction of the building the applicant shall:
  - a. use dust control techniques when excavating to minimize dust problems on adjacent parcels;
  - b. re-vegetate all disturbed areas prior to winter rain; and
  - c. take all precautions necessary to avoid the encroachment of dirt or debris on adjacent properties.

The plot plan submitted for the Building Permit shall indicate that all ground bared during construction shall be landscaped and/or seeded and mulched prior to October 1st.

13. The applicant shall submit a landscaping plan subject to the review and approval of the Planning Director. All landscaping shall be installed and have its maintenance system in working order prior to occupancy issuance.
14. The applicant shall submit a Drainage Plan for approval by the Department of Public Works that incorporates Low Impact Development techniques into the project design in a manner complementary to the requirements of COA #3 (oil-water filtration) and COA #4 (storm water detention). The Drainage Plan shall comply with the standards of a Regulated Project under the State Water Board's Phase II Small Municipal Separate Storm Sewer System (MS4) Program. Areas identified as treatment areas shall be maintained for the life of the project. The purpose of these combined measures is to maximize the retention of storm water on site such that pollutant-laden runoff from the proposed new parking lot and other impermeable surfaces does not degrade surrounding coastal wetlands and waters.
15. The applicant shall implement all Mitigation Measures set forth in the Mitigated Negative Declaration.
16. The applicant shall submit a soils report with erosion and sediment control measures for review by the Building Inspection Division. Engineered construction plans will be required.
17. The applicant shall submit a Lighting Plan for the project for approval by the Planning and Building Department. The plan shall address the amount of light to be used, minimize glare and off-site impacts of light trespass, and provide for energy conservation by reducing the amount of light during non-business hours while maintaining adequate illumination for security.
18. Signs shall conform to Section 313-87 of the zoning regulations and the County's sight visibility ordinance. A signage plan shall be submitted with the application for Building Permit.
19. **Within five (5) days of the effective date of the approval of this permit**, the applicant shall submit a check to the Planning Division payable to the Humboldt County Recorder in the amount of \$2,260.25. Pursuant to Section 711.4 of the Fish and Game Code, the amount includes the Department of Fish and Wildlife (DFW) fee plus a \$50 document handling fee. This fee is effective through December 31, 2016 at such time the fee will be adjusted pursuant to Section 713 of the Fish and Game Code. Alternatively, the applicant may

contact DFW by phone at (916) 651-0603 or through the DFW website at [www.wildlife.ca.gov](http://www.wildlife.ca.gov) for a determination stating the project will have no effect on fish and wildlife. If DFW concurs, a form will be provided exempting the project from the \$2,210.25 fee payment requirement. In this instance, only a copy of the DFW form and the \$50.00 handling fee is required.

20. This project is required to pay for permit processing on a time and material basis as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors. Any and all outstanding Planning fees to cover the processing of the project shall be paid to the Humboldt County Planning Division, 3015 "H" Street, Eureka.
21. A review fee for Conformance with Conditions as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors (currently \$95.00) shall be paid to the Humboldt County Planning Division, 3015 "H" Street, Eureka. This fee is a deposit, and if actual review costs exceed this amount, additional fees will be billed at the County's current burdened hourly rate.
22. The applicant shall submit to the Planning Director annual follow-up reports prepared by a qualified biologist that verifies whether or not: a) the mitigations recommended in the Wetland Protection Plan dated June 5, 2016, prepared by Virginia Dains, Consulting Biologist were adhered to, and b) to assess the success of the restoration plantings and maintenance activities (invasive plant and litter removal and fence maintenance). Surveys shall be conducted for two (2) consecutive years after construction. The report shall prescribe any additional measures required to insure full compliance with the Wetland Protection Plan. A written contract for services and cost estimate for this monitoring work shall be provided to the Department prior to initiation of work. A performance bond may be required by the Planning Director.
23. The following mitigation measures shall apply in addition to those specified in the environmental document.
  1. Not more than 25% of the lot surface shall be effectively impervious.
  2. The release rate of storm runoff to adjacent wetlands shall not exceed the natural rate of storm runoff for a 50 year storm of 10 minute duration.
  3. Storm water outfalls, culverts, gutters and the like shall be dissipated.
  4. Septic systems or alternative waste disposal systems must meet standards of the Humboldt -Del Norte Health Department and the Regional Water Quality Control Board.
  5. Areas disturbed during construction, grading, etc., within 100 feet of the mean high water line, shall be restored to original contours and sufficiently and promptly replanted with vegetation naturally occurring in the immediate area.
  6. Development and construction shall minimize cut and fill operations and erosion and sedimentation potentials through construction of temporary and permanent sediment basins, seeding or planting bare soil, diversion of runoff away from graded areas and areas heavily used during construction, and, when feasible, avoidance of grading during the rainy season (November through April).

**On-going Requirements/Development Restrictions which Must be Satisfied for the Life of the Project:**

1. The project shall be developed and conducted in accordance with the Project Description, Plan of Operations, Project Site Plan and Wetland Protection Plan. Changes other than Minor Deviations to the Plot Plan as provided by Section 312-11.1 shall require a modification of this permit.



2. A six (6) foot high solid wood fence shall be installed at the time of development between the residential and commercial use and be maintained for the life of the development.
3. All new and existing outdoor lighting shall be compatible with the existing setting and directed within the property boundaries. Illuminated signs shall be turned off within one (1) hour of close of business.
4. New utilities shall be installed underground, when feasible.
5. Landscaping shall be maintained for the life of the development in conformance with the approved landscaping plan.

#### **Informational Notes**

1. If cultural resources are encountered during construction activities, the contractor on site shall cease all work in the immediate area and within a 50 foot buffer of the discovery location. A qualified archaeologist as well as the appropriate Tribal Historic Preservation Officer(s) are to be contacted to evaluate the discovery and, in consultation with the applicant and lead agency, develop a treatment plan in any instance where significant impacts cannot be avoided.

The Native American Heritage Commission (NAHC) can provide information regarding the appropriate Tribal point(s) of contact for a specific area; the NAHC can be reached at 916-653-4082. Prehistoric materials may include obsidian or chert flakes, tools, locally darkened midden soils, groundstone artifacts, shellfish or faunal remains, and human burials. If human remains are found, California Health and Safety Code 7050.5 requires that the County Coroner be contacted immediately at 707-445-7242. If the Coroner determines the remains to be Native American, the NAHC will then be contacted by the Coroner to determine appropriate treatment of the remains pursuant to PRC 5097.98. Violators shall be prosecuted in accordance with PRC Section 5097.99.

The applicant is responsible for ensuring compliance with this condition.

2. Gates are not permitted on County right of way for public roads without authorization of the Board of Supervisors. Gates must not create a traffic hazard and must provide an appropriate turnaround in front of the gate (set back approximately 25 feet from the road). Existing gates shall be evaluated for conformance.
3. The applicant is responsible for receiving all necessary permits and/or approvals from other state and local agencies.
4. The Coastal Development Permit and Special Permit shall expire and become null and void at the expiration of one (1) year after all appeal periods have lapsed (see "Effective Date"); except where construction under a valid building permit or use in reliance on the permit has commenced prior to such anniversary date. The period within which construction or use must be commenced may be extended as provided by Section 312-11.3 of the Humboldt County Code.
5. New Development Requires a Permit. Any new development as defined by Section 313-139.6 of the Humboldt County Code (H.C.C.) shall require a Coastal Development Permit and Special Permit or permit modification, except for Minor Deviations from the Plot Plan as provided under Section 312-11.1 of the Zoning Regulations.

**ATTACHMENT B**

**Expanded Discussion of Wetland Buffer Provisions**

<p>Biological Resource §3400 - §3604 (FP) §3.30 (HBAP)</p>	<p>Protect designated sensitive and critical resource habitats.</p>	<p>A site visit by Department of Fish and Wildlife identified a small isolated wetland near the middle of the parcel. The applicant engaged the services of a biologist who submitted a Preliminary Wetland Delineation (Dains, May 6, 2015) followed by a Wetland Protection Plan (Dains, September 15, 2015). The Wetland Delineation identified the wetland as a 150 square foot seasonal isolated wetland occurring on disturbed ground. Section 3.30.B.6.e of the HBAP allows for the relaxation of the 100 foot wetland buffer setback provided the reduction is necessary to allow development of the parcel with the principally permitted use and the maximum feasible setback is maintained sufficient to protect the wetland's habitat values. The Wetland Protection Plan details measures to implement to ensure the protection and rehabilitation of the wetland area. The 150 square foot wetland will be buffered by an area 13 times its size. The minimum setback to parking areas is approximately 16 feet. The wetland and buffer area will be separated from foot and vehicular traffic by a permanent post and cable fence. A concrete curb will encircle the wetland buffer to prevent parking area runoff from entering the wetland. During construction the wetland and buffer will be protected with high visibility fencing and remain undisturbed. After construction the wetland and buffer will be planted with native, locally sourced species and monitored and maintained to ensure the plantings survive.</p> <p><u>The HBAP requires that when development occurs within the wetland buffer, the project shall be subject to the mitigation measures set forth in section 3.30B.6.f(1) through (6) inclusive, as applicable. These measures will be part of the final development plan for the project (see Page 9 of this staff report, Condition of Approval #23 for full text of this provision). The measures will be satisfied as follows: (1) no more than 25% impervious surfaces – the applicant will meet this standard through limiting hardscape and through use of pervious paving and/or other suitable surfacing materials; (2) release of storm water runoff – runoff will be redirected away from the wetland feature through drainage plan and through incorporation of Low Impact Development features (Condition of Approval #3, 14, 15); (3) dissipation of outfalls, culverts and gutters – drainage plan and to comply with MS4 and on-site detention (Conditions of Approval #3, 4, 8, 14); (4) sewage disposal to meet Basin Plan requirements – the development will be served by Humboldt Community Services District; (5) disturbance within 100 feet of mean high water line – not applicable; and (6) minimize cut and fill, address sediment and revegetate all disturbed areas – the project will use best management practices to control erosion and sediment from construction activities and includes landscaping plan (Condition of Approval -#12, 13, 16).</u></p> <p>The project is conditioned with standard erosion and sediment controls, an oil-water separator, and LID techniques for natural storm water detention. Therefore, minimal impacts to biological resources and/or sensitive or critical habitats resources are expected.</p>
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313-87.3 Signs and Nameplates	In commercial zones signs shall not exceed 300 square feet in the aggregate and shall not be divided into more than six single-faced or double-faced signs.	The project proposes two signs. The first is a double-sided pole mounted sign of approximately 70.7 square feet per side (141.4 square feet total). The height of the pole mounted sign is 21 feet. This sign is proposed to be illuminated. The second sign will be mounted on the building and be approximately 150 square feet and illuminated. Together the signs total 291.5 square feet.
313-38.1 W: Coastal Wetland Areas	<u>The purpose of these provisions is to establish regulations to provide that any development in coastal wetlands will not degrade the wetland, but will maintain optimum populations of marine or freshwater organisms and, where feasible, will enhance wetland resources.</u>	<u>The project proposes the protection, revegetation and restoration of the wetland by implementing the mitigation measures in the environmental document and Section 3.30B6 Wetland Buffers of Humboldt Bay Area Plan and adhering to the Wetland Protection Plan developed for the project.</u>  <u>These measures, when implemented, will enhance the wetland resources.</u>
<b>313-125 WETLAND BUFFER AREAS</b>		
313-125.8 Required Findings	<u>Development within Coastal Wetland Buffer Areas shall be permitted only if the applicable Resource Protection Impact Findings in Chapter 2, Procedures, Supplemental Findings (312-39.15), are made.</u>	<u>As described and depicted on the plot plan, a degraded seasonal wetland (approximate 150 square feet) lies in the southwest portion of the property. By definition, a buffer from this wetland feature extends to South Broadway and the adjoining property lines. Per Section 313-125.7.3 development within the wetland buffer may be sited closer than 100 feet (or the average setback of existing development using the string line method) from the wetland feature. This accommodation may be used if it can be shown that 1) the lesser setback will not result in a significant adverse effect to the wetland habitat and will be compatible with the continuance of such habitat; and 2) additional mitigation measures may be required to ensure that new development does not adversely affect habitat values. The two findings are addressed in the Dains reports (refer to discussion in Section 1 HBAP consistency (above)) and in the Supplemental Findings for Coastal Wetland Buffers 312-39.15 below.</u>
<b>312-39 SUPPLEMENTAL COASTAL RESOURCE PROTECTION IMPACT FINDINGS</b>		
<b>312-39.14 Coastal Wetlands</b>		
<u>There is no less environmentally damaging feasible alternative</u>	<u>The project proposes to develop a parcel that was subdivided for the purposes of future commercial</u>	

## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

1385 EIGHTH STREET, SUITE 130

ARCATA, CA 95521

VOICE (707) 826-8950 FAX (707) 826-8960

DEC 05 2016

CALIFORNIA  
COASTAL COMMISSION  
NORTH COAST DISTRICT

## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name:

Kimberly A. Tays

Mailing Address:

P.O. Box 5047

City:

Arcata, CA

Zip Code:

95518

Phone:

707-630-3170

SECTION II. Decision Being Appealed

1. Name of local/port government: Humboldt County Board of Supervisors
2. Brief description of development being appealed: Dollar General; Humboldt Hill area; CDP-14-033/SP-14-049.  
The proposed project is a commercial 9,300 sq.ft. building on a 0.87-acre vacant parcel. A 150 sq.ft. seasonal wetland was identified near the middle of the parcel. A special permit is required to reduce the wetland setback in order to develop the parcel.
3. Development's location (street address, assessor's parcel no., cross street, etc.):  
The proposed project site is located on the east side of South Broadway, approximately 455 feet north from the intersection of Eich Road and South Broadway, and is identified as Assessor Parcel No. 305-101-054.
4. Description of decision being appealed (check one.):
  - ☐ Approval; no special conditions
  - ☒ Approval with special conditions:
  - ☐ Denial

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator  
☒ City Council/Board of Supervisors  
☐ Planning Commission  
☐ Other

6. Date of local government's decision: Planning Commission, July 7, 2016  
Board of Supervisors, November 15, 2016 (Appeal Hearing)

7. Local government's file number (if any): Application No. 9329

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Dan Dover  
c/o Dollar General  
5317 Inverrary Drive  
Plano, TX 75093

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Bradford C. Floyd  
Floyd Law Firm  
819 Seventh Street  
Eureka, CA 95501

(2) Cookman-Meyer Partnership  
1920 Freshwater Road  
Eureka, CA 95503

(3)

(4)



## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

### **SECTION IV. Reasons Supporting This Appeal**

#### **PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly ***your reasons for this appeal***. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SEE ATTACHMENT (CONSISTING OF 6 PAGES) ENTITLED: Section IV. Reasons Supporting This Appeal:

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**

**SECTION V. Certification**

The information and facts stated above are correct to the best of my/our knowledge.

Kimberly A. Tays  
Signature of Appellant(s) or Authorized Agent

Date: 12/4/16

**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby  
authorize \_\_\_\_\_  
to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_

#### **Attachment IV. Reasons Supporting This Appeal:**

**(In Re: CDP 14-033, Dollar General (DG) Proposed Development near Humboldt Hill, Humboldt County, CA):**

Pursuant to PRC Section 30603(a)(2), any development located within 100 feet of any wetland may be appealed to the California Coastal Commission. This proposed development is within 100 feet of a 150-sq. ft. seasonal wetland, and my reasons for the appeal are stated below:

Reduction to Setbacks/Buffer Zone: The reduction in setbacks are too extreme and will further degrade this small wetland and its habitat values. While the standard setback for an urban-area wetland is 100 feet (per HBAP Section 3.30.B.6.c.), the Humboldt County Planning Commission and Board of Supervisors approved this project with setbacks of 5', 16.49', 17.03' and 20.11' (for an average of 14.65'). (To see these setbacks, look at Figure 1 entitled *Wetland Protection Area*, prepared by Tectonics Design Group, and included in the staff report). To justify these setbacks, planning staff referred to Section 3.30.B.6.e of the HBAP that *allows for the relaxation of the 100 foot wetland buffer setback provided the reduction is necessary to allow development of the parcel with the principally permitted use and the maximum feasible setback is maintained sufficient to protect the wetland's habitat values*. No specific findings were presented in the staff report or at the public hearings on how these reduced setbacks would be *sufficient to protect the wetland's habitat values*. No alternatives were presented or discussed at the July 7 Planning Commission meeting or at the November 15 Board of Supervisors meeting about reducing the footprint or reconfiguring the project in a way to allow for larger wetland buffer setbacks or to provide a larger buffer on one or two sides of the wetland to connect to other habitat. Such drastic reductions in the buffer setbacks and extensive removal of native vegetation to allow for this development would violate Section 30231 of the HBAP that calls for maintaining *natural vegetation buffer areas that protect riparian habitats [...]* (p.49).

Impervious Surfaces: Section 3.30.B.6.f. of the HBAP states: *All new development within the wetland buffer shall include the following mitigation measures: (1) Not more than 25% of the lot surface shall be effectively impervious*. Prior to the November 15 Board of Supervisors meeting, there were no plans to incorporate pervious/porous surfaces into the project. Then, at the November 15 meeting, a new condition, #23, was introduced into the permit documents that stated: *Not more than 25% of the lot surface shall be effectively impervious*. No plans or specifics were provided in the staff report or discussed during the November 15 meeting about what surfaces would be used, where they would be used, and whether there was sufficient space to meet the *not more than 25%* impervious surface requirement. Instead, the comment was made during the meeting that the proposed LID development plans will be approved by the Public Works Department. This means that public members have not been provided the opportunity to review the LID design plans and or make public comments about whether they believe those plans are adequate to meet the previous surface requirement.

Also, a post and cable fence, a concrete curb encircling the wetland and plans to augment the hydrology by directing the roof runoff into a vegetated swale are inadequate mitigation measures to protect the wetland and its habitat values. Natural drainage to the wetland will be significantly altered from grading activities, from changes to the slope of the property and because large vegetated areas will be displaced with unnatural, un-vegetated surfaces.



Because hydrology is such a vital feature of a wetland ecosystem, interference with the natural flow of rainwater/runoff will likely have a significant impact on the wetland, vegetated buffer areas and wildlife habitat. Such impacts would violate Section 30231 of the HBAP, which calls for *controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow [and] maintaining natural vegetation buffer areas that protect riparian habitats [...]* (p.49). In fact, it is unlikely the wetland will continue to function, because there is no room for wildlife to thrive in such an unnatural environment.

Vegetation Removal: Nearly all of the vegetation, including numerous mature native Hooker willows, were mowed to the ground a few weeks after the July 7 Planning Commission meeting. One can only assume that this was deliberately done to further degrade the site to allow for Dollar General's retail store. While the staff report states that native plants are to be planted around the wetland, this is not an appropriate mitigation measure, as mature native vegetation already existed on site (see 2 attached photos taken on July 13, 2016). Furthermore, because the proposed area to be set aside for the wetland is so small—1,889 sq. ft.—this leaves very little room for larger plants like the Hooker willow to develop fully and provide adequate shade and refuge for the birds and wildlife, and it greatly reduces the undisturbed area that birds and wildlife have to fly or move about on the wetland. As Section 30231 calls for *maintaining natural vegetation buffers that protect riparian habitats*, the extensive removal of well-established vegetation conflicts with this section of the HBAP (p.49).

Monitoring Program: Mitigation measure #6 states: *The applicant is responsible for on-going maintenance of the restoration plantings, which shall include routine weed and litter removal and maintenance of protective fencing. The applicant shall establish a two year monitoring plan with the goals of developing perennial ground cover and long term maintenance.* (See p. 82 of staff report). However, no specifics were provided in the staff report to answer the following questions: (1) How will a 2-year monitoring plan protect the wetland? (2) How often will the wetland be monitored? (3) Who will insure the monitoring is done? (4) Will a report be generated to describe the monitoring activities and whether or not they are successful? (5) Will the person in charge of monitoring the wetland have a proper understanding of what they are protecting or looking for (i.e., native plants vs. weeds)? (6) Will the person monitoring the wetland be qualified to recognize problems with the wetland (i.e., contamination issues, insufficient soil moisture, drainage problems)? (7) What would the consequences be if the monitoring plan is not implemented and the wetland is not cared for? (8) What would happen if the wetland is no longer functioning or viable after the site is developed? (9) Who will insure the wetland is protected **after** the 2-year monitoring period is up? (10) Who will insure the newly planted plants will survive and that non-native, invasive space will take over the site? This mitigation measure is insufficient to insure the long-term protection for the wetland and habitat area, as the monitoring plan is non-specific, there do not appear to be any mandates to enforce its implementation, follow-through and success, nor are there any stated consequences for failure to protect the wetland and its habitat values once the site is developed.

Drainage/LID Plans and Protection of Ground Water and Surface Waterflow: No specifics were provided in the staff report or at the public hearings about what type of Low Impact Development (LID) designs will be incorporated into the project. This is due to the fact that ***The applicant requested to postponed [sic] the submission of their plan to implement Low Impact Development techniques to comply with the MS4 program until after project***



approval. [Emphasis added; see p.4 of staff report.] Instead, Condition of Approval #14 allows the applicant to **submit a Drainage Plan for approval by the Department of Public Works that incorporates Low Impact Development techniques into the project design in a manner complementary to the requirements of COA #3 (oil-water filtration) and COA #4 (stormwater detention) [...].** (See p.13 of staff report for July 7 PC meeting). Allowing the Drainage/LID plans to be approved by the Public Works Department after the project was approved deprives public members of the information needed to assess whether the plans are adequate to protect the wetland environment. While there are plans to divert roof runoff into a vegetated swale that can overflow into the wetland through curb openings, the remaining runoff that would normally feed the wetland will no longer exist once the site is developed, as the contours of the land will be greatly altered by grading activities, and the water from the parking lot will be directed **into the existing storm drain system within South Broadway.** (See p.12 of staff report for July 7 PC meeting.) Because rainwater that would typically reach and recharge the wetland and/or percolate into the ground during the rainy season will, instead, be diverted into a storm drain system, this development conflicts with Section of 30231 of the HBAP (p.48) due to the fact that it will: (1) divert essential water sources into a storm drain; (2) alter the natural slope of the property from grading activities and, (3) interfere with the natural drainage patterns due to alterations to the natural contours of the land and slope of the property. Such changes in surface waterflow, ground water supplies and natural drainage patterns will deprive the wetland of the water it needs, especially during the dry season, to function and provide valuable wildlife habitat.

Wildlife Study: A wildlife survey should be conducted to assess the type of birds, amphibians, etc. that use the wetland and how those species might be impacted by this development. With approval of this project, Condition of Approval #22 states that: **the applicant may contact DFW by phone at (916) 651-0603 or through the DFW website at [www.wildlife.ca.gov](http://www.wildlife.ca.gov) for a determination stating the project will have no effect on fish and wildlife.** (See p.14 of staff report for July 7 PC meeting.) Allowing such a determination to be made over the phone circumvents proper review of this project by the Humboldt County Planning Commission, Board of Supervisors and by the public.

Furthermore, in the October 11, 2016, appeal summary prepared for the Board of Supervisors, in regards to the need for a wildlife study, it says: *Staff consulted with the Department of Fish and Wildlife with regard to the potential need for a wildlife study. The response was that the wetland 'is a small and seemingly disconnected wetland, and the proposal is to preserve it in place, albeit with a reduced buffer. Habitat value for anything other than pacific tree frog (Pseudocris regilla) and foraging birds (not likely nesting habitat) is quite limited.* Since no wetland study has been conducted, this statement is purely speculative and serves to dismiss the importance of protecting what is left of the wetlands in this area. Just because a wetland is small or fragmented does not mean it should be degraded to the point of destroying its value to area wildlife. If there is no baseline wildlife survey to determine what type of birds, amphibians, etc., inhabit the wetland, how can we know the true impacts of this project on the wetland and surrounding environment? Repeatedly, during the two meetings on this matter, planning staff stated that there is no habitat value at this wetland site. However, when I visited this site on July 13, 2016, prior to the vegetation being mowed to the ground, I could hear and see a lot of birds using the site and flying in and out of the mature native willows.



Wetland Delineation Report: A new and accurate Wetland Delineation report needs be done to assess the proper boundaries of the wetland. I walked the site on July 13, 2016, and the vegetation looked completely different from the photos taken in February of 2015 (one of the driest winters on record in Humboldt County). I noticed that roughly half of the site was covered in mature, healthy Hooker willows around 15 feet tall. The presence of so many willows seems to indicate the wetland is much larger than 150 sq. ft. If Dollar General builds its project on this site and the Wetland Delineation Report is not accurate, this means that the statements in the staff report about the impacts of this project are inaccurate and this wetland ecosystem, designated an EHSA, will be lost due to improperly assessed boundaries and inadequate mitigation measures. For this reason, I believe a new Delineation Report needs to be done so that the true impacts of the proposed development on this wetland are known, especially with the recent rains we have had in Humboldt County.

Lighting Plans: No specifics were presented in the staff report or at the public hearings about the type of lighting, the number of fixtures and bulb wattage that will be installed on site or how many lights will be left on and where they will be situated. Instead, the lighting plans have been deferred to the County Planning and Building Department, which means, once again, the impacts of this project have not been fully disclosed to the public. Night lighting is known to disrupt the physiology and behavior of nocturnal wildlife. Because this proposed project will be developed within a few feet of the wetland, the impacts from light pollution will likely be more direct and disruptive to wildlife. If 100-foot setbacks, or more reasonable setbacks—say 60 or 70 feet—were incorporated into this development, light pollution may not be such a concern. But this project, as approved, will be literally feet from the boundaries of the wetland, which means light pollution would likely have a more negative impact to nocturnal wildlife using the site.

CEQA: The following statement was made in the October 11, 2016, appeal summary prepared by planning staff: ***While there are vacant and available sites in other areas of Humboldt the applicant has chosen the Humboldt Hill location as the best fit for their business model.*** Despite Dollar General's desire to use this sensitive (ESHA) site for its retail store, no efforts have been made to reconfigure the project to allow for greater setbacks. One hundred foot setbacks have been reduced to 5', 16.49', 17.03' and 20.11', causing the wetland to be completely encompassed, within a few feet, by unnatural, man-made materials and various sources of pollution. As only 5% of California's coastal wetlands remain intact, it is important to protect this wetland, even if it is small and isolated, because of the extensive and cumulative losses of wetland habitat in California's coastal areas. Dollar General can build its retail store in an alternative, less sensitive site or locate its store in Bayshore Mall (which has vacant retail space), but the wetland cannot move. Again, no discussions were presented or questions raised by the Planning Commission or Board of Supervisors about the possibility of reducing the size of this development or reconfiguring it in a way that would be more compatible for protection of the wetland. Approving a project that requires setbacks to be reduced by 80-90% in order to accommodate that development makes a mockery of the environmental laws that were enacted to protect sensitive wetland areas. While it is correct that a commercial retail store is, as stated several times during both meetings on this issue, a principally permitted use in this zone, projects should not be necessarily approved just because it is a permitted use. If appropriate and/or reasonable setbacks cannot be incorporated into the project design to protect the wetland, then fair findings should be made that this particular commercial development cannot be approved because the basic protections



afforded the wetland cannot be met. Instead of **relaxing** the 100 foot wetland buffer setback (as allowed under Section 3.30.B.6.e of the HBAP), planning staff slashed the setbacks to such a degree it is highly unlikely the wetland can function and provided no factual findings to support the claim that these reduced setbacks are sufficient to protect the wetland.

Public Resources Code Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would significantly lessen any significant effect that the activity may have on the environment. In this case, the applicant could seek an alternative site to build their store or investigate renting space at the Bayshore Mall, but they have stated they want to develop this site, because it is the *best fit for their business model*. The applicant could also reduce the footprint of their store or reconfigure it in a way to allow for greater setbacks, but there were no discussions about alternative designs or configurations that would better protect the wetland. Allowing this project to be built, in its current design, would be a violation of CEQA, because there are feasible alternatives available which would substantially lessen the significant adverse impact this project would have on the environment.

Dangerous Precedent: Approval of this project also sets a dangerous precedent for development in the rest of California, as other individuals, development companies, government agencies, etc., will want the same leniency for setbacks applied to projects they want to build in wetland areas.

Mitigation Requirements: Per 14 CCR Section 16126.4(a)(4)(B) Re: Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects it states: *The mitigation measure must be 'roughly proportional' to the impacts of the project.* There were no mitigation measures presented in this staff report that are remotely close to being *proportional to the project's impacts*. The entire dynamic of the wetland and its surroundings will be changed, as it will be hemmed in, within a few feet of its edges, by asphalt/concrete, a 9,300 sq. ft. building, large light fixtures, noise and emissions from traffic and delivery trucks, foot traffic from people coming and going, polluted run-off and trash impacts, etc. It is unlikely the wetland will continue to function in a manner that will provide quality habitat for wildlife, as there is no room for adequate mitigation measures to protect the wetland because the proposed development is simply too big for the site.

Lack of Specifics about Project Plans/No-Effect Determination: There is no way for the public to determine if key elements of this project will comply or conflict with the HBAP and Coastal Act, because the specifics regarding the Drainage/LID plans, landscaping plans, lighting plans and the no-effect determination have all been deferred for approval by the Humboldt County Public Works Department, the Planning and Building Department and the Department of Fish and Wildlife. The lack of specifics and discussions about these plans and determination in the staff report and at the public hearing means the true impacts of this project on the wetland and its habitat values were not fully disclosed to the public. In addition, there were no provisions in the staff report about what enforcement would be taken or what remedies would be provided if the conditions of approval and mitigation measures set forth in the Mitigated Negative Declaration are not complied with by the applicant.

Conclusion: I believe the concerns I have presented above show that "substantial issue" exists to warrant further review and analysis of the impacts of this development on the wetland and its habitat values by the California Coastal Commission.



Hooker willow on Proposed Dollar General Site

Taken 7-13-16



Hooker willow on Proposed Dollar General Site Taken 7-13-16 (4542, JPG)



Exhibit No. 5  
A-1-HUM-16-0101

TAYS APPEAL

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PHOTOS TAKEN PRIOR TO MOWING PROJECT