

**CALIFORNIA COASTAL COMMISSION**

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# W11b

Filed: 06/22/2023  
49th Day: Waived  
Staff: TRG-A  
Staff Report: 8/24/2023  
Hearing Date: 9/6/2023

## STAFF REPORT: APPEAL SUBSTANTIAL ISSUE DETERMINATION ONLY

**Appeal No.:** A-1-FTB-23-0021

**Applicant:** Best Development Properties, Agent: Remy  
Moose Manley, LLP (RMM)

**Appellants:** Fort Bragg Local Business Matters, Mary Rose  
Kaczorowski, Leslie Kashiwada, Lee & Mitzi Rider

**Local Government:** City of Fort Bragg

**Local Decision:** Approval with Conditions

**Location:** 825, 845, and 851 South Franklin Street, Fort Bragg,  
Mendocino County (APNs: 018-120-47, 018-120-48,  
and 018-120-49)

**Project Description:** Various site improvements to construct a Grocery  
Outlet Market (retail store), including (1) demolition of  
an existing 16,436 square-foot structure, parking lot,  
and wooden fence; (2) construction of a 16,157  
square-foot single-story structure, parking lot, loading  
dock, landscaping and drainage swales, sound wall,  
fencing, and signage; (3) improvements to adjacent  
sidewalks and other infrastructure; and (4) parcel  
merger.

**Staff Recommendation:** No Substantial Issue

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## **IMPORTANT HEARING PROCEDURE NOTE**

This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 3 minutes total per side (although the Chair has the discretion to modify these time limits). Please plan your testimony accordingly. Only the applicant, appellants, 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 (14 CCR § 13117). The Commission will accept the appeal for a full de novo review unless it determines that the appeal raises no substantial issue. Otherwise, the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does not raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

## **SUMMARY OF STAFF RECOMMENDATION**

The City of Fort Bragg approved a Coastal Development Permit (CDP), Design Review, and Parcel Merger for Best Development Group (Applicant) to construct a Grocery Outlet Market on a 1.63-acre site (comprised of three parcels located at 825, 845, and 851 S. Franklin Street) east of Highway 1. The project location is a developed urban infill site that is not located between the sea and the first public road but is close to Noyo Harbor, across North Harbor Dr. The project site includes two vacant lots which have been used as an unimproved parking area for various uses, including potentially for access to the harbor from an existing public access path extending from the hotel across the street from the site down to the Harbor. The other northern lot is developed with an office building and related development that was constructed prior to the Coastal Act.

The approved project involves the demolition of an existing 16,436-square-foot vacant former office building, 47-space parking lot, and wooden fencing along the property line, and the construction and operation of a 16,157-square-foot, one-story, retail store with a 54-space parking lot, loading dock, landscaping, sound wall, fencing, signage and other associated improvements and infrastructure.

The appeal raises several contentions, which primarily concern the protection of public access, community character and visual resources, water quality and supply, as well as traffic circulation and greenhouse gas (GHG) concerns. Staff recommends that none of the contentions raise a substantial issue as to the approved project's consistency with the certified LCP. There is a high degree of legal and factual support for the City's decision that the approved project as conditioned (1) is consistent with the purpose of and allowed uses within the Highway Commercial (CH) zoning district and will incidentally serve visitors in addition to the local community, (2) includes sufficient parking to serve the permitted use and will not displace planned coastal access parking,

(3) conforms with traffic and circulation policies of the LCP and includes appropriate traffic and circulation mitigation, such as new sidewalks, street frontage improvements, and in lieu fees for future intersection improvements at the intersections of both Franklin St. and South St. and at North Harbor Dr. and Highway 1; (4) minimizes energy consumption and vehicle miles traveled by, among other things, including bicycle parking and EV-compatible parking and incorporating rooftop solar panels; (5) conforms with the Citywide Design Guidelines to protect visual resources and community character; and (6) includes water quality, water conservation, and native plant protection requirements consistent with the LCP.

The approved development is limited to the redevelopment of an existing 1.6-acre developed urban infill site with development of a smaller sized retail store and similarly sized parking lot. There will be very little discernable difference between the scale of the new and existing development upon completion of the project. As such, the project is limited in extent and scope when compared to the existing development and conditions on the project site. In addition, the project location is not a designated scenic area under the LCP, is not located between the sea and the first public road and does not contain any environmentally sensitive habitat areas. Moreover, as mentioned, the proposed development is a use consistent with the purpose of and allowed use in the CH zone. Therefore, staff believes that the approved development as conditioned will not have an effect on any significant coastal resources including public access to the coast, public views to the ocean, and biological resources.

Staff believes the City has thoroughly addressed the relevant coastal resource concerns, and the City's decision would not set an adverse precedent for future interpretations of the LCP. Therefore, especially given the high degree of legal and factual support for the City's decision and considering all five factors of section 13115(c) of the Commission's regulations, staff recommends that Appeal Number A-1-FTB-23-0021 does not present a substantial issue with respect to the grounds upon which the appeal was filed under section 30603 of the Coastal Act. The motion to adopt the staff recommendation of No Substantial Issue is found on page 4.

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## APPENDICES

[Appendix A: Substantive File Documents](#)

[Appendix B: LCP Excerpts Related to Public Access & Traffic](#)

[Appendix C: LCP Excerpts Related to Visual Resources](#)

[Appendix D: LCP Excerpts Related to Water Quality](#)

## EXHIBITS

[Exhibit 1 – Project Vicinity and Location Maps](#)

[Exhibit 2 – Excerpts of Project Plans](#)

[Exhibit 3 – Appeal](#)

[Exhibit 4 – City of Fort Bragg Final Action Notice](#)

[Exhibit 5 – City of Fort Bragg Staff Report](#)

## I. MOTION AND RESOLUTION

Staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission would not take jurisdiction over the underlying CDP application for the proposed project and would not conduct further hearings on this matter, and that the local government CDP decision stands and is thus final and effective. To implement this recommendation, staff recommends a **yes** vote on the following motion which, if passed, will result in the recommended no substantial issue finding. If the motion fails, then the Commission will have found a substantial issue and will take jurisdiction over the subject CDP application; however, the de novo portion of the hearing will be held at a future date. The motion passes only by an affirmative vote of a majority of the Commissioners present.

### Motion:

I move that the Commission determine that Appeal Number A-1-FTB-23-0021 **raises no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a **yes** vote.

### Resolution:

The Commission hereby finds that Appeal No. A-1-FTB-23-0021 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 of the approved development with the certified Local Coastal Program and/or the public access policies of the Coastal Act.

## II. FINDINGS & DECLARATIONS

### A. Project Description and Location

The approved project is described as follows (from the agenda item summary report prepared by the City's planning consultant for the June 5, 2023 City Council meeting, included as Exhibit 5):

"Best Development Group (Applicant) is proposing to construct a Grocery Outlet (retail store) on a 1.63-acre site located at 825, 845, and 851 S. Franklin Street, Fort Bragg, and identified by Assessor's Parcel Numbers (APNs) 018-120-47, 018-120-48, and 018-120-49 (Site). Grocery Outlet describes itself as a value grocer, meaning they sell brand name products at lower prices. The site is owned by Dominic and Juliette Affinito and is located in the Coastal Zone within the City of Fort Bragg city limits. No changes to the Site's current land use or zoning designations are proposed under the Project.

The Project includes:

## A-1-FTB-23-0021 (Best Development Properties)

- Parcel merger of Parcels 018-120-47, 018-120-48, and 018-120-49; and
- Demolition of an existing 16,436-square-foot vacant former office building and existing 47-space parking lot, and wooden fencing along the property line; and
- Construction and operation of a 16,157-square-foot, one-story, retail store with a proposed 5[4]-space parking lot, loading dock, landscaping, sound wall, fencing, signage and other associated improvements and infrastructure.

The store would operate from 9:00 a.m. to 10:00 p.m., seven days per week with 15 to 25 full-time staff and two (2) managers working over two (2) shift schedules. The store would receive approximately eight (8) semi-trailer truck deliveries per week and 4 to 5 medium truck deliveries per day. Typically, trucks would arrive around 7:00 a.m. and leave before 9:00 a.m. Additional deliveries would be made daily by four (4) to five (5) small trucks that would typically arrive in the morning and leave shortly afterward.”

The project site is located east of Highway 1, between North Harbor Dr., Franklin St., and South St. (see Exhibit 1), at 825, 845, and 851 Franklin St., Fort Bragg (APNs: 018-120-47, 018-120-48, and 018-120-49). The project site is not located between the first public road and the sea.

## B. Project Background

The following reports and studies were completed for the project:

- Initial Study and Mitigated Negative Declaration approved July 26, 2021
- Initial Study dated May 19, 2022;<sup>1</sup>
- Draft Environmental Impact Report dated September 2022;<sup>2</sup>
- Final EIR dated May 2023;<sup>3</sup>
- cultural and tribal resource inventories prepared by Genesis Society;
- a Biological Review prepared by Wildland Resources Managers;

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<sup>1</sup> Accessible from the OPR website: <https://files.ceqanet.opr.ca.gov/278651-1/attachment/rjSYwJhnAxzbtDdSMY72CAXgLJ5082gf3ZlMObiTJHehROUGBjLQQoz09HQFRoMlo4a1S ITE6i9QtoFsP0>.

<sup>2</sup> Accessible from the OPR website: <https://files.ceqanet.opr.ca.gov/278651-2/attachment/B4mEXYDJGnZMeYYxx2BhZ8d-6quo1KG64Apvot3eOZ1c9Dj4xRQB1F2HK6-cj6sYLF0N9wEDFjPnynx10>.

<sup>3</sup> Accessible from the City’s website: <https://www.city.fortbragg.com/departments/community-development/city-projects>.

- a Traffic Impact Analysis prepared by KD Anderson & Associates, Inc.
- CalEEMod emissions estimates prepared by LACO;
- Wetland Report also prepared by Wildland Resources Managers;
- Environmental Noise Assessment prepared by Saxelby Consultants;
- an Addendum to the Traffic Impact Analysis prepared by KD Anderson;
- and a CEQA VMT Analysis memo prepared by Fehr & Peers.
- Urban Decay Study prepared by ALH Urban & Regional Economics;
- wetland data sheets prepared by De Novo;
- water use documentation submitted by Grocery Outlet;
- an updated noise analysis from Saxelby Consultants.

### **C. Local Government Action**

On June 5, 2023, the City of Fort Bragg (City) City Council approved local Coastal Development Permit (CDP) No. 2-22 with conditions. Concurrently with approval of the CDP, the City Council also approved Design Review (DR) Permit No. 7-22 and Parcel Merger (MGR) Permit No. 1-22. The permits authorize the project as described above. The City granted its approval for the CDP subject to 32 special conditions including, but not limited to, conditions related to parking and landscaping plans, frontage (sidewalk) improvements, traffic management funding and planning, drainage capacity, grading and dust control plans, storm water pollution prevention, mitigation monitoring, water and energy efficiency measures, and site plans related to building materials, lighting, signage, and loading dock design. The City's Notice of Final Action is attached as Exhibit 4.

### **D. Appeal Jurisdiction and Procedures**

#### **Appeal Jurisdiction and Grounds for Appeal**

A comprehensive update to the City of Fort Bragg's (City) Local Coastal Program (LCP) was certified in August 2008. 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 City's approval of the subject project is appealable to the Commission because the approved development is located within 300 feet of the top of the seaward face of a coastal bluff. Specifically, the proposed Project site is located 210 feet from a bluff top that faces the Noyo Harbor, which is considered part of the sea under the City's Certified LCP and the Coastal Act. 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 LCP or the public access and recreation policies of the Coastal Act.

## Appeal Procedures

Coastal Act section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed. The term “substantial issue” is explained in section 13115 of the Commission’s regulations as follows:

“When determining whether the appeal raises a substantial issue, the Commission may consider factors, including but not limited to:

- (1) the degree of factual and legal support for the local government’s decision;
- (2) the extent and scope of the development as approved or denied by the 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.

The Commission may, but need not, assign a particular weight to a factor.”

At this stage, the Commission may only consider issues brought up by the appeal.

Commission staff has analyzed the City’s record for the approved project, including, but not limited to the City’s Notice of Final Action for the approval (Exhibit 4), the City’s staff report (Exhibit 5), and the appellants’ claims (Exhibit 3). Staff is recommending that the Commission find that the appeal of the City’s action raises no substantial issue with respect to the grounds on which the appeal was filed.

In this case, because staff is recommending that the appeal raises no substantial issue, the Commission will hear arguments and vote on the substantial issue question. Generally, and at the discretion of the Chair, qualified persons will have three 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 applicant, the appellants, persons who opposed the application before the local government (or their representatives), and the local government. 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.

If the Commission determines that the appeal does not raise a substantial issue, the local government approval will stand. If the Commission determines that the appeal raises a substantial issue, the Commission would continue the de novo portion of the appeal hearing to a subsequent meeting.



## **E. Filing of Appeal**

On June 14, 2023, the Commission received the City's Notice of Final Action (Exhibit 4), and on June 22, 2023, the Commission received an appeal of the City's approval from an attorney, Mark Wolfe, who is an authorized agent for co-appellants Fort Bragg Local Business Matters, Mary Rose Kaczorowski, Leslie Kashiwada, and Lee and Mitzi Rider (Exhibit 3). The appeal was filed in a timely manner, within 10 working days of receipt by the Commission of the City's Notice of Final Action. No other appeals were received by the Commission. The appellants participated in the 2021 City-approved project after which they challenged the City in court on CEQA grounds. The appellants dismissed the lawsuit after the applicant agreed to allow the City to rescind its 2021 project approval and mitigated negative declaration decision and, instead, prepare an environmental impact report, upon which the City relied to comply with CEQA and approve the current CDP. The appellants also participated in the most recent local CDP application and decision-making process (i.e., submitted comments and testified at the local hearing, and thus qualify as an "aggrieved person" pursuant to Coastal Act Section 30801(b) and Title 14, California Code of Regulations, Section 13111. On July 5, 2023, the applicant, Best Development, submitted a signed copy of a waiver of the 49-working-day deadline for opening the Commission hearing on the appeal.

## **F. Summary of Appeal Contentions**

Listed below is a summary of the appeal contentions. The appeal raises various contentions alleging project inconsistencies with the policies and standards of the City's LCP (primarily with policies of the City's Coastal General Plan or "LUP"). The appeal is included as Exhibit 3.

1. The approved development prioritizes a general commercial use (grocery store) over an existing visitor-serving use that provides public opportunities for coastal recreation (existing informal parking lot on the subject site used for coastal access parking), inconsistent with LUP policy LU-5.6.
2. The approved development as conditioned does not maximize public access, because it will displace coastal access parking, does not include substitute coastal access parking, and does not include sufficient access amenities or mitigation for maintaining safe access to the coast with increased traffic associated with the development, inconsistent with LUP policies C-1.2, C-1.3, C-1.4, C-1.5, C-6.2, C-9.3, C-9.7, C-14.1, LU-5.7, and OS-16.7.
3. The approved development does not minimize greenhouse gas emissions or energy consumption, inconsistent with LUP policy LU-10.5.
4. The approved development as conditioned is not sited and designed to protect public views to the ocean and scenic coastal areas, inconsistent with LUP policies CD-1.1, CD-1.4, CD-1.10, CD-2.1, CD-2.5, and CD-5.1.

5. The approved development as conditioned is out of character with the City's small town rural character and will detract from the economic vitality of established commercial businesses in the City, inconsistent with LUP policies LU-4.1, CD-2.1, and others.
6. The approved development as conditioned violates LUP policies OS-11.6, OS-12.1, and OS-12.2, because it does not incorporate permeable paving, does not include various water quality protection standards required by the IP, and did not involve the preparation of a Water Quality Management Plan prepared by a licensed professional.
7. The City's approval did not demonstrate availability of adequate water supply to serve the development, inconsistent with LUP policy LU-10.4.
8. The approved development as conditioned fails to preserve native plant and animal species and their habitat, inconsistent with LUP policies OS-5.1 and OS-5.2, because site development will result in interference with "the continued ability of native animal species observed on the site (e.g., grey herons) to access food sources and habitat provided by existing conditions on the site" and because the project as approved will replace existing trees with new landscaping.

For the reasons discussed below, the Commission finds that all contentions present valid grounds for appeal but none raise a substantial issue of conformance of the approved development with the policies and standards of the City's certified LCP.

## **G. Substantial Issue Analysis**

### **1. CONTENTION REGARDING VISITOR SERVING USES**

The appeal contends that the project as approved by the City is inconsistent with LUP policy LU-5.6, because the City's approval prioritizes a general commercial use over the use of the site for existing visitor-serving parking that provides public opportunities for coastal recreation.

#### APPLICABLE LCP POLICIES

LUP Policy LU-5.6 states as follows:

The use of private lands suitable for visitor-serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

#### DISCUSSION

The project, as conditionally approved by the City, authorizes redevelopment of an existing developed site comprised of three parcels that total approximately 1.6 acres. The project site currently is developed with the former County Social Services building

and 47-space parking lot on the northern parcel and an unimproved unpaved lot surrounded by ruderal grasses and forbs extending across the two parcels to the south. The approved Grocery Outlet store will be located on the northern portion of the project site, and the 54-space parking lot and landscaping will occupy the southern portion of the project site. With authorization from the property owner, the parking areas on the project site, including the currently unimproved southernly lot, were temporarily used for parking for visitors to the neighboring Mendocino Coast Clinic to facilitate Covid-19 vaccine administrations (see letter from applicant in Correspondence packet). The appeal contends that the public has continued to use the undeveloped lot on the site for public parking to access a nearby coastal access trail that provide access to Noyo Harbor, and the approved development (retail store) conflicts with the existing visitor-serving priority use as an informal parking lot.

The certified LCP, including, but not limited to, LUP Policy LU-5.6, requires that the City prioritize the use of private lands suitable for visitor-serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation over private residential, general industrial, and general commercial uses (excluding agriculture or coastal-dependent industries). According to the City’s findings for approval, the project “falls under the land use category ‘General retail – 5,000 SF or larger,’ which is permitted by right in the Highway and Visitor Commercial (CH) zoning district.” The purpose of the CH zoning district is described in Section 17.22.20 (E) of the Coastal Land Use and Development Code (the LUDC, which implements the LUP) in part as follows:

*“The CH zoning district is applied to sites along Highway 1 and arterials at the entry points to the community. Allowable land uses include lodging, restaurants, and retail stores...”*

Retail stores are principally permitted in the CH zone, and the approved project – a lower-cost grocery store – is a use consistent with the underlying zone district that will incidentally serve coastal visitors in addition to the local community. The zoning does not require prioritization of certain principal uses over others, and the use of the subject site for public access parking is not identified in the LCP. Nor is use of the site for coastal access parking necessary to ensure the public has access the small vertical trail to the harbor across from the subject site, as there is adequate free public street parking both in the immediate vicinity of the subject site and at the harbor public parking lot (as discussed in the section below) to access recreational opportunities in the area. As mentioned, the City found that the proposed grocery store is a principally permitted retail use, and there is legal and factual support for the City’s findings that the project, as conditioned, is consistent with LUP policy LU-5.6. Additionally, there are no significant coastal resources affected by the City’s decision.

## **2. CONTENTIONS REGARDING PUBLIC ACCESS & TRAFFIC**

The appeal contends that the project does not maximize public access, because it will displace coastal access parking, does not include substitute coastal access parking, and does not include sufficient access amenities or mitigation for maintaining safe

access to the coast with increased traffic associated with the development, inconsistent with LUP policies C-1.2 C-1.3, C-1.4, C-1.5, C-6.2, C-9.3, C-14.1, LU-5.7, and OS-16.7 (The appeal also cites inconsistency with LUP Policy C-9.7. However, that policy is not part of the certified LUP).

APPLICABLE LCP POLICIES

[See Appendix B.](#)

DISCUSSION

**Public Parking Facilities**

The public access policies of the LCP and the Coastal Act provide for the protection and enhancement of all people's opportunity to access the coast and enjoy coastal recreation. In addition, the LCP policies require that maximum access and recreational opportunities be provided consistent with public safety needs. The project site is not between the first public road and the sea, but regardless, the certified LCP includes various applicable policies and standards requiring adequate parking to be provided to serve coastal access and recreational uses, to the extent feasible, and directing that existing parking areas serving recreational uses not be displaced unless a comparable replacement area is provided. The LCP also includes policies requiring mitigation for public access impacts to be provided prior to or concurrent with construction of the approved development.

The appeal contends that the site, specifically the undeveloped southern lots, currently support informal parking used by the public for coastal access and thus, development of the project will displace coastal access parking inconsistent with Policy LU-5.7. Policy LU-5.7 requires that adequate parking be provided to serve coastal access and recreation uses, to the extent feasible, and existing parking areas serving recreational uses not be displaced unless a comparable replacement area is provided.

As mentioned above, the site is not between the first public road and the sea. It is also not adjacent to the coast but is located up the hill above the harbor, separated from the coast to the east by Highway 1 and to the south by North Harbor Dr. The nearest point of coastal access is located at the Harbor Lite Lodge hotel along North Harbor Dr., which provides public access via a trail that descends down to Noyo Harbor and the river (see Exhibit 5, Figure 4). Also as previously mentioned, the site (including the undeveloped southern lots) is designated Highway and Visitor Commercial (CH) and intended for development of lodging, restaurants, and retail stores as opposed to the zoning designation, Parks and Recreation (PR), which is the land use designation intended for public parks and recreational facilities, including "trails, playgrounds, parking lots, interpretive facilities, restrooms, storage sheds, and other structures needed to accommodate public use or provide for maintenance of the land and recreational facilities." The nearest point of coastal access is located at the Harbor Lite Lodge hotel along North Harbor Dr., which provides public access via a trail that descends down to Noyo Harbor and the river (see Exhibit 5, Figure 4).

According to the certified final EIR completed for the project, the existing 16,436 square-foot (sf) vacant former office building and associated 47-space parking lot on the site have not been formally leased since 2010, but the building has been used as storage since then and the parking areas (including the undeveloped lots to the south of the project site), with authorization from the property owner, was temporarily used for parking for visitors to Mendocino Coast Clinic to facilitate Covid-19 vaccine administrations. The approved project provides, in part, for the replacement and relocation of the existing 47-space parking lot located on the northern portion of the project site with a 54-space parking lot to be located south of the proposed retail store, onto the currently undeveloped lots.

The amount of parking required for the project conforms with the requirements of IP Sec. 17.36, which requires 1 space per 300 SF of retail space, 1 recreational vehicle (RV) dedicated space per 40 parking spaces, and 1 ADA space per 26 spaces. The approved project will have 54 parking spaces total, including three ADA-accessible spaces, 1 RV space, six bike parking stalls, and five EV compatible spaces consistent with IP requirements. Furthermore, the approved project includes a merger of the subject parcels, which will result in the new parking lot being located on the same parcel as the Grocery Outlet store consistent with LCP requirements for adequate parking. The City imposed Special Condition 32 to require the parcel merger eliminating the lot lines between the subject parcels prior to issuance of the building permit.

The evidence in the record reflects the property owner's desire to keep the public off of the unimproved parking lot by posting "No Parking" signs on the property. The public has ample public parking options for coastal access purposes in the area surrounding the project site on local streets that are wide enough to accommodate on-street parking, including parking for RVs. Existing coastal access public parking also is available at Noyo Harbor via a public parking lot at the terminus of North Harbor Dr., which includes RV parking and enables public access to the coast. In addition, although the project will replace an informal, unimproved private parking area with an improved private parking lot, the approved project as conditioned will not reduce existing public on-street parking opportunities along adjacent streets. Currently, there is unmetered (no time limits) parking along Franklin St. and South St. near the project site, and this street parking will remain. Lastly, the City-approved project will protect public access to the coast by providing adequate parking to serve the permitted use, thereby avoiding the risk of the project's patrons' use of on-street public parking that may be used for coastal access.

While the appeal contends that RVs in particular would be negatively affected by the approved development, as discussed above, RV parking is available in the public parking lot at the terminus of North Harbor Dr and RV parking is also provided in the project's parking and landscaping plan. As conditioned, the required parking and landscaping plan includes the development of one RV-dedicated parking space, consistent with IP Sec. 17.36, which requires 1 RV space per 40 spaces. The new parking and associated street and public safety improvements (discussed below) are required to be constructed prior to issuance of the building permit. Therefore, there is a high degree of legal and factual support for the City's determination that the project includes sufficient parking to serve the permitted use, including parking to

accommodate RVs, and the project as conditioned, without provisions for new coastal access parking but with provisions for public safety frontage and street improvements is consistent with LUP policies LU-5.7 and OS-16.7.

### **Traffic and Safety**

As the project site is adjacent to busy intersections at South St., Franklin St., and North Harbor Dr., the project will result in increased traffic and the need for circulation and street improvements to protect public safety. The appeal specifically argues that the approved development is inconsistent with LUP Policy C-14.1, because it only requires a fair-share contribution for a signal at Main St. and North Harbor Dr. but not for other transportation infrastructure improvements.

The City's findings for project approval discuss the project's consistency with the traffic and circulation requirements of the LCP in part as follows:

*“A detailed analysis of the proposed Project's impacts on vehicle miles traveled (VMT) is included in the EIR. However, the City's General Plan uses Level of Service (LOS) to identify required special conditions to address vehicle wait time.*

*A traffic study for the parcel was completed in 2019. Subsequently, Caltrans determined that the left-hand turn prohibition located at the intersection of S. Main Street and N. Harbor Drive was no longer necessary and has removed the prohibition. In order to determine if allowing left-hand turns at this intersection required an updated traffic study for the proposed Project, the City engaged a traffic engineer to analyze whether the change would impact the LOS... [and]... the report found that traffic LOS limits would be satisfied even with the construction of the Grocery Outlet and allowing left hand turns...”*

The City concluded that the project as conditioned would conform with traffic and circulation policies of the LCP for several reasons. First, the approved project as conditioned includes multiple components to address pedestrian and vehicular safety needs. The project proposal includes the development of sidewalks on the eastern and southern perimeters of the project site, at the intersection of Franklin St. and North Harbor Dr., thereby connecting existing sidewalks around the entirety of the immediate block and enabling safer pedestrian access to the site and to adjacent properties, including those which include coastal access (such as the Harbor Lite Lodge mentioned above). The City's approval imposed Special Condition 2 requiring development of all necessary sidewalk improvements along the parcel boundaries along South St., Franklin St., and North Harbor Dr. frontages prior to issuance of the final building permit for the retail store. Special Condition 16 further requires frontage improvements along the sections of North Harbor Dr. and the southerly portion of Franklin St. that currently are not improved. The condition requires that frontage improvements be designed by a licensed Civil Engineer and include pavement as needed for road widening, curb, gutter, and sidewalk. The improvements must be installed prior to issuance of the building permit.

Furthermore, the City's approval includes Special Condition 33 requiring the applicant to pay its fair share for improvements at the intersection of Franklin St. and South St., as recommended by the City, which may include the installation of pedestrian activated flashing beacons, traffic calming measures, sidewalk improvements, or other improvements. Currently, at the intersection of Franklin St. and South St., traffic is regulated by a two-way stop on South St. permitting continuous north-south traffic along Franklin St. This requirement is in addition to required payment contributions towards improvements at the intersection of Main St./Highway 1 and North Harbor Dr. imposed under Special Condition 3. Because traffic studies prepared for this project identified the need to signalize the intersection of Highway 1/North Harbor Dr., Special Condition 3 was included to require the applicant pay 16.1% of the cost of future signalization and to enter a "Fair-Share Deferment" agreement with Caltrans prior to issuance of the building permit. This condition will ensure that when North Harbor Dr./Highway 1 signalization is required, the Grocery Outlet will pay its fair share of the construction costs. The Commission also notes that a recently approved Caltrans project for ADA improvements along Highway 1 (CDP No. A-1-FTB-23-0002 approved by the Commission August 9, 2023) is investigating what improvements may be appropriate at this intersection to aid in safe vertical pedestrian access across the highway to maximize coastal connectivity and the coastal, commercial, and residential centers east of the highway (including the subject site) with the coastal trail network and residential communities west of the highway.

Additionally, to address safety concerns regarding the south bound turn lane from North Harbor Dr. onto Highway 1, the City's approval includes Special Condition 4, which requires the applicant to both (1) install signage, stripe, and paint to create a right-hand-turn-only lane at the western approach of North Harbor Dr. to the intersection with Highway 1 (S. Main St.), and (2) pay its pro-rata share of the cost to further modify this intersection per Caltrans specifications if the City determines through a traffic/safety study completed within two (2) years of project development, that the left turn lane at this intersection needs to be modified. As mentioned above, Caltrans is tracking and coordinating various improvements at this location and in the nearby vicinity, including improvements involving new sidewalks and crossings; ADA and pedestrian improvements; and planning efforts for access and circulation improvements in the area undertaken by the City, Mendocino County, and the Mendocino County Association of Governments.

Ultimately, with respect to vehicular access to the harbor, the City's findings conclude in part:

*"The proposed Project would contribute to traffic that may slightly slow access to the Harbor at the corner of Franklin and N Harbor Drive, however the intersection currently provides a LOS A and the LOS with the Project would remain as LOS A. Thus the Project is in compliance with General Plan Policy C-1.1 which allows a LOS C or LOS E (if there are less than 15 vehicles/hour) for this intersection."*

Finally, the City imposed Special Condition 36 requiring installation of a crosswalk from the parking area to the entrance of the grocery store to further public pedestrian safety

and Special Condition 21 requiring the installation of two benches within the proposed landscaped area adjacent to the sidewalk along Franklin St. as an added amenity for pedestrians and store patrons.

Therefore, the Commission finds there is a high degree of legal and factual support for the City's determination that the project as conditioned will not interfere with coastal access and will maintain levels of service and traffic safety in the City consistent with LCP requirements. Moreover, the City's findings demonstrate that the project as conditioned includes safe and multi-modal access to the site and surrounding areas and will increase traffic and pedestrian safety through implementation of various traffic mitigation solutions.

### **3. CONTENTIONS REGARDING GHG & ENERGY CONSUMPTION**

The appeal contends that the project does not minimize greenhouse gas (GHG) emissions or energy consumption, inconsistent with LUP policy LU-10.5.

#### APPLICABLE LCP AND COASTAL ACT POLICIES

LUP Policy LU-10.5 states as follows:

Minimize Impacts on Air Quality and Green House Gasses. New development shall: 1) be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development, and 2) minimize energy consumption and vehicle miles traveled.

#### DISCUSSION

The appeal asserts that the project will result in an increase in GHG emissions and energy consumption due to increased vehicular traffic from food and product delivery trucks, employees, and patrons travelling to the proposed Grocery Outlet. LUP Policy LU-10.5, cited above, requires that new development minimize energy consumption and vehicle miles traveled (VMT) and be consistent with the State Air Board requirements.

#### **Air Quality**

The DEIR completed for the project analyzed the project's air quality impacts in terms of construction and operation-generated emissions. In reaching its air quality impact conclusions, the City relied on the California Emission Estimator Model (CalEEMod), that was developed for the California Air Pollution Officers Association in collaboration with California air districts, to estimate emissions from the proposed project. The major construction activities considered were site preparation, grading, paving, building construction, and architectural coatings. The DEIR identified that the major source of emissions from operation of the Grocery Outlet store would be vehicle miles travelled (VMT) to and from the store. Nonetheless, both construction and operation-generated emissions were found to be far below the County Air Quality Management District's criteria pollutant thresholds. Tables 3.2-8 and 3.2-9 in the DEIR provided the results from the CalEEMod modeling to support the finding of no adverse impact on air quality



resources. In addition, the DEIR analyzed the impacts of mobile toxic air contaminants (TAC) caused by vehicle engines and fuels. The proposed project is projected to accept 8 heavy-duty truck deliveries per week with half of the trucks delivering refrigerated goods, and 4-5 additional medium-duty trucks per day delivering dry goods. The California Air Resources Board (CARB) released the *Air Quality and Land Use Handbook: A Community Health Perspective* which recommends minimum distances between significant sources of TAC (freeways and high traffic roads) and sensitive land uses. A relevant standard is as follows:

*Avoid siting new sensitive land uses within 1,000 feet of a distribution center (that accommodates more than 100 trucks per day, more than 40 trucks with operating transport refrigeration units (TRUs) per day, or where TRU unit operations exceed 300 hours per week).*

Although there are existing residential uses within 1,000 feet of the project site, the anticipated amount of both refrigerated and non-refrigerated trucks do not meet the thresholds identified above and are, therefore, not anticipated to produce a significant level of TACs above existing conditions. As outlined, the project will not contribute significantly to GHG emissions or TACs and complies with State Air Resources Control Board requirements. Special Condition 13, which requires submittal of and adherence to a dust prevention and control plan and a grading plan, further benefits air quality by limiting the discharge of dust from the site during both demolition and construction phases.

In addition to the projected levels of vehicle-borne pollutants anticipated by the proposed project, the DEIR also states regarding VMT,

*“the most likely effect on regional travel is to slightly reduce the length of trips from areas south of the river off of SR 20 or SR 1 that are today made northbound...The regional effect on VMT is likely to be small, but generally will be reduced by offering a closer option for northbound traffic.”*

In other words, because the project site is located in the southern portion of the City, patronage at the Grocery Outlet will reduce northbound traffic through the City because less people will need to travel to other retail stores located further north. Furthermore, the proposed Grocery Outlet will likely have a larger, regional impact in traffic patterns. Currently, residents of coastal communities in Mendocino County travel to the Grocery Outlet located in Willits, approximately 35 miles from Fort Bragg. Development of a local Grocery Outlet store in the City will eliminate the need for individuals to travel to Willits to purchase lower-cost products available at Grocery Outlets, reducing regional VMT and associated GHG production. According to the VMT Analysis prepared by Fehr & Peers, the re-routing of just 1% of the current trips from the Willits Grocery Outlet to the proposed Grocery Outlet in Fort Bragg would result in a net decrease in VMT.<sup>4</sup>

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<sup>4</sup> It was found that 9% of patrons to the Willits Grocery Outlet are residents of Fort Bragg, so it is likely that more than 1% of trips will be rerouted once the project is completed.

Special Conditions 2 and 21 further support the reduction in VMT and associated GHG by requiring the development of sidewalks on surrounding streets, as well as the addition of public benches. These additions increase sidewalk connectivity which will allow pedestrians and employees to access the store without the need for a vehicle. In addition, Special Condition 33 requires the project applicant to pay its fair share (48.7%, according to Table 3.7-16 in the EIR) for the installation of a safety solution at the intersection of South Franklin and South Streets, as recommended by a traffic engineer. These safety improvements will further promote pedestrian accessibility to the Grocery Outlet as the intersection connects the site to existing residential neighborhoods and a bus stop to the north. Lastly, the project site is accessible via bike lanes, and the project appropriately includes bicycle parking within the proposed parking lot configuration, further reducing VMT.

### **Energy Consumption**

According to the City's findings for approval of the project with respect to project conformance with energy standards, the Project will achieve Title 24 energy efficiency in compliance with the State Building Code. As previously mentioned, the proposed parking and landscaping plan includes six (6) bicycle parking spaces as well as five (5) EV-compatible spaces, enabling less energy-consumptive means of travel to the store. The project was also designed to utilize energy efficient fixtures on all outdoor light fixtures and lamps. Lastly, the City has imposed multiple conditions to minimize energy consumption caused by the proposed project; Special Condition 1, in part, requires the applicant to include native tree species in their updated landscaping plans and to comply with the California Model Water Efficient Landscape Ordinance to minimize water used at the site; Special Condition 20 requires the installation of rooftop solar panels for active solar energy generation to serve the proposed use; and Special Condition 23 requires that the building's south-facing windows remain unobscured to allow passive solar gain into the building.

Therefore, there is a high degree of legal and factual support for the City's determination that the proposed project, as conditioned, is consistent with policy LU-10.5.

## **4. CONTENTIONS REGARDING VISUAL RESOURCES IMPACTS**

The appeal asserts that the project is inconsistent with various visual resources protection policies of the certified LCP (including, but not limited to, LUP policies CD-1.1, CD-1.4, CD-1.10, CD-2.1, CD-2.5, and CD-5.1), because the approved project (1) does not protect scenic views to and along the ocean or as seen from the public right-of-way; (2) is inconsistent with Citywide Design Guidelines; and (3) because the approved parking facilities are neither located to the rear of the building or hidden from view.

### APPLICABLE LCP POLICIES

[See Appendix C.](#)

DISCUSSION

The certified LCP requires that development, including boundary line adjustments, be sited and designed to protect public views to and along the ocean and scenic coastal areas visible from public viewing areas, minimize the alteration of natural landforms, be visually compatible with the character of surrounding areas, and restore and enhance scenic views in visually degraded areas. The project site, however, affords no scenic views to or from the ocean, is located east of Highway 1, is not within view from a bluff, and is not located in an area designated as having “potential scenic views toward the ocean or the Noyo River” per Map CD-1 of the certified LCP. The project is therefore not subject to Visual Analysis requirements of the LCP and will have no significant effect on coastal visual resources.

The project consists of infill development of two empty level lots and the redevelopment of the abandoned northern-adjacent lot (with all three lots to be merged). Very little grading is required, and as such, the approved project minimizes the alteration of natural landforms. The area surrounding the project site is largely developed with various visitor-serving, commercial, and residential uses that largely obscure views to the ocean. The approved new building will be located in a similar location on the site to the existing building, though shifted slightly to the north, blocking a partial “keyhole” view to the ocean (Exhibit 5, Figures 2 and 3). The available view to the ocean from the project site is along a small approximately 20-foot stretch of Franklin St., but the viewshed is heavily impeded by a gas station, two large cypress trees, bushes, and a solid wood fence along the Mill Site property across Highway 1. Additionally, the view to the ocean is only available at heights of about 8-feet, above the height of most pedestrians, cyclists, and average-sized vehicles. Also, as previously mentioned, the site is not mapped as having “potential scenic views toward the ocean or the Noyo River” per Map CD-1 of the certified LCP. Therefore, the approved project as conditioned will not significantly impacts public views to the ocean.

The appeal also asserts that the project’s “overall aesthetic” is inconsistent with the City’s Citywide Design Guidelines [Guidelines]. However, the proposed building height would be 28 feet at the top of the canopy and 23 feet at the top of the parapet, which is consistent with the 35-foot height limit in the CH zone (IP Section 17.22.50). Regarding building design, the City’s findings for approval in the design review analysis state in part:

*“The proposed Project design has features that are compatible with, without trying to mimic historic design, including parapets and building articulation which break up the building’s massing. It is similar in design quality to other recently constructed large format and franchise stores such as CVS, McDonalds and Taco Bell. It has better design character than some larger franchise stores which were constructed prior to the adoption of the Citywide Design Guidelines, such as Safeway, Pizza Hut and RiteAid...” and “[The project] includes a higher level of architectural details at the pedestrian level, such as parapets, windows, awnings, medallions, and trellis features...”*

The City's findings conclude that the building sufficiently meets Guideline requirements, and the project as conditioned will improve the site with the addition of sidewalk, landscaping, benches, lighting, and other features.

As approved by the City, the store's footprint will occupy the northern portion of the parcel, which is largely the same building footprint as the current structure on the property, while the parking lot and landscaping features will be concentrated in the southern portion of the site (as is currently the case). Although the City's LUP and Design Guidelines suggest parking for new development should be located to the rear of primary structures if feasible, in this case the long and narrow site with three streets on three sides makes it infeasible to develop the project with parking located to the rear of the store. Having parking that faces the building entrance rather than located in the rear is common for grocery stores, increases accessibility, and is consistent with other grocery stores in the City. In addition, the approved site layout (1) complies with the LCP-required 20-foot building setback from North Harbor Dr.; (2) ensures that the truck dock and loading area are visibly shielded from neighboring residents and adjacent streets (consistent with IP sec. Sections 17.30.050 and 17.36.110); and (3) avoids the need for reconfiguration of infrastructure (water, sewer, electricity, etc.) by locating the structure adjacent to South Street, where utility lines are already in place. The City's findings note that with the Project's inclusion of a new, 30-foot-wide entrance/exit on North Harbor Dr. and a 35-foot-wide entrance/exit on Franklin St. complies with IP sec. 17.36.100 (driveway standards).

The City's conditions of approval include Special Condition 1 requiring, in part, submittal of a final revised landscaping and parking plan that will provide for approximately 18,290-square-feet of landscaping on the project site including 36 trees planted 25-feet apart, 786 shrubs, ground cover, grasses, and boulders. In addition, the required 15-foot-wide (required by IP Sec. 17.34.050) perimeter landscaping along the eastern and southern edges of the lot will largely obscure the parking lot from public view along adjacent streets (see Exhibit 2). Furthermore, Special Condition 26 requires that parking lot lighting be limited to light standards no taller than 16 feet in height, and Special Condition 27 requires submittal of final plans showing the new fencing/sound wall conforms with City Design Guidelines. With these conditions and the FEIR conclusion that the project's effects on aesthetics and visual resources will be less than significant, there is a high degree of legal and factual support for the City's decision that the approved project as conditioned conforms with the LCP requirements regarding visual resources. Moreover, there are no significant visual resources affected by the City's decision.

## **5. CONTENTIONS REGARDING COMMUNITY CHARACTER**

The appeal contends that the project is inconsistent with the LCP because it (1) is out of character with the City's small town rural character and (2) will detract from the economic vitality of established commercial businesses in the City, inconsistent with LUP Policies LU-4.1, CD-2.1, and others).

### APPLICABLE LCP AND COASTAL ACT POLICIES

LUP Policy LU-4.1 states as follows:

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

LUP Policy CD-2.1 states as follows:

Design Review: All development that has the potential to affect visual resources shall be subject to Design Review, unless otherwise exempt from Design Review pursuant to Coastal Land Use & Development Code Section 18.71.050. Design Review approval requirements shall not replace, supersede or otherwise modify the independent requirement for a coastal development permit approved pursuant to the applicable policies and standards of the certified LCP. Ensure that development is constructed in a manner consistent with the Citywide Design Guidelines

## DISCUSSION

The certified LCP regulates “Formula Businesses” to ensure they are of appropriate location, scale, and appearance consistent with the City’s rural character, and to ensure that newly permitted businesses do not detract from the economic vitality of established commercial businesses. A formula business is defined in the IP as “A business that is required by contractual or other arrangement to maintain standardized uses, services, decor, uniforms, architecture, signs, or other similar features.” Grocery Outlet stores are required to have similar signs and typically have similar architectural features and standardized products for sale across all stores. There are over 400 Grocery Outlet stores throughout the U.S., and although they are individually owned and operated, they qualify as a formula business under the certified LCP.

The County’s finding for approval note that the certified IP lists no specific land use standards for a formula business in the CH zone. However, LUP Policy LU-4.1 directs the City to regulate the location, scale and appearance of formula business such that they “do not detract from the economic vitality of established commercial businesses and are consistent with the small town, rural character of Fort Bragg.”

In terms of location, the City’s findings note that the proposed location of the new Grocery Outlet store is currently occupied by a similarly sized building, is within and in close proximity to existing developed areas in the City, and would be located near a number of existing competitive businesses, including Safeway, Rite Aid, and Harvest Market. As previously discussed, retail stores are an appropriate use within the CH zoning district and the project as approved by the City includes the development of an 8-foot-tall sound wall, landscaping, and pedestrian features to separate the retail use from neighboring motel and residential uses.

Also as previously discussed, the scale of the proposed Grocery Outlet store (16,157 square-feet and 28 feet at the top of the canopy and 23 feet tall at the top of the

parapet) is both similar in size to the current building occupying the site (16,436 square-foot) and in some cases smaller than other existing commercial retail stores located in the City (Safeway located 0.25 miles to the north is ~45,000 square feet and Harvest Market located 0.8 miles to the south is ~36,000 square feet).

Regarding design, as discussed above, the City's findings explain how the approved development, as conditioned, is consistent with the Citywide Design Guidelines, which are intended to maintain the small town, rural character of the area. In particular, the project underwent Design Review (Sec. 17.71.050) and was found, as conditioned, to be consistent with the intent of City's Citywide Design Guidelines to maintain and enhance the small-town, coastal, historic, and rural character of the community. Because a number of Grocery Outlet's typical franchise designs do not comply with the Citywide Design Guidelines, the City required certain modifications to the project for LCP conformity, including (as discussed above) (a) incorporating parapets and building articulation to break up the building's massing; (b) components to support connectivity by incorporating safe, functional, and multimodal features such as sidewalks and bicycle racks; (c) significant landscaping to screen the parking lot from public view and the use of native plants that require less water (consistent with LUP policy OS-5.1) and bioswales to reduce stormwater flows; and (d) installation of solar panels and passive solar features (unobscured windows) to minimize the project's carbon footprint. The City imposed Special Condition 1 to require, in part, that landscaping include only drought tolerant native species and that existing trees on the site be preserved to the extent feasible (consistent with LUP Policy OS-5.2); Special Condition 16 to require frontage improvements along N. Harbor Dr. and a portion of S. Franklin St., including road widening and the addition of curb, gutter and sidewalk; Special Condition 24 to require use Hardi Board Composite or Cultured Stone material for the building façade rather than Smooth-Face CMU; and Special Conditions 30 and 31 to require no more than 100 square feet of signage placed at least 20 feet back from the edge of the sidewalk in every direction.

As noted in the FEIR adopted for the project, the approved Grocery Outlet store will employ up to 25 individuals and support the economic diversity of the City by providing residents and travelers to the City an opportunity to purchase lower-cost products. In addition, the EIR concludes that the project will not have a negative effect on established commercial businesses in the City that sell similar products. Specifically, the report states:

*“These findings suggest that the existing primary market area food and other stores selling goods in common with Grocery Outlet are unlikely to experience strong individual store sales impacts resulting from the operations of the proposed Grocery Outlet Store. If sales are diverted from any existing stores resulting from Grocery Outlet's operation, they will be dispersed among many of the stores, such that no one store is likely to experience sales loss sufficient to significantly impact store sales.”*

Therefore, there is a high degree of legal and factual support for the City's determination that the approved project as conditioned is consistent with LCP policies

requiring the scale, location, and appearance of new development to be compatible with the City's small town rural character and to not significantly detract from the economic vitality of established commercial businesses in the City.

## **6. CONTENTIONS REGARDING STORMWATER IMPACTS**

The appeal asserts that the project violates LUP policies OS-11.6, OS-12.1, and OS-12.2, because it does not incorporate permeable paving, does not include certain water quality protection standards required by the IP, and did not involve the preparation of a Water Quality Management Plan prepared by a licensed professional.

### APPLICABLE LCP POLICIES

[See Appendix D.](#)

### DISCUSSION

The certified LCP requires that development incorporate permeable paving materials and techniques to enhance stormwater infiltration capacity, filter pollutants, and improve groundwater recharge. Additionally, due to the project's total area of impervious surfaces (1.18 acres of impervious surfaces for the store, parking lot, sidewalks, and driveways), the project is considered a "Development of Special Water Quality Concern" under the LCP and is subject to various requirements to protect water quality (OS-12.2). Requirements include, but are not limited to, development of a Water Quality Management Plan, consisting of either a Runoff Mitigation Plan or Stormwater Pollution Prevention Plan (SWPPP)<sup>(08.01)</sup>, selection of structural treatment control Best Management Practices (BMPs), and submittal of proof showing the development will retain and treat onsite stormwater runoff from the 85th percentile storm events.

Consistent with the LCP water quality protection requirements, the project design includes certain features to protect water quality, including permeable paving for 25 parking spots located in the middle of the parking lot, new perimeter landscaping, and two bioretention basins designed to capture and treat runoff from impervious surfaces produced by the 24-hour 85th percentile rain event. The City imposed Special Condition 10 to require submittal of a SWPPP (or Runoff Mitigation Plan) for review and approval prior to issuance of the building permit in accordance with IP Sec. 17.64.040. In addition, Special Conditions 6 and 7 were imposed to require approval of a final drainage plan demonstrating the effective transport of stormwater flows to drainage facilities and, as needed, requiring off-site drainage improvements such as gutters and subsurface piping. Furthermore, Special Condition 8 requires the recordation of a Maintenance and Operations agreement for ongoing maintenance of the bioretention features to ensure their functionality and maintenance throughout the life of the project. Finally, Special Conditions 9, 11, 12, and 13 require compliance with various grading, erosion, sediment controls, and stormwater runoff standards and procedures.

Therefore, there is a high degree of legal and factual support for the City's decision that the project as conditioned incorporates water quality protection standards consistent with LCP requirements.

## 7. CONTENTION REGARDING WATER AVAILABILITY

The appeal contends that the City's approval fails to demonstrate availability of adequate water supply to serve the development, inconsistent with LUP Policy LU-10.4.

### APPLICABLE LCP POLICIES

LUP Policy LU-10.4 states as follows:

#### Ensure Adequate Services and Infrastructure for New Development.

Development shall only be approved when it has been demonstrated that the development will be served with adequate water and wastewater treatment. Lack of adequate services to serve the proposed development shall be grounds for denial of the development.

### DISCUSSION

The certified LCP requires that development demonstrate that it will be served with adequate water (and wastewater) services prior to project approval. The appeal contends that the City's water supply and water infrastructure have not been shown to adequately serve the project and that the provided analyses did not account for sea level rise impacts to the City's water supply.

According to the DEIR, the project will use only 300 to 450 gallons of water per day in both domestic water for the store and irrigation water for the landscaping. This amount was determined to be less than 25 percent of the average water usage of other grocers in the City and "well within the amount that can be provided given the City's approximate water availability..." As the City has raw water storage capacity of 17.93 million gallons, treated water storage capacity of 3.3 million gallons, and water appropriations of 741 million gallons, the approved development will use only 0.04% of the City's appropriated water. The projected water usage is based on data from other existing Grocery Outlet stores in California and is much less than the calculated amount of water typically used in commercial businesses in the City. Additionally, high tide events causing saltwater intrusion in the Noyo River, the City's primary source of water, have been adequately mitigated for with the installation of a reverse-osmosis desalination plant installed in 2021 that can treat up to 144,000 gallons of water per day. According to the DEIR, "the City has sufficient water supply to serve the projected buildout of the City of Fort Bragg as currently zoned within the existing City Limits through 2040."

Although there are adequate water services to serve the retail store, Special Condition 14 requires the applicant to pay its fair share of the system infrastructure and future capital improvements through the Drainage fees, Water Capacity Charges and Wastewater Capacity Charges. In addition, if the project requires new or increased water capacity and/or connections, Special Condition 15 requires further fees to the City to enable any required development. Furthermore, Special Condition 17 requires the applicant to provide, prior to issuance of the building permit, documentation that adequate water pressures can be achieved for necessary commercial and fire



suppression flows. To address safety concerns during power outages, Special Condition 35 requires the final site plan to be revised to include a generator or battery backup prior to issuance of the building permit. Finally, Special Condition 1, as previously discussed, in part requires the applicant to employ water conservation measures, including the use of native plant species in updated landscaping plans and compliance with the California Model Water Efficient Landscape Ordinance to minimize water used for irrigation.

Therefore, there is a high degree of legal and factual support for the City's decision that there is an adequate supply of water to serve the approved project as conditioned consistent with LUP Policy LU-10.4.

## **8. CONTENTIONS REGARDING ESHA/ LANDSCAPING**

The appeal contends that the approved development as conditioned fails to preserve native plant and animal species and their habitat, inconsistent with LUP policies OS-5.1 and OS-5.2, because site development will result in interference with “the continued ability of native animal species observed on the site (e.g., grey herons) to access food sources and habitat provided by existing conditions on the site” and because the project as approved will replace existing trees with new landscaping.

### APPLICABLE LCP POLICIES

LUP Policy OS-5.1 states as follows:

Native Species: Preserve native plant and animal species and their habitat.

LUP Policy OS-5.2 states as follows:

To the maximum extent feasible and balanced with permitted use, require that site planning, construction, and maintenance of development preserve existing healthy trees and native vegetation on the site.

### DISCUSSION

The project site is not located in a mapped ESHA as shown on LUP Map OS-1. A biological report and wetlands study were completed for the project, and no rare species or habitats were identified on or within 100 feet of the project site. As previously stated, the site currently is developed with an existing structure and parking area surrounded by nonnative ruderal grasses and forbs.

To ensure that demolition and ground disturbing activities do not impact any bird or bat species that may be nesting or roosting on the site during project construction, the City imposed Special Condition 18 requiring implementation of mitigation measures in the final adopted EIR. These measures include (1) required preconstruction surveys for active nests of special-status birds conducted by a qualified biologist in all areas of suitable habitat within 500 feet of project disturbance; (2) a pre-construction bat survey prior to demolition of the existing onsite building; and (3) avoidance and buffering of any active nests/roosts of birds or bats found on the site. In addition, Special Condition 1

requires in part that that existing trees on the site be preserved to the extent feasible consistent with LUP Policy OS-5.2 – specifically the existing Monterey cypress trees and the Shore Pine on the site.

In addition, the approved project includes approximately 18,290 square feet of landscaping (13% of the total parking area, which exceeds the code requirement of 10%), including 36 trees that would be planted 25 feet apart and 786 shrubs. The proposed parking and landscaping plan includes various boulders, ground covers, grasses, shrubs, and trees of appropriate scale to screen views of the building and demarcate entrances and walkways. As conditioned, the landscaping plan will use native water efficient trees and plants.

Therefore, there is a high degree of legal and factual support for the City’s decision that the project as conditioned will, to the maximum extent feasible, preserve native plant and animal species and their habitat and preserve existing healthy trees and native vegetation on the site, consistent with LUP policies OS-5.1 and OS-5.2.

## **H. Substantial Issue Determination**

When considering a project on appeal, the Commission must first determine whether the appeal raises a substantial issue of the project’s conformity with the LCP and/or the public access policies of Chapter 3 of the Coastal Act (if applicable), such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the appeal does or does not raise a substantial issue of the project’s LCP and Coastal Act (where applicable) conformity. The Commission has in the past and, pursuant to section 13115(c) of its regulations, considered the following five factors in its decision of whether the issues raised in a given case are “substantial”: (1) the degree of factual and legal support for the local government’s decision; (2) the extent and scope of the development as approved or denied by the City; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the City’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. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

In this case, these five factors considered together support a conclusion that the appeal does not raise a substantial issue as to the City-approved project’s consistency with the LCP. The investigations and analyses submitted as part of the CDP application support the City’s decision that the approved development as conditioned would not result in significant degradation of public access, visual resources, water quality, or ESHA, nor significantly contribute to greenhouse gas (GHG) production. As discussed in the above findings, there is a high degree of legal and factual support for the City’s decision that the approved project, as conditioned (1) is consistent with the underlying zoning district and will incidentally serve visitors in addition to the local community, (2) includes sufficient parking and does not displace designated or planned coastal access parking c, (3) conforms with traffic and circulation policies of the LCP and includes appropriate

traffic and circulation mitigation (such as new sidewalks, street frontage improvements, and in lieu fees for future intersection improvements at the intersections of both Franklin St. and South St. and at North Harbor Dr. and Highway 1) that will improve traffic and pedestrian safety; (4) minimizes energy consumption and vehicle miles traveled; (5) conforms with the Citywide Design Guidelines to protect community character and visual resources; and (6) includes water quality and native plant protection requirements consistent with the LCP. The Commission finds there is substantial factual and legal support for the City's decision. As the City thoroughly addressed the relevant coastal resource concerns, the Commission assigns more weight to this factor in the substantial issue analysis.

As to project scope, the approved development is limited in extent and scope to the redevelopment of an existing approximately 1.6-acre urban infill site currently developed with a 16,436 square-foot vacant former office building and associated 47-space parking lot with development of a smaller sized retail store and 55-space parking lot. There will be very little discernable difference between the scale of the new and existing development upon completion of the project. Thus, the proposed project is very limited in extent and scope when compared to the existing development and conditions on the project site. Therefore, when combined with the first factor and third factor (discussed below), this second factor also weighs against finding substantial issue.

The third factor (the significance of coastal resources affected) also supports a finding of no substantial issue. The project location is not a designated scenic area under the LCP, is not located between the sea and the first public road and does not contain ESHA. Moreover, the proposed development is a use consistent with the purpose of and allowed use in the CH zone. Therefore, the proposed development will not have an effect on any significant coastal resources including public access to the coast, public views to or from the ocean, and biological resources.

Fourth, the City's decision does not involve any novel LCP interpretive issues and would not set an adverse precedent for future interpretations of the City's LCP, especially given the high degree of legal and factual support for the City's decision, as discussed above.

Finally, while the appeal does raise issues of regional or statewide significance (primarily related to coastal public access, ESHA, visual resources, and water quality), as previously discussed, there is a high degree of legal and factual support that the City-approved project, as conditioned, adequately protects the resources identified in the appeal. In addition to adequately protecting ESHA, visual resources and water quality, the City-approved project will protect public access to the coast because it will provide adequate parking to serve the permitted use, thereby avoiding the risk of the project's patrons' use of on-street public parking that may be used for coastal access. Finally, The City-approved project also protects coastal public access because it will increase traffic and pedestrian safety through implementation of various traffic mitigation improvements, such as the development of sidewalks on the eastern and southern perimeters of the project site, frontage improvements along the sections of North Harbor Dr. and the southerly portion of Franklin St. that currently are not improved, and

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payment for improvements at the intersection of Franklin St. and South St. and at the intersection of North Harbor Dr. and Highway 1.

Therefore, especially given the high degree of factual and legal support for the City's decision and conditions of approval, consideration of the five factors together support a conclusion that the appeal of the City's approval of the CDP does not raise a substantial issue of LCP conformance. For the reasons stated above, the Commission finds that Appeal Number A-1-FTB-23-0021 does not present a substantial issue with respect to the grounds upon which the appeal was filed under section 30603 of the Coastal Act, and the Commission declines to take jurisdiction over the CDP application for this project.