CALIFORNIA COASTAL COMMISSION
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W12a & W12b

Filed (1st Appeal):	4/11/2025
49th Day (1st Appeal):	Waived
Filed (2nd Appeal):	7/29/2025
49th Day (2nd Appeal):	10/7/2025
Staff:	MBK - A
Staff Report:	8/26/2025
Hearing Date:	9/10/2025

STAFF REPORT: APPEAL
NO SUBSTANTIAL ISSUE DETERMINATION

Appeal Nos.:	**A-1-FTB-25-0013 and A-1-FTB-25-0024**
Applicant:	**Kosh Grewal**
Local Government:	City of Fort Bragg
Local Decisions:	Approval with Conditions (CDP 8-24) Approval with Conditions (CDP Amendment 8-24/A)
Location:	1151 South Main Street, Fort Bragg, Mendocino County (APN: 018-440-58)
Project Description A-1-FTB-25-0013:	Development of a multifamily residential housing project with seven apartment buildings 32 to 38 feet tall consisting of 86 (studio, 1-bedroom, & 2-bedroom) units, including eight units affordable to households of very low income, one 1,000-square-foot (SF) commercial/retail facility on the ground floor of one highway-fronting building, 107-space parking lot, 5-ft-high soundwall between parking lot and Harbor Ave., outdoor play area, landscaping, signage, property fencing, stormwater biofiltration planters, and new sidewalks and other improvements along Harbor Ave. and Frontage Rd.
Project Description A-1-FTB-25-0024:	Modify permit previously granted for multifamily residential housing project to: (a) change three residential units to four visitor-serving hotel suites without kitchens, one of which will be rented to visitors

	at a low-cost rate and all of which will be managed out of the adjacent Dolphin Inn (also under applicant's ownership); and (b) add a public access path across the parcel and install signage for access to Pomo Bluffs Park north of the site.
Appellants (1st Appeal):	Two separate appeals filed by (1) Judy Mashhour-Azad, and (2) jointly by Guy R. Burnett, Mary Chamberlin, Paul Clark, Teresa Skarr, David Skarr, and Hamid Zarrabi
Appellants (2nd Appeal):	Five separate appeals filed by (1) Guy R. Burnett & Truthful Kindness, (2) Paul Clark, (3) Judy Mashhour-Azad, (4) Teresa Skarr, David Skarr, and Annemarie Weibel, and (5) Hamid Zarrabi
Staff Recommendation:	No Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeals raise a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 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. (14 CCR § 13117.) If the Commission determines the appeals do 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.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after a public hearing, determine that **No Substantial Issue** exists with respect to the grounds on which the appeals have been filed. The subject property is a 2.6-acre vacant lot located west of Highway 1 and south of the Noyo River near the southwestern boundary of the City's coastal zone. The property is adjacent to three local streets – Harbor Avenue to the west, Ocean View Drive to the south, and an unnamed frontage/access road to the west. Pomo Bluffs Park is northwest of the site. Lands west of Harbor Avenue immediately west of the site are outside of the City limits in the unincorporated County. There are a number of single-family homes on 1-acre lots served by onsite domestic wells in this unincorporated Todd Point area.

On March 24, 2025, the City Council conditionally approved a CDP (and other discretionary approvals) authorizing the construction of seven apartment buildings with a total of 86 residential units (including six studio, 36 one-bedroom, and 44-two-bedroom units) and one 1,000-square-foot commercial retail store on the ground

highway-fronting floor of one of the seven buildings. The applicant initially proposed 87 units, but the City's approval required the applicant to "*resubmit the site plan and floor plan with the Building Permit application for Building 3 defining and redesigning the bottom floor northeast unit of the building for a visitor serving use, such as a retail store or gift shop*." The City's approval also included a 107-space parking lot, 5-ft-high soundwall between the parking lot and Harbor Avenue, an outdoor play area, landscaping, signage, property fencing, stormwater biofiltration planters, and new sidewalks and other improvements along Harbor Avenue and the frontage road.

After two timely appeals of the City's approval were filed on April 8, 2025 raising contentions related to housing affordability, land use inconsistency issues, visual resources, traffic, and water quality concerns, the applicant elected to waive the time limit for opening the hearing on the appeal to allow time to return to the City with a revised project application to try to address issues raised under the appeals.

On July 14, 2025, the City Council conditionally approved CDP Amendment 8-24/A with conditions to modify the original permit(s). As amended, the project includes seven apartment buildings 32 to 38 feet tall consisting of a total of 83 residential units, rather than 86 units. The mixed-use component of the project as amended involves not only the inclusion of one ~1,000-square-foot commercial/retail facility on the ground floor of one highway-fronting building but also an additional four visitor-serving hotel suites without kitchens on the ground floors of highway-fronting buildings. One of the hotel suites is proposed (and as conditioned by the City required) to be rented to visitors at a low-cost rate. The amended project also includes a public access path across the parcel with signage directing access to Pomo Bluffs Park north of the site.

On July 29, 2025, the Commission received five separate appeals of the City's approval of the CDP amendment. The appeals raise contentions related to land use consistency, priority uses, visual resources, water quality, stormwater runoff, ESHA, hazards, adequacy of services, traffic impacts, coastal access, noise, noticing, and CEQA procedures. For the reasons discussed herein, staff recommends the Commission find that none of the contentions raise a substantial issue of conformance of the approved development with the policies and standards of the certified LCP or with the public access and recreation policies of the Coastal Act.

The City's approval of the mixed-use project under the permit amendment includes the approval of multiple density bonus and inclusionary incentives, which are allowed under State Density Bonus Law (State DBL) and the City's certified LCP. Under Government Code §65915(d)(2), projects are eligible for three incentives or concessions for projects that include at least 15 percent units reserved for very low income households ("very low income" is defined as 50% of the median family income or lower, which in Fort Bragg was approximately $58,000 for the year 2022). In this case, the City granted three incentives consistent with the State DBL, because out of the 83 overall residential units proposed under the CDP amendment application, the project will provide eight units as affordable to households of very low income. This represents 15% of the pre-bonus baseline of 53 units (the applicant initially, last year, applied for permits for 53 units, and the inclusionary requirement for 53 units (15% of 53 units) is eight units).

State DBL and the City's certified LCP allow incentives to be granted so long as it can be found that the requested incentives or concessions would not have an adverse effect on coastal resources. The three incentives granted by the City with its permit amendment approval allow for increasing the height limit of the buildings from 28 feet to up to 38 feet, reducing the minimum balcony sizes for apartments, and modifying the requirement that visitor serving uses be provided on the street-facing frontage of the bottom floor of each of the seven buildings to instead allow visitor serving uses on the street facing frontage of the bottom floors of two of the buildings only. The subject site is designated and zoned Highway Visitor Commercial (CH) under the City's LCP, which prioritizes visitor-serving uses such as lodging, restaurants, and retail outlets. The LCP specifies that on CH lands, residential uses may be permitted above the ground floor or on the ground floor at the rear of buildings.

Staff believes that there is a high degree of legal and factual support for the City's determination that the approved 83-unit mixed-use project, as conditioned, with the density bonuses and incentives granted, will not have an adverse effect on coastal resources and is consistent with the LCP. Not only will the approved project provide new affordable housing opportunities for persons of low and moderate income in the coastal zone, consistent with Coastal Act section 30604(g), the LCP, and State DBL, the project also will provide several priority visitor serving elements consistent with the intent of the CH land use and zoning designation and with LCP policies that prioritize visitor-serving uses.

The City's approval includes requirements (in Special Conditions 7, 39, and 43) that the ground floors of buildings 3 and 5 on the eastern, highway-fronting side of each building be occupied by priority visitor-serving uses, as required by the LCP. The uses that will occupy these spaces include a ~1,000-square-foot retail facility and four visitor-serving hotel suites to be managed by the applicant's adjacent Emerald Dolphin Inn. As proposed and required by Special Condition 40, one of the four suites will be offered at a lower cost rate, which is consistent with several of the City's LUP priority use policies. Requiring the proposed visitor-serving uses to occupy the ground floors of Buildings 3 and 5 is appropriate, as these are the two buildings closest to and fronting the highway, the other five buildings will either be set back behind Buildings 3 and 5 or set further back on the property not readily fronting the highway, and the LCP allows non-visitor-serving uses to occupy the rear, non-highway-fronting sides of buildings. Additionally, the approved project as conditioned will construct a public access path across the parcel with associated signage directing the public to Pomo Bluffs Park north of the site (required to be implemented by Special Condition 44) and the installation of a public bench in front of Building 3 (required by Special Condition 42). Including these public access amenities provides additional visitor-serving elements and integrates the development with nearby access points to facilitate coastal access, as required by the LCP. Thus, allowing residential uses in the CH zoning district will not create an adverse precedent for future City decisions, because the approved project as conditioned strikes an appropriate balance between providing new housing in the coastal zone (including affordable housing for persons of low and moderate income) and protecting priority visitor-serving uses, including lower cost overnight accommodations and coastal access amenities.

Though this is a relatively large housing project for the City's coastal zone, the project is limited to a single property adjacent to the southern end of the City boundary that will have no significant effect on coastal resources. As discussed in the findings, there are no significant visual resources affected by the City's decision, there are no environmentally sensitive habitat areas, wetlands, or natural drainages on or adjacent to the site, the site is not within an area of high geologic, flood, or fire hazard, and the City's findings demonstrate that the approved project as conditioned will be served by adequate services, including improved local roadways, onsite drainage infrastructure, and connections with municipal water and sewer services. As the site is within a half mile of coastal access points, the City's findings and conditions demonstrate that the approved project as conditioned will not adversely impact public access, will include public access enhancements, will appropriately mitigate traffic impacts, and will minimize vehicle miles traveled. The City's findings also demonstrate that the project as designed and conditioned with significant open space and permeable areas will infiltrate and treat a significant volume of stormwater onsite, thereby minimizing any effect on groundwater and domestic wells west of the site. The City's approval includes various special conditions to address water quality protection, stormwater runoff, and to ensure stormwater improvements are appropriately sized to manage runoff. While the project does raise issues of regional and statewide significance, the City imposed numerous conditions addressing these issues and provided substantial legal and factual support for its determination that the approved project as conditioned will protect coastal resources consistent with LCP requirements.

Therefore, especially given the high degree of factual and legal support for the City's decision, its numerous conditions of approval imposed to protect coastal resources, including water quality, public access, and other resources, and the fact that there are no significant coastal resources affected by the City's decision, consideration of the five factors together of section 13115(c) of the Commission's regulations related to substantial issue determinations support the conclusion that the City's approval of the CDP Amendment does not raise a substantial issue of LCP conformance. Thus, staff recommends the Commission find that Appeal Number A-1-FTB-25-0024 does not present a substantial issue with respect to the grounds on which the appeals were filed under section 30603 of the Coastal Act.

Because staff is recommending that the Commission find that A-1-FTB-25-0024 raises no substantial issue (NSI), the Commission's NSI decision would render the City's CDP amendment final and effective. Because the City's resolutions for conditionally approving the CDP amendment include a declaration that the CDP amendment supersedes the original permit and shall control the development of the project, finality of the CDP amendment renders the original CDP approval as having no legal effect. Thus, the appeal of the original permit would become effectively moot, and the contentions raised under Appeal No. A-1-FTB-25-0013 for the original permit approval would therefore also not present a substantial issue.

The motions to adopt the staff recommendation of No Substantial Issue are found on pages 11-12.

Table of Contents

I. LOCAL GOVERNMENT ACTIONS 7
II. FILING OF APPEALS 7
III. APPEAL JURISDICTION & PROCEDURES 8
A. APPEAL JURISDICTION 8
B. APPEAL PROCEDURES 9
1. Factors in Determining Whether a Substantial Issue is Raised 9
2. Appeal Hearing Procedures 10
IV. MOTIONS & RESOLUTIONS 11
V. SUMMARY OF APPEAL CONTENTIONS 12
VI. FINDINGS & DECLARATIONS FOR NO SUBSTANTIAL ISSUE 15
A. PROJECT DESCRIPTION & BACKGROUND 15
B. ANALYSIS OF CONTENTIONS 18
1. Land Use Consistency & Priority Use Contentions 19
2. Visual Resources Contentions 35
3. Public Access, Recreation, and Traffic Related Contentions 38
4. Water Quality & Hydrology Contentions 46
5. ESHA Contentions 56
6. Hazards Contentions 58
7. Adequacy of Services Contentions 61
8. Invalid Contentions 67
C. CONCLUSION – NO SUBSTANTIAL ISSUE DETERMINATION 68
APPENDIX A: SUBSTANTIVE FILE DOCUMENTS 71

EXHIBITS

Exhibit 1 – Vicinity Map
Exhibit 2 – Approved Plans
Exhibit 3 – Appeal Filed on Original Permit by Mashhour-Azad
Exhibit 4 – Appeal Filed on Original Permit by Burnett et al.
Exhibit 5 – Notice of Final Action (NOFA) for Original Appealed CDP
Exhibit 6 – Burnett-Kindness Appeal of CDP Amendment
Exhibit 7 – Clark Appeal of CDP Amendment
Exhibit 8 – Mashhour-Azad Appeal of CDP Amendment
Exhibit 9 – Skarr-Weibel Appeal of CDP Amendment
Exhibit 10 – Zarrabi Appeal of CDP Amendment
Exhibit 11 – NOFA & Supporting Findings for Permit Amendment Approval

I. LOCAL GOVERNMENT ACTIONS

A. APPEAL NO. A-1-FTB-25-0013 (CDP 8-24)

On March 24, 2025, the Fort Bragg City Council conditionally approved Coastal Development Permit 8-24 (CDP 8-24), Design Review 11-24 (DR 11-24), Use Permit 9-24 (UP 9-24), and Sign Permit 20-24 (SP 20-24). Collectively, these permits authorized development of a multifamily residential housing project with seven apartment buildings 32 to 38 feet tall consisting of 86 (studio, 1-bedroom, & 2-bedroom) units, including eight units affordable to households of very low income, one 1,000-square-foot (SF) commercial/retail facility on the ground floor of one highway-fronting building, 107-space parking lot, 5-ft-high soundwall between parking lot and Harbor Ave., outdoor play area, landscaping, signage, property fencing, stormwater biofiltration planters, and new sidewalks and other improvements along Harbor Ave. and Frontage Rd. The City granted its approval subject to eight standard conditions and 38 special conditions.[1] The City issued a Notice of Final Action (NOFA) received at the Commission's North Coast District Office on March 26, 2025 (**Exhibit 5**).

B. APPEAL NO. A-1-FTB-25-0024 (CDP 8-24/A)

On July 14, 2025, the Fort Bragg City Council conditionally approved Coastal Development Permit Amendment 8-24/A with conditions, along with Design Review Permit Amendment 11-24/A (DR 11-24/A), Use Permit Amendment 9-24/A (UP 9-24/A), and Sign Permit 20-24 (SP 20-24), which collectively modify the original permit(s), including findings and conditions, approved on March 24, 2025. The approved permit, as amended, includes the following project changes: (a) change three of the residential units to four visitor-serving hotel suites without kitchens, one of which will be rented to visitors at a low-cost rate and all of which will be managed out of the adjacent Dolphin Inn (also under applicant's ownership); and (b) add a public access path across the parcel and install signage for access to Pomo Bluffs Park north of the site. The City granted its approval subject to nine standard conditions and 48 special conditions. The City's final action and approved project plans for the amendment are attached as **Exhibits 2** and **11**.

II. FILING OF APPEALS

A. APPEAL NO. A-1-FTB-25-0013

On April 8, 2025, the Commission received two timely appeals of local CDP 8-24: one filed by Judy Mashhour-Azad (**Exhibit 3**) and separate appeal jointly filed by Guy R. Burnett, Mary Chamberlin, Paul Clark, Teresa Skarr, David Skarr, and Hamid Zarrabi (**Exhibit 4**). Both appeals were received within ten working days of receipt by the Commission of the City's NOFA. Pursuant to section 30621(a) of the Coastal Act, a

[1] The applicant initially proposed 87 units, but the City's approval required the applicant to "*resubmit the site plan and floor plan with the Building Permit application for Building 3 defining and redesigning the bottom floor northeast unit of the building for a visitor serving use, such as a retail store or gift shop*."

hearing on an appeal must be set no later than 49 working days after the date on which an appeal is determined filed; however, according to Coastal Act section 30625(a), the applicant can waive that time limit. On May 14, 2025, the applicant submitted a signed waiver of the 49-working-day deadline for opening the Commission hearing on the appeal. The applicant subsequently (on May 27, 2025) submitted a revised project description to the City requesting an amendment to the original CDP to address issues raised in the appeal.

B. APPEAL NO. A-1-FTB-25-0024

On July 29, 2025, the Commission received five separate timely appeals of the City's approval of the CDP amendment from (1) Guy R. Burnett & Truthful Kindness (**Exhibit 6**), (2) Paul Clark (**Exhibit 7**), (3) Judy Mashhour-Azad (**Exhibit 8**), (4) Teresa Skarr, David Skarr, and Annemarie Weibel (**Exhibit 9**), and (5) Hamid Zarrabi (**Exhibit 10**). The appeals were filed within 10 working days of receipt by the Commission of the City's Notice of Final Action (**Exhibit 11**).

III. APPEAL JURISDICTION & PROCEDURES

A. Appeal Jurisdiction

The Coastal Act provides that after certification of a local government's Local Coastal Program (LCP), the local government's actions on Coastal Development Permit (CDP) applications for development in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their final CDP actions. During a period of ten working days following Commission receipt of a notice of final local action for an appealable development, an appeal of the action may be filed with the Commission.

Approvals of CDPs by cities or counties may be appealed if the authorized development will be located within the appealable areas, which under Coastal Act section 30603(a)(1) through (3) include development located (1) 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 tideline of the sea where there is no beach, whichever is the greater distance; (2) in other areas on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; or (3) in a sensitive coastal resource area.[2] Approvals of CDPs by counties also may be appealed if the approved development is not designated as the principal permitted use under the county's certified zoning ordinance or zoning district map (Coastal Act section 30603(a)(4)). In addition, any development that constitutes a major public works project or a major energy facility that is approved or denied by a city or county may be appealed (Coastal Act section 30603(a)(5)).

[2] See Commission regulations 14 CCR § 13577 for guidance.

In this case, the City of Fort Bragg's approvals of CDP 8-24 and CDP Amendment 8-24/A are appealable to the Commission, because the approved development is located between the sea and the first public road paralleling the sea.

B. Appeal Procedures

Section 30603(b)(1) of the Coastal Act states that the grounds for an appeal pursuant to Coastal Act section 30603(a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed.

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. The Commission is required to begin its hearing on an appeal, addressing at least the substantial issue question, within 49 working days of the filing of the appeal unless the applicant has waived that requirement, in which case there is no deadline.[3] At the Substantial Issue determination stage, the Commission may only consider whether appellants' grounds for an appeal raise a substantial issue.

1. Factors in Determining Whether a Substantial Issue is Raised

The Coastal Act and the Commission's implementing regulations are structured such that "substantial issue" is presumed, and the Commission generally considers a number of factors in making such a determination. The term "substantial issue" is explained in section 13115(c) 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 that the development is consistent or inconsistent with the certified LCP;
> 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 local issues, or those of regional or statewide significance.

[3] In the case of Appeal No. A-1-FTB-25-0013, pursuant to section 30625(a) of the Coastal Act, the applicant elected to waive the 49-working-day time limit for opening a hearing on the appeal.

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

Commission staff has analyzed the administrative record for the original approved project and subsequent amendment, including, but not limited to, the City's Final Local Action Notices for the approvals (**Exhibits 5** and **11**), the appellants' claims (**Exhibits 6-10**), and the relevant requirements of the certified LCP. Staff is recommending that the Commission find that the development as approved by the City under the CDP amendment raises no substantial issue with respect to the appellants' grounds for appeal.

2. Appeal Hearing Procedures

In this case, because staff is recommending that the appeals raise 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 (or their representatives), the appellants (or their representatives), persons who opposed the application before the local government, 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, following testimony and a public hearing, the Commission determines that the appeal *does not* raise a substantial issue, then the Commission does not take jurisdiction over the underlying CDP application, and the local government approval will stand.

The contentions raised under the appeal of the original permit approval (Appeal No. A-1-FTB-25-0013 related to City CDP No. 8-24) are not separately analyzed herein, because the City's resolutions for conditionally approving the permit amendment (CDP No. 8-24/A) include a declaration that the subject CDP amendment supersedes the original permit and shall control the development of the project (Exhibit 11, page 20). Furthermore, the City's staff report for the July 14, 2025 public hearing on the CDP amendment permit clearly explains the process and relationship between the original permit and the amendment (Exhibit 11, page 33):

> *This hearing is intended to discuss proposed modifications to an already approved project, and this staff report focuses on the analysis of the project modifications and the issues raised by the appellants as discussed above. As the modified project will have to comply with all approved special conditions (including (a) those in the City Council resolution dated 3-24-2025, as amended herein, if any amendments to existing conditions are made in this CDP amendment action as well as (b) the new Special Conditions adopted in the resolution today), the numbering for Special Conditions in this staff report starts where the numbering for the special conditions in the resolution adopted on 3-24-2025 ended namely with Special Condition 38. The attached resolution rescinds the initial CDP, UP and DR permits in their entirety and replaces them with the amended*

> *permit for the full project as amended subject to all the findings and special conditions identified in the original staff report and for amended project elements.*

Therefore, if the Commission finds that the appeal of the permit amendment (Appeal No. A-1-FTB-25-0024) raises no substantial issue, the City's permit as amended (CDP 8-24/A) becomes final and effective following Commission action, and the original CDP approval (CDP 8-24) is rendered as having no legal effect as of the issuance date of the amended CDP, and no development may be performed under that approval (but rather under the amended approval). In that case, the appeal of the original permit becomes effectively moot, and the contentions raised under Appeal No. A-1-FTB-25-0013 for the original permit approval also do not raise a substantial issue, because following its action on the appeal of the CDP amendment would result in a final action on the amendment and effective rescission of the original CDP, as adopted under the City's resolution for the CDP amendment.

Should the Commission determine that a substantial issue does exist, the Commission will consider the CDP application(s) for the subject development *de novo*. The applicable test for the Commission to consider in a de novo review of a project is whether the proposed development is in conformity with the certified LCP and, if the development is between the sea and the first public road paralleling the sea (as it is in this case), the public access policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons. In this case, any consideration of a de novo application will occur at a future hearing and not at the hearing considering whether a Substantial Issue is raised.

IV. MOTIONS & RESOLUTIONS

A. APPEAL NO. A-1-FTB-25-0024

Motion A:

> I move that the Commission determine and resolve that Appeal No. A-1-FTB-25-0024 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 **YES** vote on the foregoing motion. Passage of this motion by voting "Yes" as is recommended by staff will result in a finding of **No Substantial Issue** and adoption of the following resolution and findings. The local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution A:

The Commission hereby finds that Appeal A-1-FTB-25-0024 raises No 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 LCP and/or the public access policies of the Coastal Act.

B. Appeal No. A-1-FTB-25-0013

Motion B:

> I move that the Commission determine and resolve that Appeal No. A-1-FTB-25-0013 does not present a substantial issue because the appeal is moot upon finding that Appeal No. A-1-FTB-25-0024 raises no substantial issue with respect to the grounds on which that 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 **YES** vote on the foregoing motion. Passage of this motion by voting "Yes" as is recommended by staff will result in a finding of **No Substantial Issue** and adoption of the following resolution and findings. The local action will become final and effective as to its recission of the underlying local, original CDP for the proposed development. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution B:

The Commission hereby finds that Appeal No. A-1-FTB-25-0013 raises No Substantial Issue because the appeal is moot upon finding that Appeal No. A-1-FTB-25-0024 raises no substantial issue with respect to the grounds on which that appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the certified LCP and/or the public access policies of the Coastal Act.

V. SUMMARY OF APPEAL CONTENTIONS

A. Appeal No. A-1-FTB-25-0013 (City CDP No. 8-24)

Below is a summary of issues and contentions raised by the appeals of the original CDP approved by the City (CDP 8-24) filed by (1) Judy Mashhour-Azad and (2) jointly by Guy R. Burnett, Mary Chamberlin, Paul Clark, Teresa Skarr, David Skarr, and Hamid Zarrabi. Copies of the appeals are included as **Exhibits 3** and **4**.

1. The approved project failed to meet the criteria for a "a housing development project for very low, low- or moderate-income households" because only eight of the 87 housing units will be low-income (rather 10% of the total as required by Gov. Code § 65589.5, subd. (h)(3)(A)).

2. The approved project does not conform to Highway Commercial (CH) land use and zoning district requirements that restrict residential uses to upper floors (or, if allowed on the ground floor, then only to the rear of buildings) and which prioritize visitor-serving uses over private residential uses.

3. The approved project is inconsistent with the small-town rural character and natural beauty of the area and will obstruct public views from the highway to the coastline.

4. The approved project will generate high traffic volumes (and generate excessive greenhouse gas emissions) on limited capacity roadways, which in turn will result in adverse impacts on recreational users and visitors attempting to access the coast. The mitigation required to address the increase in traffic is inadequate, was based on an outdated traffic study, and does not include adequate mitigation proportional to the impacts that would enhance public access, ensure pedestrians and bicyclists can safely access the coast, and ensure that the level of service and service capacity for the project is adequate.

5. The project raises water quality concerns, particularly with respect to possible contamination of residential groundwater wells on Todd Point.

6. The approved project fails to provide ADA access from the development site to Pomo Bluffs Trail and Park.

B. Appeal No. A-1-FTB-25-0024 (City CDP Amendment No. 8-24/A)

In their appeals of the City's approval of the permit amendment, the following is a collective summary of contentions raised by the five separate appeals filed by appellants (1) Guy R. Burnett & Truthful Kindness (**Exhibit 6**), (2) Paul Clark (**Exhibit 7**), (3) Judy Mashhour-Azad (**Exhibit 8**), (4) Teresa Skarr, David Skarr, and Annemarie Weibel (**Exhibit 9**), and (5) Hamid Zarrabi (**Exhibit 10**):

1. The approved project does not conform to Highway Commercial (CH) land use and zoning district requirements that restrict residential uses to upper floors (or, if allowed on the ground floor, then only to the rear of buildings) and which prioritize visitor-serving uses over private residential uses. Appeals allege there are other inconsistencies as well, such as the project exceeds the allowed residential density for CH lands.

2. The approved project is inconsistent with the small-town rural character and natural beauty of the area and will obstruct public views from the highway to the coastline. The City failed to require either story poles or a visual analysis.

3. The approved project will generate high traffic volumes on limited capacity roadways, which in turn will result in adverse impacts on recreational users and visitors attempting to access the coast. The mitigation required to address the increase in traffic is inadequate, was based on an outdated traffic study, and does not include adequate mitigation proportional to the impacts that would enhance public access, ensure pedestrians and bicyclists can safely access the coast, and ensure that the level of service and service capacity for the project is adequate. Related to traffic, another contention is that the City's approval did not consider greenhouse gas emissions and project residents idling in traffic queues.

Because the City did not require an updated traffic study, there has been no analysis of the project's air quality impacts, and there is insufficient evidence to support a finding that the developments will "Minimize energy consumption and vehicle miles traveled."

4. The City's approval did not address the fact that circa 2018 there were ten bore holes/exploratory wells drilled on the site for which there is no evidence of proper sealing or decommissioning. Improperly filling, or leaving unfilled and abandoned, bore holes could result in migration of documented site contaminants (including petroleum, coolant, fuel, animal waste, etc.) through these conduits and the porous soils of the area, thereby contributing pollution to the residential groundwater wells of Todd Point.

5. The City did not require a new groundwater evaluation for the project but instead relied on an old, outdated report for an adjacent site. As the City did not require the applicant to prepare a project-specific hydrologic design analysis to consider the project's impacts on the Todd Point aquifer, to ensure maintenance of existing levels of groundwater recharge, and to consider cumulative hydrologic impacts, the approved project may impact the aquifer and groundwater wells that rely on it, and mitigation measures included to mitigate these impacts are insufficient.

6. The City's approval of the project could lead to pollutants in the environment that generally could degrade water quality.

7. The project may impact sensitive plant and bird habitat areas inconsistent with the ESHA protection policies of the LCP.

8. The City's approval did not address safe evacuation for Todd Point residents in the event of a tsunami, and the high traffic volumes generated by the project will impair the ability of all residents to safely evacuate.

9. The City did not require a new geotechnical report for the project but instead relied on the 2018 report. Thus, there is insufficient legal and factual support for the City's conclusion that the project design minimizes geologic risks.

10. The City's approval did not demonstrate that there are adequate services for both the approved development and future planned development in the City.

11. The noise study was flawed, noise levels from the project will exceed acceptable levels and disturb the peace and enjoyment of the existing low-noise-level surrounding neighborhoods, and no adequate mitigation measures were required to reduce noise levels generated by the project.

12. The City failed to conduct meaningful environmental review or consider cumulative impacts related to traffic, infrastructure capacity, stormwater runoff, and other issues. The City improperly relied on certain CEQA exemptions that are not appropriate in this case.

13. By failing to notify neighbors of the November 2024 public hearing (when the Council pre-approved density bonus incentives), and by failing to require story poles or any other prominent hearing notice on the site, the City failed to provide adequate notice of the scope of the project.

Analyses of all contentions raised in Appeal No. A-1-FTB-25-0024 are included in Finding VI below.

VI. FINDINGS & DECLARATIONS FOR NO SUBSTANTIAL ISSUE

A. Project Description & Background

Project Location

The subject property is a 2.6-acre vacant lot located at 1151 South Main Street, Fort Bragg, Mendocino County (APN: 018-440-58). The property is west of Highway 1 and south of the Noyo River. **Exhibit 1** is a vicinity map of the subject site, and Figure 1 below shows an aerial view of the site (taken from the City's 2018 Initial Study and Mitigated Negative Declaration prepared for the AutoZone project previously proposed on the site). The property fronts an unnamed access road to the east referred to as frontage road. Highway 1/Main Street is east of the frontage road. Ocean View Drive is to the south (which is signalized at its intersection with Highway 1/Main Street), and Harbor Avenue is to the west. The City boundary borders Harbor Avenue, so lands immediately west of the site are in unincorporated Mendocino County.



Figure 1. Aerial map of the subject property outlined in red (aerial imagery circa 2018).

Description of Project Approved Under Original Permit (A-1-FTB-25-0013)

On March 24, 2025, the Fort Bragg City Council conditionally approved Coastal Development Permit 8-24 (CDP 8-24), Design Review 11-24 (DR 11-24), Use Permit 9-24 (UP 9-24), and Sign Permit 20-24 (SP 20-24). Collectively, these permits authorized the following, as described in the City's Notice of Final Action (NOFA) transmitted for the project (**Exhibit 5**):

> *"The project applicant proposes constructing a multifamily project consisting of the following components:*
>
> - *The project includes new construction of seven residential buildings which range in height from 32' (flat roofs) to 37' 8' (shed roofs) with a total of 87 units.*
> - *The project includes six studio, 36 one-bedroom, and 44 two-bedroom residential units and one commercial/retail space of 1,000 SF. Each residential unit features a private patio or balcony.*
> - *Site amenities include an outdoor playground, outdoor courtyard, and 18,850 SF of open space (14,067 SF of common open space and 4,783 SF of private open space). Landscaping includes 3,006 SF of bioretention planters, as well as 37,000 SF of landscaped areas throughout the project. The landscaping plan includes 73 trees, multiple plants native to Northern California's coast, and four non-native species.*
> - *Total open space (playgrounds, courtyards, open space, landscaped areas) is approximately 55,850 SF (1.3 acres) or 46% of the site. The total building footprint is 28,126 SF or 24% of the site. The remainder of the site, 24,942 SF or 30%, is composed of the parking lot and sidewalks.*
> - *Building finishes are composed of cement plaster, cement board siding, standing seam metal roof, brick veneer, and board and batten.*
> - *The project includes 107 parking spaces in an L-shaped parking lot located along the west and north sides of the parcel. The parking lot includes 16-foot-high light poles and is surrounded by landscaping with 25 trees (planted every five to eight stalls). The project includes 11 bicycle spaces. The parking lot proposal includes 43 EV-ready parking spaces, eight EV chargers and three ADA parking spaces. There are two trash enclosures proposed for the parking lot. The parking lot would be entered from Harbor Ave. and Frontage Road on the east side of the parcel."*

The City granted its approval subject to eight standard conditions and 38 special conditions, including Special Condition 7 requiring the applicant to "*resubmit the site plan and floor plan with the Building Permit application for Building 3 defining and redesigning the bottom floor northeast unit of the building for a visitor serving use, such as a retail store or gift shop*."

Description of Project Approved Under CDP Amendment (A-1-FTB-25-0024)

After two timely appeals of the City's approval were filed on April 8, 2025 (**Exhibits 3-4**), as described in Finding II-A above, the applicant subsequently (on May 27, 2025) submitted a revised project description to the City requesting an amendment to the original CDP to address issues raised in the appeal.

On July 14, 2025, the City Council conditionally approved CDP Amendment 8-24/A with conditions, along with Design Review Permit Amendment 11-24/A (DR 11-24/A), Use Permit Amendment 9-24/A (UP 9-24/A), and Sign Permit 20-24 (SP 20-24), which collectively modify the original permit(s), including findings and conditions, approved on March 24, 2025. As described in the City's Notice of Final Action (NOFA) transmitted for the amended project (**Exhibit 11**), the approved permit, as amended, includes a proposal to (1) change three of the residential units to four visitor-serving hotel suites without kitchens, one of which will be rented to visitors at a low-cost rate and all of which will be managed out of the adjacent Emerald Dolphin Inn located at 1211 South Main Street (also under applicant's ownership); and (2) add a public access path across the parcel and install signage for access to Pomo Bluffs Park north of the site.

The NOFA for the City's approved CDP Amendment 8-24/A includes, as noted in the July 14, 2025 staff report for the City Council hearing, the written findings for approval supporting both the original project and the project as amended: "*This report builds upon the previous staff report [i.e., the staff report for the original permit approval dated March 24, 2025]. It is supplemental to it. The analysis of both staff reports should be considered when deliberating about the requested project*" (Exhibit 11, page 32). Thus, the complete "NOFA" for the CDP amendment (Exhibit 11) includes, in addition to the Notice of Final Local Action and adopted conditions of approval of CDP 8-23/A, the following attached documents: (1) the July 14, 2025 staff report; (2) the City Council resolution approving the CDP Amendment; (3) the March 24, 2025 staff report; and (4) several other key reports and information upon which the City's approval of the CDP Amendment was based and which the City included as attachments to the July 14, 2025 staff report, including, but not limited to: (a) the City's responses to contentions raised in the appeal filed on the original staff report (contentions raised in A-1-FTB-25-0013) in the form of an annotated copy of the appeal and table of responses; (b) a June 9, 2025 Market and Feasibility Analysis for Project Alternatives and Inclusionary Housing Incentives; (c) a November 12, 2024 report on proposed Inclusionary Housing Incentives; (d) a June 24, 2025 Traffic Memo prepared by Tahoe Design & Engineering; and (e) a June 24, 2025 follow-up email to the City from Tahoe Design & Engineering regarding traffic impacts.

The City granted its approval of the CDP amendment subject to nine standard conditions and 48 special conditions (including 10 new conditions added to those 38 included under the original approval), which are discussed in subsection (B) below.

Description of Density Bonus & Inclusionary Incentives Approved Under the Project

The City approved multiple Density Bonus and inclusionary incentives as part of the project "to provide for affordable housing costs as defined in Health and Safety Code

Section 50052.5, or for rents for the targeted units to be set in compliance with Government Code Section 65915(c)…" Out of the approved 83 residential units, the project as approved by the City will provide eight units as affordable to households of very low income, as described in the NOFA for the amended permit:

> *"The Fort Bragg City Council did approve the following Density Bonus incentives to allow for the construction of an 83-unit mixed-use project proposed for 1151 South Main Street per analysis incorporated herein by reference to the project staff reports, dated July 14, June 25, June 18, June 11, and March 24, 2025:*
>
> 1. *Increase the height limit for the proposed project from 28 feet to 38 feet; and*
> 2. *Allow a minimum balcony size of 42 SF, and the project shall provide the range of balcony sizes illustrated in the project plans.*
> 3. *Modify the requirement for visitor serving uses on the street facing frontage of the front bottom floor of each building, to the street facing frontage of the bottom floors of Buildings 3 and 5, with the following configuration: 1,000 SF of retail and 2,450 SF of hotel suites, 25% of which would be low-cost visitor serving accommodations."*

B. Analysis of Contentions

Pursuant to sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the locally approved project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act (where applicable; in this case it is not).

For the reasons discussed below, the Commission finds that all but three of the contentions raised by the appeals filed under Appeal No. A-1-FTB-25-0024 for the permit amendment present valid grounds for appeal, but none raise a substantial issue of conformance of the approved development with the policies and standards of the certified LCP or with the public access and recreation policies of the Coastal Act. Valid contentions are discussed in subsections (1) through (7) below, and invalid contentions are discussed in subsection (8) below.

As discussed above (Finding III-B-2), the contentions raised under Appeal No. A-1-FTB-25-0013 for the original permit approval are not separately analyzed herein, because the City's resolutions for conditionally approving the permit amendment include a declaration that the amended CDP supersedes the original permit and shall control the development of the project.[4] Furthermore, the City's staff report for the July 14, 2025

[4] Although the contentions raised under Appeal No. A-1-FTB-25-0013 for the original permit approval are not separately analyzed herein, those contentions that overlap with contentions raised under Appeal

public hearing approving the CDP amendment permit clearly explains the permit process and relationship between the original permit and the amendment permit (Exhibit 11 page 33):

> *This hearing is intended to discuss proposed modifications to an already approved project, …. As the modified project will have to comply with all approved special conditions (including (a) those in the City Council resolution dated 3-24-2025, as amended herein, if any amendments to existing conditions are made in this CDP amendment action as well as (b) the new Special Conditions adopted in the resolution today), the numbering for Special Conditions in this staff report starts where the numbering for the special conditions in the resolution adopted on 3-24-2025 ended namely with Special Condition 38. The attached resolution rescinds the initial CDP, UP and DR permits in their entirety and replaces them with the amended permit for the full project as amended subject to all the findings and special conditions identified in the original staff report and for amended project elements.*

Therefore, a determination by the Commission of No Substantial Issue on Appeal No. A-1-FTB-25-0024 renders the City's permit as amended (CDP 8-24/A) final and effective and also renders the original CDP approval as having no legal effect as of the issuance date of the amended CDP. Thus, the appeal of the original permit is effectively moot, and the contentions raised under Appeal No. A-1-FTB-25-0013 for the original permit would also not raise a substantial issue (because as adopted under the City's resolution for the CDP amendment, action on the appeal of the CDP amendment would result in a final action on the amendment and effective rescission of the original CDP).

1. Land Use Consistency & Priority Use Contentions

The subject 2.6-acre property is designated and zoned "Highway Visitor Commercial" (CH) under the City's certified LCP. As summarized above, the appeals raise two contentions regarding land use issues. First, four of the appeals contend that the approved project does not conform to CH land use and zoning district requirements, including, but not limited to, requirements that restrict residential uses to upper floors (or, if allowed on the ground floor, then only to the rear of buildings). Appeals allege there are other inconsistencies as well, such as the project exceeds the allowed residential density for CH lands. Second, two of the appeals contend that the approved project prioritizes private residential uses over visitor-serving uses (which are required to be prioritized on CH lands), and, according to the appeals, there are feasible alternatives available that would provide more visitor-serving uses than the approved project, such as additional hotel units on the ground floors of all the buildings.

No. A-1-FTB-25-0024 are addressed herein. Additionally, the City provided a response to each contention raised under both appeals filed under Appeal No. A-1-FTB-25-0013. The City's responses are found in Exhibit 11 pages 141-160 (appeal contentions are annotated in margins, with City's response to each annotation compiled in a table following the annotated appeals).

Below are LCP excerpts related to the purpose, allowed uses, and standards for CH lands as well as the policies of the LCP that relate to priority of visitor-serving uses.

Excerpts of Applicable LCP Policies:

City of Fort Bragg Coastal General Plan (LUP) Chapter 2 (Land Use Element) section G describes the Highway Visitor Commercial (CH) designation as follows:

> This land use designation applies to land uses serving residents and visitors on sites which are located along Highway One and arterials at the entry points to the community. Typical uses allowed in this designation include motels and other lodging enterprises, restaurants, and retail outlets. Residential uses are permitted above the ground floor or on the ground floor at the rear of buildings at a maximum density of up to 24 units per acre with a conditional use permit.

Section 17.22.020 of the City's Coastal Land Use & Development Code (part of the certified Implementation Plan (IP)) chapter 17.22 describes the purpose of the CH (Highway and Visitor Serving) zoning district 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. The maximum allowable residential density within the CH district for the residential component of a mixed use project is 24 dwelling units per acre; the maximum floor area ratio (FAR) is 0.40. The CH zoning district implements and is consistent with the CH land use designation of the Coastal General Plan

Permitted uses allowed in the CH zoning district are specified in Table 2-6 in IP section 17.22.050. Permitted uses include (1) numerous retail trade uses (e.g., shops, auto sales, bars, general retail, groceries, restaurants, etc.); (2) agricultural uses (crop production, horticulture, orchard, vineyard); (3) industrial uses (recycling facilities); (4) recreation, education, and public education uses (commercial recreational facilities, parks and playgrounds; libraries, museums, art galleries, theatres, etc.); (5) various general and professional services (bank, business office, lodging, veterinary clinic, etc.); and (6) transportation, communication, and infrastructure uses (e.g., parking and utility facilities). Conditional uses allowed include a wide variety of uses in all the various categories mentioned above for permitted uses as well as the following residential uses: multifamily dwellings and residential components of mixed-use projects.

General development standards for the CH zoning district are specified in Table 2-9 in IP section 17.22.030 as follows:

Maximum residential density:	24 units/acre
Setbacks:	
Front:	15 ft on an arterial street; …
Side – Interior (each):	Same as front setback required for an R

	zone abutting the side property line; none required elsewhere
Side – Street side:	Same as front setback. Except for properties north of Pudding Creek and west of Main St. with more than 135 feet of frontage
Rear:	… 15 ft adjacent to residential zone;…
Floor area ratio (FAR):	0.40 [Maximum floor area ratio allowed. May be increased with Use Permit approval to accommodate housing units and/or live-work units up to the maximum density allowed in the zone.]
Maximum site coverage:	No limitation
Maximum height:	35 ft. / 28 ft and 2 stories west of Highway 1

LUP Chapter 2 (Land Use Element) includes various policies that prioritize and protect lands in the City designated for visitor-serving uses, particularly those providing lower cost visitor-serving facilities:

> **Policy LU-5.1**: Additional Sites for Visitor-Serving Commercial: Continue to provide for and encourage additional visitor-serving commercial facilities.
>
> **Policy LU-5.2**: Ensure that there are adequate sites for visitor-serving land uses by:
>
> a) Maintaining existing areas designated for Highway-Visitor Commercial uses;
>
> b) Maintaining the Highway Visitor Commercial land use designation as one allowing primarily recreational and visitor-serving uses; and
>
> c) Reserving adequate infrastructure capacity to accommodate existing, authorized, and probable visitor serving uses.
>
> **Policy LU-5.3**: Lower Cost Facilities: Protect, encourage, and, where feasible, provide lower-cost visitor and recreational facilities for persons and families of low and moderate income. If and when average annual occupancy rates at Fort Bragg visitor facilities exceed 70%, removal or conversion of existing lower cost facilities shall be prohibited unless the use will be replaced with another facility offering comparable visitor serving or recreational facilities…
>
> **Policy LU-5.4**: Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities

> that could be accommodated on the property is already adequately provided for in the area.
>
> **Policy LU-5.5**: Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.
>
> **Policy LU-5.6**: 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.

Finally, portions of the City's Housing Element have been certified as part of the LUP, including the following policy encouraging the development of residential uses in conjunction with commercial uses:

> **Policy H-2.2** Mixed-Use Development: Encourage the development of residential uses in conjunction with commercial enterprises in commercial zones, where the viability of the commercial activities and visitor-serving uses would not be adversely affected.

Discussion

As summarized in Finding VI-A, as discussed in detail in the NOFA and written findings supporting approval of the amended permit (**Exhibit 11**), and as shown in the approved final plans (**Exhibit 2**), the approved development, as amended under the CDP amendment approved by the City, involves the development of a multifamily residential housing and mixed use project, which under IP section 17.22.050 are uses allowed with a conditional use permit in the CH zoning district. The project includes seven apartment buildings 32 to 38 feet tall consisting of a total of 83 residential units, including eight units affordable to households of very low income. The mixed-use component of the project as amended involves the inclusion of one ~1,000-square-foot commercial/retail facility on the ground floor of one highway-fronting building and four visitor-serving hotel suites without kitchens on the ground floors of highway-fronting buildings. One of the hotel suites is proposed (and as conditioned required) to be rented to visitors at a low-cost rate and all of the hotel suites will be managed out of the adjacent Emerald Dolphin Inn located at 1211 South Main Street (also under the applicant's ownership). Other approved project components include a 107-space parking lot, 5-ft-high soundwall between parking lot and Harbor Ave., an outdoor play area, landscaping, signage, property fencing, stormwater biofiltration planters, new sidewalks and other improvements along Harbor Ave. and Frontage Rd., and a public access path across the parcel and with signage directing access to Pomo Bluffs Park north of the site.

The City's findings for approval and conditions attached to the CDP amendment address project conformance with all required setbacks, site coverage, height limits, floor area ratio (FAR), and density standards for the CH zoning district as allowed under

the LCP, including deviations from standards allowed per certified LCP-certified inclusionary housing incentive standards and State Density Bonus law. As shown in Table 2 on page 11 of the July 14, 2025 staff report (Exhibit 11, page 38):

> *"This project complies with all required zoning standards for the Highway Commercial Zoning District. See Table 2 for specific standards and project details.*

Table 2 – Compliance with Zoning Standards			
Development Aspect	**Zoning Requirement (CH)**	**Proposed Project**	**Compliance**
Front setback	15 feet	15 feet	Yes
Rear Setback	15 feet	81 feet	Yes
Side Setback	0 feet	56 Feet (N), 11 Feet (S)	Yes
Site Coverage	No Limitation	NA	NA
Height Limit	28 feet	38 feet	Yes, per Inclusionary Housing Incentive
Floor Area Ratio (FAR)	0.40	0.7	Requires Use Permit
Density	12 to 24 units/acre	32 units/acre	Yes, per State Density Bonus Law

As noted in the above table, the project complies with all listed CH zoning district standards except height limit, FAR, and density. However, the certified LCP allows for, and the City approved, multiple density bonus and inclusionary incentives as part of the project "*to provide for affordable housing costs as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set in compliance with Government Code Section 65915(c)*…" (as noted in the findings for amended project approval – Exhibit 11, page 5). These density bonus and inclusionary incentives allowed for exceedances of density and height limit. The FAR exceedance is allowed with a conditional use permit, as was granted by the City for the approved project.

For background and context on the density bonus and inclusionary incentives, below is a brief discussion of the City's regional housing needs, the relationship of those needs to the approved project, and the relationship of State Density Bonus Law to the project and to the City's certified LCP.

Housing Needs, Context, and Relationship to Approved Project

For context, State Housing Element law (Government Code §65580 *et seq.*) requires that the City comply with its 2019-2027 (6th Cycle) Housing Element to accommodate the City's regional housing need allocation (RHNA) of 137 housing units, comprised of 60 very low income units, 31 lower income units, 23 moderate income units, and 23 market-rate units.[5] Per the California Department of Housing and Community Development's (HCD's) December 12, 2019 review, the City's most recent adopted

[5] Fort Bragg 2019 Housing Element: https://www.hcd.ca.gov/housing-elements/docs/fort-bragg-6th-adopted092419.pdf.

Housing Element is compliant with State law. In terms of permitting, according to HCD data, the City has kept pace with approving higher income housing units under its 5th Cycle Housing Element and its ongoing 6th Cycle Housing Element, but it has fallen short on its obligations for very low-income housing units. In the case of this project, the applicant proposed including inclusionary units at a rent that is affordable to very low-income residents – a category needed under the City's regional housing needs. As proposed by the applicant (discussed further below), a lesser number of affordable housing units is proposed than the number of units possible for the site as calculated by the City in a site capacity analysis[6] completed for the subject site in its 6th Cycle Housing Element. Regardless, according to the City's Housing Element, there still are various other vacant and non-vacant sites throughout the City that have been identified as able to accommodate additional affordable housing, particularly sites designated as High Density Residential (RH) and Very-High Density Residential (RVH) that appear compatible for housing development towards fulfilling the City's RHNA targets for affordable housing.

State Density Bonus Law & Provisions of State DBL in the Certified LCP

As background, California's Density Bonus Law ("State DBL") is a mechanism that allows developers to exceed local development standards in exchange for incorporating units for specific demographics (moderate, lower, and very low income residents; transitional foster youth; disabled veterans; unhoused persons; college students on financial aid, seniors). State DBL (found in Gov. Code §§65915-65918) provides developers of multifamily housing (5+ units) with tools to encourage the development of affordable and senior housing, including a package of incentives intended to help make the development of affordable and senior housing economically feasible. In addition to density bonuses, other tools available include reduced parking requirements, incentives and concessions such as reduced setbacks, and reduced minimum square footage requirements.

Government Code §65915(a) requires local governments to adopt a respective DBL ordinance. In the case of Fort Bragg, the City adopted State DBL policies and standards via its certified LCP (portions of its certified LUP Housing Element and certified IP sections 17.31 and 17.32). These provisions have been used by the City in its approval of projects since they were first certified in 2008[7] to implement the Housing Element of the General Plan through offering incentives for the development of housing that is affordable to low- and moderate-income households. Though updates to the LCP's State DBL and inclusionary incentives provisions have not kept pace with more frequent Housing Element updates, the certified LCP generally is not in tension with current State DBL.

[6] See HCD's Housing Element Sites Inventory Guidebook dated June 10, 2020: https://www.hcd.ca.gov/community-development/housing-element/docs/sites_inventory_memo_final06102020.pdf.

[7] See https://documents.coastal.ca.gov/reports/2008/8/F3a-8-2008.pdf.

Certified LUP (Housing Element) policy H-3.5 and certified IP sections 17.31 and 17.32 address the allowances of density bonuses and affordable housing incentives under the LCP. These sections allow the City to grant incentives, including exceedances of density and height limitations, if the City determines that the incentive(s) proposed will not have any adverse effects on coastal resources.

Certified LUP Policy H-3.5 states in part (emphasis added):

> Density Bonus Incentives: Continue to provide density bonuses to projects that provide a required percentage of total units affordable to very-low, low-income, median, and moderate-income households and for units meeting the special housing needs identified in this Element and as established in conformance with State law. Density ranges described in land use designations may be exceeded consistent with the provisions of Government Code Section 65915 to encourage affordable housing production pursuant to §65915 of the California Government Code (Density Bonuses) provided the density bonus will not have an adverse effect on coastal resources. Any housing development approved pursuant to Government Code Section 65915 shall be consistent with all applicable certified Local Coastal Program (LCP) policies and development standards. In reviewing a proposed density increase, the City shall identify all feasible means of accommodating the density increase and consider the effects of such means on coastal resources. The City shall only grant a density increase if the City determines that the means of accommodating the density increase proposed by the applicant does not have an adverse effect on coastal resources. If, however, the City determines that the means for accommodating the density increase proposed by the applicant will have an adverse effect on coastal resources, the City shall not grant the density increase.

Similarly, IP section 17.31.040(A) specifies in part the following regarding the amount of a density bonus and the extent of other incentives allowed by a proposed housing development (emphasis added):

> 1. Density ranges described in land use designations of the certified LCP may be exceeded consistent with the provisions of Government Code Section 65915 to encourage affordable housing production pursuant to §65915 of the California Government Code (Density Bonuses). In reviewing a proposed density increase, the City shall identify all feasible means of accommodating the density increase and consider the effects of such means on coastal resources. The City shall only grant a density increase if the City determines that the means of accommodating the density increase proposed by the applicant does not have an adverse effect on coastal resources. If, however, the City determines that the means for accommodating the density increase proposed by the applicant will have an adverse effect on coastal resources, the City shall not grant the density increase.
> 2. …

3. A development shall be entitled to additional incentives or concessions as provided by State law, if the additional requirements of the State law (Government Code Section 65915(d)(2)) are met and only if it is determined that the means of accommodating the additional incentives or concessions would not have an adverse effect on coastal resources…
4. Any housing development approved pursuant to Government Code Section 65915 shall be consistent with all applicable certified Local Coastal Program policies and development standards.

It's important to note that the above LCP provisions, and State DBL generally, are harmonious with the Coastal Act in a twofold manner. First, these provisions contain a "savings clause" for coastal resources protection that requires qualifying projects to incorporate density bonuses, incentives, and waivers into projects in a way that avoids conflicts with the certified LCP/Coastal Act. Second, Coastal Act section 30604(f), reflected in LCP provisions cited above, in addition to encouraging housing opportunities for persons of low and moderate income,[8] prevents local governments or the Commission on appeal from requiring measures that reduce density below what is allowed by State DBL when reviewing a low- or moderate-income housing project unless it is found that the density cannot be accommodated in a manner consistent with the certified LCP (or relevant Coastal Act policies serving as the standard of review for the project).

Calculations of Density Bonuses

Certified IP sections 17.31.040 and 17.31.050 defer to State DBL regarding how to calculate density bonuses for eligible projects. State DBL sets a sliding-scale formula for the number of additional units allowed under the density bonus, based upon two factors: (1) the percentage of units in the project that will be set aside as affordable; and (2) the household income category of those affordable units (very low, low, or moderate household income). State DBL does not prevent local governments from granting greater density bonuses than specified or density bonuses to projects that do not meet State DBL criteria (Gov. Code §65915(n)).

As explained by the City in the Density Bonus section of the March 24, 2025 staff report supporting approval of the original 87-unit project (which was included as part of the written findings supporting the City's approval of the permit amendment – see Exhibit 11, pages 93-94 – emphasis added):

> *The CLUDC* [certified IP] *includes inclusionary housing requirements for projects of more than three units. The inclusionary housing ordinance was adopted in 2007 and is intended to implement the Housing Element of the General Plan, by offering incentives for the development of housing that is*

[8] Coastal Act section 30604(g) also declares "that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone."

> *affordable to low- and moderate-income households. Per section 17.32.040, developments of greater than seven units "must construct 15 percent of all new dwelling units in a residential development as affordable units." Additionally,* [certified IP] *section 17.32.060.A.1 identifies the required affordability levels for the affordable units:*
>
> - *One-third of the inclusionary units must be affordable to very low-income households with income less than 50% of area median income;*
> - *One-third of the inclusionary units must be affordable to low-income households with income less than 80% of area median income;*
> - *One-third of the inclusionary units must be affordable to moderate-income households with income less than 120% of area median income, with the first priority for rental given to essential public service employees within the City; and second priority given to local residents who work within city limits. Essential public service employees include: City of Fort Bragg sworn police officers, Fort Bragg Fire Protection Authority fire fighters, Fort Bragg Unified School District teachers, and Mendocino Coast District Hospital health care workers.*
>
> *However, the applicant proposes to provide all required inclusionary units at a rent that is affordable to very low-income residents, which qualifies the applicant, per State law, to receive a 50% density bonus, a parking reduction, and up to three planning incentives (Government Code 65915.(a)(3)(D)).*

Gov. Code §65915(b)(1)(B) makes the project eligible for a density bonus, since it exceeds at least 5% of the total baseline units being set aside for rental or sale to very low income households. Gov. Code §65915(f)(2) states that for this type of housing development, where there is greater than 5% of units set aside for very low income households, the percentage density bonus should go up on a sliding scale. The corresponding density bonus is 50%, which is the maximum possible.

Out of the proposed 83 overall residential units,[9] the project will provide eight units as affordable to households of very low income. This represents 15% of the project as proposed by the applicant under the CDP amendment. This calculation is explained in the City's findings (Exhibit 11, page 94 – emphasis added):

> *The applicant initially applied for permits for 53 units and the inclusionary requirement for 53 units is eight units (15% of 53=8). Therefore, the applicant has committed to renting eight units at a rent that is affordable to families earning less than 50% of median Income. Median family income in Fort Bragg in 2022 was $57,662. After adjusting for inflation, Area*

[9] Two of the proposed housing units are proposed as attached ADUs rather than regular multifamily units, as permissible under State ADU law.

> *Median Income (AMI) in 2024 was $62,123. Families earning 50% of AMI would earn $31,061/year and pay $647/month for an affordable unit... It is also important to note that the Density Bonus is applied for the project after the number of inclusionary units is determined. This is why the project will not have 15% of 87 units (13 units) as the number of inclusionary units.*

The City notes in its above findings (which relate to the original permit approval, which, as previously discussed, included 87 units overall) that the applicant, prior to contemplating applying for a density bonus, initially came in for a 53-unit project, which the City considered to be the pre-bonus baseline. Per Gov. Code §65915(f) and the certified LCP [IP sec. 17.31.050(B)(2)], density bonus calculations are derived from the "otherwise maximum allowable gross residential density" (also known as "base density") for the site, which is 63 units (rounded up), given the CH designation's 24 units/acre x the size of the parcel at 2.6 acres. Thus, the applicant's baseline request for 53 units is less than the maximum. Fifty percent of the baseline project in this case is 27 bonus units (rounded up). Thus, State DBL allows for an overall project (comprised of 53 base units and 27 bonus units) that is 80 units.[10]

Per the City's above analysis, the City defines "very low income" as 50% of the median family income (MFI) or lower, which is consistent with the State's Health and Safety Code and HCD's guidelines.[11] Given this approach to calculating density bonus, the City found that the eight very low income affordable units would constitute 15% of total number of units within the applicant's initially proposed baseline project. Those same eight units also fulfill inclusionary housing requirements in certified IP section 17.32.

With the project as revised under the permit amendment to include four visitor serving hotel units in lieu of three housing units (as discussed further below), the City recalculated the density bonus allowances and inclusionary requirements in the July 14, 2025 staff report (Exhibit 11, page 47) as follows (emphasis added):

> *Per Government Code 65915(f)(2), the applicant is eligible for a 50% density bonus for agreeing to provide 15% of units at a rent affordable to very low-income households. Density bonus law clearly indicates that the density bonus is 50% for projects which provide 15% of units at a rent that is affordable to very low-income residents.*
>
> *However, to address issues raised by the appeals, the applicant now is requesting to amend their permit application to change four of the residential units into a mix of retail and visitor-serving accommodations. Therefore, the applicant has requested a total of 83 residential units, eight*

[10] Had the applicant initially requested 63 units (which is the base density maximum for the 2.6-acre site) rather than 53 units, the applicant could have been entitled to build 95 units with 10 units (15%) affordable to residents of very low income. At the same time, in this scenario, with a total proposal of 87 units under the original permit as approved by the City, rather than 95 units, the applicant would be declining some of the bonus units that State DBL would allow.

[11] See https://www.hcd.ca.gov/sites/default/files/docs/grants-and-funding/income-limits-2025.pdf.

> *of which will be affordable for very low-income residents. If one backs out the density bonus from an 83-unit project the base project is 55 units. So, the applicant must provide 15% of these 55 units as affordable units, which is eight units. Per density bonus law the percentage of units that are affordable is always calculated on the base number of units and excludes the density bonus units.*

The City summarizes its calculation of the number and affordability of inclusionary units as follows (Exhibit 11, page 47):

> *As amended, the project includes the following:*
>
> 1. *The applicant initially applied for permits for 53 units and the inclusionary requirement for 53 units is eight units (15% of 53=8).*
> 2. *Median family income in Fort Bragg in 2022 was $57,662. After adjusting for inflation, Area Median Income (AMI) in 2024 was $62,123. Families earning 50% of AMI would earn $31,061/year and pay $647/month for an affordable unit (see table below).*
> 3. *It is also important to note that per State Law the Density Bonus is applied to the project after the number of inclusionary units is determined. This is why the project will not provide 15% of 83 units (which would be 13 units) as the number of inclusionary affordable units.*

As demonstrated above, the City's calculations yield a project that is slightly larger (83 overall units) than would otherwise be calculated under State DBL (80 overall units). However, the City's findings (Exhibit 11, page 39) note that the proposal also includes two attached 2-bedroom accessory dwelling units, which are allowed under state law and which would thus allow for 82 units overall. The Commission notes that State DBL and certified LUP Policy H-3.5 do not prevent local governments from granting greater density bonuses than specified, or density bonuses to projects that do not meet DBL criteria (Gov. Code §65915(n)). However, there may be certified LCP policies that could potentially limit exceedance of the density bonus provisions of State DBL and/or the certified LCP, as discussed further below.

Requested Incentives and Consistency with LCP Requirements

Concessions and incentives, as defined under State DBL, allow a developer to deviate from design standards such as limits on building height, setback, parking, and on-site open space requirements, etc. and/or development regulations when such regulations potentially make the project economically infeasible for the developer to build. Incentives/concessions include "[a] reduction in site development standards or a modification of zoning code requirements or architectural design requirements […] that result in identifiable and actual cost reductions, to provide for affordable housing costs." (Gov. Code §65915(d)(1) and §65915(k).)

Under the permit amendment request, the applicant requested, and the City approved, three density bonus incentives as part of the amended project:

1. Increase the height limit for the proposed project from 28 feet to 38 feet.

2. Reduce the minimum balcony size from 100 SF to 42 SF and allow the balconies to be built with the range of sizes as detailed in the project plans.

3. Modify the requirement for visitor serving uses on the street facing frontage of the front bottom floor of each building, to the street facing frontage of the bottom floors of Buildings 3 and 5, with the following configuration: 1,000 SF of retail and 2,450 SF of hotel suites, 25% of which would be low-cost visitor serving accommodations.

Per Gov. Code §65915(d)(2), projects are eligible for three incentives or concessions for projects that include at least 15 percent units reserved for very low income households. In this case, the applicant has received three incentives and is consistent with the statute. Incentives may be granted so long as it can be found that the requested incentives or concessions would not have an adverse effect on coastal resources.

With respect to the first incentive granted that would allow an increase in height limit from 28 to 38 feet, this incentive is required to accommodate the density bonus, as the 50% density bonus cannot be accommodated on the site without the height increase. As noted in the City's findings related to the requested height exceedances and the impact on visual resources (Exhibit 11, page 98):

> *"… all the views to the ocean across this site are highly constrained by existing trees, bushes and development located behind and on either side of the vacant parcel. There are large buildings to the North (two-story Outlet Store warehouse), to the South (two-story hotel building), and to the west there are 11 single family homes. These buildings significantly reduce visual access to the distant blue-water views throughout the public right of way as further illustrated by the photos below."*

In addition to noting that there currently are only limited public views available from the highway through the site due to the presence of intervening vegetation and existing structures west of the site, the City's findings also note that the proposed building design siting of buildings intentionally spaces structures in a way that will maintain partial visibility through the site from public vantage points along the highway.

Related to the density issue, the City's findings address the bonus density, and the resulting floor area ratio (FAR) increase, in part as follows (Exhibit 11, pages 90-91 – emphasis added):

> *"The City's zoning code allows up to 24 units per acre in the Highway Commercial Zoning District. The FAR of 0.4 is set to regulate the scale of the commercial not the residential development in this zoning district. Per Table 2-9, a Use Permit can be used to increase the FAR above 0.4 to*

> *accommodate housing. As a point of comparison FAR in the Central Business District is 2.0 and FAR is not regulated in residential zoning districts. Instead, the size of residential buildings in residential zoning districts is constrained only by the height limit and the maximum number of units allowed in the district…*
>
> *The applicant has proposed modest unit sizes of 500 SF for the studios, 760 SF for the one-bedroom units and 1,000 SF for the two-bedroom units and has requested a 0.3 increase in the FAR from 0.4 to 0.7 to accommodate 33 units/acre, which is less than the maximum density allowed by density bonus law. This increase in FAR is reasonable as it allows the requested level of density for very small units. Without the FAR increase the applicant would have to reduce unit size by 42% resulting in 290 SF studios, 440 SF one-bedroom units and 580 SF two-bedroom units. These unit sizes are not practical or feasible."*

The City's approval included the approval of a conditional use permit to allow for the FAR increase. Though the City approved an 83-unit project (resulting in 32 units/acre, which is erroneously stated in the City's findings above as 33 units/acre), as previously mentioned, State DBL does not prevent local governments from granting greater density bonuses than specified, or density bonuses that exceed those which would normally be allowed under State DBL criteria (Gov. Code §65915(n)). The City's findings thus conclude that the increase in the FAR from 0.4 to 0.7 as allowed with the approved conditional use permit is appropriate in this case, as it allows accommodation of the overall density yield and reasonably sized housing units, including affordable units, which are allowed as part of a mixed-use project in the CH zone. Furthermore, as discussed below in the findings on visual resources, water quality, public access and recreation, ESHA, and adequacy of services, the increase in FAR will not have an adverse effect on coastal resources and is consistent with the LCP.

The second and third incentives requested, as listed above, relate to project feasibility, and the third incentive relates to a coastal resource issue. This requested incentive is rather than proposing visitor-serving uses on the ground floors of all seven buildings, which across all buildings totals over 24,000 square feet, the development as approved by the City includes ~3,450 square feet of visitor-serving space on the ground floors of just two of the buildings (in Buildings 3 and 5), including a ~1,000-sf commercial/retail facility and 2,450 square feet of hotel suites, 25% of which would be low-cost visitor serving accommodations. The applicant requested this incentive to maintain the project's financial feasibility, as the City's findings explain (Exhibit 11, page 79):

> *The applicant has determined that including a visitor serving commercial use on the bottom floor of each of the residential structures would make the project infeasible as it would: 1) eliminate 14 residential units from the project and 2) would require the developer to build out commercial space which would likely never be rented or occupied by a commercial use especially as most of these storefronts would not be visible from the public*

right of way. Therefore, the applicant has requested a planning incentive under State Density Bonus law to waive this requirement…

To evaluate the applicant's feasibility assertion, the City completed a Market and Feasibility Analysis (Exhibit 11, pages 161-172), which concludes the following (as summarized in the City's findings, Exhibit 11, page 48):

- *Fort Bragg currently has over 44,000 sf of vacant small format retail space, which rents for $0.75 to $1.50 per square foot depending on the size of the space, condition and location.*
- *Much of this vacant retail space has been vacant for years with an average vacancy time of 4 years.*
- *Fort Bragg has a very "soft" or poor market for new small format retail space.*
- *The multifamily residential retail market is very strong with a vacancy rate of less than 1% and average rents which range from $1.60 to $3.25 per square foot.*
- *If the applicant was forced to add 24,000 SF of new vacant retail space in this market it is unclear if and when it would be rented. Therefore, the applicant requested a planning incentive under State Density Bonus law to wave this requirement which was approved by the City Council on March 28, 2025.*
- *The project, as proposed, would generate an estimated $2.9 million in gross income per year, while a project composed of 100% retail on the first floor of all buildings and the remainder 2/3 of the buildings as multifamily would generate only $2.2 million in gross income.*
- *Total development cost for the proposed project would be $27.6 million whereas the alternative project with more retail would be an estimated $23.5 million.*
- *The applicant would need to invest $5.5 million in the proposed project and $4.6 million in the alternative project.*
- *Assuming the applicant can secure an interest only commercial loan at 7.1% with a ten-year ballon payment and a 20-year term, the proposed project would generate an ROI* [Return on Investment] *of 10% and the alternative project (1/3 retail) would generate an ROI of 4.8%. The lower ROI is not a feasible project as an investor could earn this much by investing in the much more secure government bond market.*
- *This project is exposed to risk from the volatile bond market which might result in a higher interest rate at the start of construction and the trade war and higher tariffs which has already driven up material and construction costs.*

Although the approved project does not include a visitor-serving component on the ground floor of each of the seven buildings, the overall inclusion of several visitor serving elements in the mixed-use project is consistent with the intent of the site's CH designation and LCP policies that prioritize visitor-serving uses for several reasons. First, the City's approval includes requirements (in **Special Conditions 7, 39,** and **43**) that the ground floors of buildings 3 and 5 on the eastern, highway-fronting side of each building be occupied by priority visitor-serving uses, as required by the LCP. The uses that will occupy these spaces, as discussed above, include one ~1,000-square-foot commercial/retail venue and four visitor-serving hotel suites managed by the applicant's adjacent Emerald Dolphin Inn next door (1211 South Main Street). As proposed and as required by **Special Condition 40**, one of the four suites will be offered at lower cost (specified in the condition as rented at rates that meet the Coastal Commission's definition of Low-Cost Visitor Serving Accommodations, which is defined as 70% of the ADR for the state), which is consistent with several of the LUP priority use policies cited above. Requiring the proposed visitor-serving commercial/retail use and hotel suites to occupy the ground floors of Buildings 3 and 5 is appropriate, as these are the two buildings closest to and fronting the highway. The other buildings approved as part of the project are either setback behind Buildings 3 and 5 or are set further back on the property along the frontage road not readily visible from the highway. The LCP allows non-visitor-serving uses in the CH zoning district to occupy the rear, non-highway-fronting sides of buildings.

Second, the City's approval includes the designation of additional visitor-serving elements – specifically a public access path across the parcel with associated signage directing the public to Pomo Bluffs Park north of the site (required to be implemented by **Special Condition 44**) and the installation of a public bench in front of Building 3 (required by the LCP as a component of mixed-use project and by **Special Condition 42**). Including these public access amenities provides additional visitor-serving elements and integrates the development with nearby access points to facilitate coastal access, as required by the LCP and the Coastal Act.

Finally, to ensure that the basis for granting the incentives discussed above is fulfilled, the City imposed requirements on the CDP as amended to ensure ongoing affordability. **Special Condition 6** requires the applicant to complete and enter into an Inclusionary Housing Regulatory Agreement with the City prior to issuance of the Certificate of Occupancy that will regulate eight units as affordable to households of very low income. This agreement is required by certified IP section 17.32.080(B) and will ensure that 15% of the housing units are maintained as affordable to households of very low income.

Consistency with Other LCP Requirements

The City further substantiated its findings for project conformance with the LCP by evaluating the project against all LCP required standards for (1) multifamily projects as specified in IP section 17.42.120 (including front setbacks, open space, storage, window orientation, accessory structures, outdoor lighting, and building facades adjacent to streets), (2) mixed-use projects as specified in IP section 17.42.100 (including design considerations, mix of uses, maximum density, site layout and project design standards,

and performance standards), and (3) the approval of the conditional use permit (to allow for the multifamily use, the FAR increase, and a reduction in parking requirements). Where needed, the City imposed conditions of approval to ensure project conformity with all LCP requirements. For example, IP section 17.42.120 includes a standard that multifamily development projects must permanently maintain outdoor open space for each dwelling unit (private space) and for all residents (common space). Each unit should have either 150 square feet of private patio space or a 100-square-foot balcony. While the project as proposed exceeded the standard for common space (8,700 square feet is required though over 14,000 square feet is proposed), the project initially did not meet the private open space requirements for all units. Thus, the City's approval includes **Special Condition 3** requiring the final building permit plan set to illustrate 150 square feet of private open space for all downstairs units.

Additionally, the City's findings include a detailed evaluation of the project's conformance with LCP parking requirements. The City found that the project requires one additional on-site parking space than what was shown on the proposed plans. Thus, the City imposed a condition to require one additional space in revised final plans (**Special Condition 41**). Per IP section 17.36.080(A)1, the City may approve a reduction in the number of parking spaces where two or more uses have distinct and differing peak parking periods. The project's proposed ~1,000-square-foot commercial/retail visitor serving use on the ground floor of building 3 would meet this criterion. Thus, the City imposed **Special Condition 7** to require that the commercial/retail use be operated only between the hours of 9:00 am to 5:00 pm when the majority of residents living in the multifamily housing would be at work. Moreover, the City's findings discuss whether the intensity of use and potential parking needs associated with the project would adversely affect public access parking at nearby access points (which are shown in Exhibit 1). The City's findings explain (Exhibit 11, page 90):

> *…The nearby Pomo Bluff Park and the Noyo Headland Park both offer sufficient parking to meet coastal access needs. Both of these trail systems have their own parking lots. There are over 400 parking spaces on the south side of the Noyo Headland Park and 43 parking spaces in the formal parking lot at Pomo Headlands Park. Neither parking lot is currently over-subscribed.*

Conclusion

As discussed above and further below in the findings below on visual resources, water quality, public access and recreation, ESHA, and adequacy of services, the approved project as conditioned with the density bonuses and incentives granted will not have an adverse effect on coastal resources and is consistent with the LCP.[12] There is a high

[12] The City's findings note that with the City's determination that the project complies with applicable, objective LCP standards, including design review standards, Gov. Code §65589.5(j) constrains the City's ability to impose a condition that the project be developed at a lower density than proposed unless it can be demonstrated with "written findings supported by a preponderance of the evidence on

degree of legal and factual support for the City's determination that the approved CDP as conditioned, along with the City's approval of a conditional use permit, density bonuses, and inclusionary incentives for the project, conforms to the certified LCP's land use and zoning district standards for Highway Visitor Commercial lands. Given the high degree of legal and factual support for the City's decision and the standards for granting density bonuses and inclusionary incentives under the certified LCP that have been met, the City's decision will not set an adverse precedent for future interpretations of its LCP. Furthermore, given the appropriate inclusion of several visitor serving elements in the mixed-use project consistent with the intent of the site's CH designation and LCP policies that prioritize visitor-serving uses, there are no significant coastal resources affected by the City's decision.

2. Visual Resources Contentions

Four of the appeals contend that the approved project is inconsistent with the small-town character and natural beauty of the area and will obstruct public views from the highway to the coastline. The appeals further contend that the City failed to require either story poles or a visual analysis, making the visual impacts of the project difficult to assess.

Excerpts of Applicable LCP Policies:

> **Policy CD-1.1** Visual Resources: Permitted development shall be designed and sited to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance scenic views in visually degraded areas.
>
> **Policy CD-1.3** Visual Analysis Required. A Visual Analysis shall be required for all development located in areas designated "Potential Scenic Views Toward the Ocean or the Noyo River" on Map CD-1…
>
> **Policy CD-1.4**: New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent.
>
> **Policy CD-1.5**: All new development shall be sited and designed to minimize alteration of natural landforms…
>
> **Policy CD-1.6**: Fences, walls, and landscaping shall minimize blockage of scenic areas from roads, parks, beaches, and other public viewing areas.

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the record that both of the following conditions exist: (A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density… (B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density."

> **Policy CD-1.9**: Exterior lighting (except traffic lights, navigational lights, and other similar safety lighting) shall be minimized, restricted to low intensity fixtures, and shielded so that no light shines beyond the boundary of the property.
>
> **Policy CD-1.11**: New development shall minimize removal of natural vegetation. Existing native trees and plants shall be preserved on the site to the maximum extent feasible.
>
> **Policy CD-2.1** Design Review: All development that has the potential to affect visual resources shall be subject to Design Review,…
>
> **Policy CD-2.2** Large Commercial Development: Ensure that large commercial development, such as shopping centers, big box retail, and mixed use development, fits harmoniously with the scale and design of existing buildings and streetscape of the City.
>
> **Policy CD-2.5** Scenic Views and Resource Areas: Ensure that development does not adversely impact scenic views and resources as seen from a road and other public rights-of-way.
>
> **Policy CD-2.7** Landscaping: Encourage attractive native and drought-tolerant landscaping in residential and commercial developments.
>
> **Policy LU-10.6**: Protect Special Communities. New Development shall, where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

In addition, numerous IP standards implementing the above LUP visual resources protection policies are found in certified IP Article 5 chapter 17.50 (Visual Resources).[13]

Discussion

As discussed in previous findings, the subject site is west of Highway 1 between the sea and the first through public road. Frontage Road and Highway 1 are east of the site, Ocean View Drive is to the south, and Harbor Avenue to the west. Pomo Bluffs Park, a 25-acre City Park on the southern bluffs above Noyo Bay is to the north of the site. Lands west of Harbor Avenue immediately west of the site are outside of the City limits in the unincorporated County. There are a number of single-family homes on ~1-acre lots in this Todd Point unincorporated area. Some of the lots in the area are undeveloped. The City's findings note that existing buildings west of the site (as well as existing vegetation on the subject site) significantly reduce visual access from public roads to the distant blue-water views partially visible through the site. Lands directly

[13] Certified standards of the Coastal Land Use & Development Code (certified IP) can be accessed from the City's website: https://www.codepublishing.com/CA/FortBragg/#!/LUC17/FortBraggNT.html.

north and south of the site are developed with relatively large two-story buildings (Outlet Store warehouse to the north and Emerald Dolphin Inn to the south).

The proposed project is not located in an area identified as a potentially scenic view on Map CD-1 of the LUP,[14] and thus no visual analysis was required for the project (a visual analysis is required by LUP Policy CD-1.3 for certain mapped visually sensitive sites). Regardless, the City's findings discuss the project design and how siting and orientation of buildings in an east-west manner will maintain partial visibility through the site from public vantage points along roadways. Additionally, consistent with LUP Policy CD-1.6, the City included **Special Condition 34** on the CDP amendment requiring the applicant to provide a step back, embellishment or change in height every 100 feet for all property line fences, which will minimize blockage of scenic areas from roads, parks, beaches, and other public viewing areas.

The project site also is not located in an area designated as a special community or neighborhood, and the City thus found the project consistent with LUP Policy LU-10.6. The City's findings discuss how the project site does not have unique characteristics that make it a popular visitor destination point but rather its surrounding neighborhood is dominated by commercial and hotel development. The findings contrast this with other neighborhoods in the City, such as the Noyo Harbor and the Central Business District, which have unique characteristics (such as an active harbor and downtown historic shopping) that make them visitor destinations.

The City's findings discuss the project's compatibility with the existing and future land uses in the project vicinity (Exhibit 11, page 44):

> *The vicinity includes a mix of existing land uses: two hotels, a large shopping center, three small format retail stores, two auto repair businesses, a mobile home park, a college campus, a day care, and a number of single-family homes. There are five nearby vacant parcels, four of which are zoned for medium and high-density residential and two of which are zoned Highway Commercial… The proposed apartment units would be compatible with all current and future commercial and multifamily residential uses in terms of design, location, size and operating characteristics. Most of the buildings in the corridor are average quality of contemporary design. The proposed project would have significantly higher design quality than the buildings in the neighborhood. The project is large at 84,000 SF, but the individual buildings of the project at 9,000 to 14,000 SF are similar in size to the smaller buildings in the vicinity (see table). The residential project will have compatible operations to the other commercial development in the vicinity.*

[14] See https://www.city.fortbragg.com/home/showpublisheddocument/708/637710004848170000.

To minimize any disturbance to Todd Point residents that may arise from the proposed parking lot, the City imposed **Special Condition 5** requiring the applicant to construct a 5-foot-high soundwall between the parking lot and Harbor Avenue.

Furthermore, the City's findings note that the proposed project has been designed to include extensive native landscaping and trees to ensure that the new project is more scenic than existing development along this section of Highway 1/Main Street. As the project site is flat and will not require alterations of the natural landform of the site, the approved project as conditioned complies with LUP Policy CD-1.5. With respect to exterior lighting, the City's findings note that the Lighting Plan submitted for the project includes night sky compliant lights consistent with LUP Policy CD-1.9.

Additionally, the City's findings address the project's compliance with the LCP standards for mixed-use development (IP section 17.42.100), including design standards, site layout, and other standards. The City's findings note that the project complies with LCP design requirements, because it includes in part (a) screened-from-view refuse storage facilities located as far as possible from residential units; (b) publicly accessible outdoor space for resident and public use that is proportionate to the size of the authorized structures, located in visually prominent accessible locations, and includes a park, two courtyards, sidewalks, trails, and outdoor seating areas; and (c) landscaping, shade trees, and benches incorporated into the site design. The City's approval includes **Special Condition 37** requiring submittal, prior to the issuance of a Building Permit, of plans for the locations and visual screening of all mechanical equipment such as standpipes, generators, and propane fuel tanks demonstrating that all equipment will be visually screened with vegetation, building elements, fencing or wood lattice.

Finally, in addition to the CDP, conditional use, and Design Review approvals, the City's action also includes approval of a sign permit for the apartment project's proposed monument signage. The findings note that the sign is an appropriate height (less than 6 feet high) and its placement is visually compatible with the color, scale (37 square feet, which is below the 100-square-foot limit for this type of development), and architectural style of the primary structures on the site and structures on adjacent properties.

In conclusion, there are no significant visual resources affected by the City's decision, and there is a high degree of legal and factual support for the City's determination that the approved CDP amendment, as conditioned, will protect visual resources consistent with the LCP policies cited above.

3. Public Access, Recreation, and Traffic Related Contentions

As summarized above, the appeals contend that the approved project will generate high traffic volumes on limited capacity roadways, which in turn will result in adverse impacts on recreational users and visitors attempting to access the coast. They further contend that the mitigation required to address the increase in traffic is inadequate, was based on an outdated traffic study, and does not include adequate mitigation proportional to the impacts that would enhance public access, ensure pedestrians and bicyclists can safely access the coast, and ensure that the level of service and service capacity for the

project is adequate. Related to traffic, another contention is that the City's approval did not consider greenhouse gas emissions and project residents idling in traffic queues. Because the City did not require an updated traffic study, there has been no analysis of the project's air quality impacts, and there is insufficient evidence to support a finding that the developments will "Minimize energy consumption and vehicle miles traveled."

Excerpts of Applicable LCP Policies:

Policies related to road capacity, coastal access, and traffic are included in the Public Facilities, Open Space, Circulation, and Land Use Elements of the certified LUP (emphasis added).

> **Policy PF-1.2**: Ensure Adequate Services and Infrastructure for New Development. No permit for development shall be approved unless it can be demonstrated that such development will be served upon completion with adequate services, including but not limited to potable water; wastewater collection, treatment and disposal; storm drainage; fire and emergency medical response; police protection; transportation; schools; and solid waste collection and disposal; as applicable to the proposed development.
>
> …
>
> b. Demonstration of adequate road facilities shall include information demonstrating that (i) access roads connecting to a public street can be developed in locations and in a manner consistent with LCP policies; and (ii) that the traffic generated by the proposed development, and all other known and foreseeable development, will not cause Levels of Service (LOS) of roads, streets, and intersections within the City to reduce below LOS standards contained in Policy C-1.1 of the Circulation Element of the Coastal General Plan.
>
> **Policy OS-16.1**: Coastal Access: Maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Provide public open space and shoreline access in the Coastal Zone. Acquisitions for coastal access shall not preclude the potential development of necessary infrastructure to support coastal-dependent uses.
>
> **Policy OS-16.4**: New Development: Require public access from the nearest public roadway to the shoreline and along the coast in new development except where:
>
> a) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources;
>
> b) adequate access exists within 500 feet of the site; or

c) access at the site would be inconsistent with other LCP policies, including but not limited to, expanded or new coastal-dependent industry or the protection of environmentally sensitive resources.

Policy C-1.1: Level of Service Standards: Establish the following Level of Service (LOS) standards:

…

• LOS C on all City-designated local streets.

…

Policy C-1.2: Coordinate Land Use and Transportation: Ensure that the amount and phasing of development can be adequately served by transportation facilities.

Policy C-1.3: Do not permit new development that would result in the exceedance of roadway and intersection Levels of Service standards unless one of the following conditions is met:

a) Revisions are incorporated in the proposed development project which prevent the Level of Service from deteriorating below the adopted Level of Service standards; or

b) Funding of prorata share of the cost of circulation improvements and/or the construction of roadway improvements needed to maintain the established Level of Service is included as a condition or development standard of project approval.

Policy C-1.4: Include specific time frames for the funding and completion of roadway improvements for projects which cause adopted roadway and intersection Level of Service standards to be exceeded. Require security, bonding or other means acceptable to the City to ensure the timely implementation of roadway mitigations.

Policy C-2.1: Roadway Improvements: … Project applicants are fiscally responsible for their fair share of roadway improvements necessary to serve their projects.

Policy C-2.6:Traffic Studies for High Trip Generating Uses: Traffic studies shall be required for all major development proposals, including but not limited to, drive-through facilities, fast food outlets, convenience markets, major tourist accommodations, shopping centers, commercial development, residential subdivisions, and other generators of high traffic volumes that would affect a Level of Service. Traffic studies shall identify, at a minimum:

(a) the amount of traffic to be added to the street system by the proposed development;

(b) other known and foreseeable projects and their effects on the street system;

(c) the direct, indirect, and cumulative adverse impacts of project traffic on street system operations, safety, and public access to the coast;

(d) mitigation measures necessary to provide for project traffic while maintaining City Level of Service standards;

(e) the responsibility of the developer to provide improvements; and

(f) the timing of all improvements.

Policy C-2.8:Continuation of Streets: Require the continuation of streets and bicycle and pedestrian paths through new developments wherever possible.

Policy C-2.9: Facilitate Street Connections. Review site plans for new development to facilitate the continuation of streets to improve local circulation. Priority shall be given to providing pedestrian and bicycle trails that establish connections to streets wherever possible.

Policy C-2.12: Roadway Safety: Improve the safety of the roadway system. All safety improvements shall be consistent with the applicable policies of the LCP including, but not limited to, the wetlands, environmentally sensitive habitat area, public access, and visual protection policies.

Policy C-8.1: Encourage Transit Use.

Policy C-8.3: Transit Facilities in New Development. Continue to require the provision of bus stops, bus shelters, benches, turnouts, and related facilities in all major new commercial, industrial, residential, and institutional developments.

Policy C-9.1:Provide Continuous Sidewalks: Provide a continuous system of sidewalks throughout the City.

Policy C-9.2: Require Sidewalks. Require a sidewalk on both sides of all collector and arterial streets and on at least one side of local streets as a condition of approval for new development.

Policy C-9.3: Where feasible, incorporate pedestrian facilities into the design and construction of all road improvements.

Policy C-9.5: Pedestrian Paths: Develop a series of continuous pedestrian walkways throughout the commercial districts and residential neighborhoods.

> **Policy LU-10.3**: The location and amount of new development shall maintain and enhance public access to the coast by: (1) facilitating the extension of transit services where feasible; (2) providing non-automobile circulation within the development that includes circulation connections outside of the development; (3) assuring that the recreational needs of new residents will be supported by onsite recreational facilities and/or off-site local park recreational facilities to ensure that coastal recreation areas are not overloaded; and (4) utilizing smart growth and mixed-use development concepts where feasible to improve circulation and reduce auto use, where such auto use would impact coastal access roads.
>
> **Policy LU-10.5**: 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.

In addition, IP section 17.30.090 - Public Improvement Requirements, requires the following (emphasis added):

> The development of an approved project shall include the construction of improvements to each public street frontage of the site as required by the review authority, the subdivision improvement requirements in Chapter 17.88 (Subdivision Design and Improvement Requirements), and/or the City's public improvement standards, as applicable. These improvements may include the widening of an existing street, and/or the installation or reinstallation of curb, gutter, and sidewalk; the installation of street trees and other landscaping within the public right-of-way; the installation of drainage facilities as required by the City Engineer, and/or other improvements determined by the review authority to be reasonably related to the needs for pedestrian and vehicle circulation, and community infrastructure demands created by the project.

Discussion

The subject property is located west of Highway (Hwy) 1/Main Street and south of the Noyo River. The property is between the first public road and the sea. The nearest coastal access points (shown on Exhibit 1) include the City's Noyo Bluff Overlook trail in Pomo Bluffs Park located about 0.2-mile north of the property, an informal view overlook and trails at Todd Point 0.5-mile west of the site, and parking access for Hare Creek Beach 0.4-mile from the property.

To evaluate the project's traffic impacts and whether traffic generated by the project would adversely impact recreational users and visitors attempting to access the coast, the City considered issues identified in a previous traffic study conducted for the site as well as updated traffic information and recommendations from City Public Works and Caltrans for the proposed project as amended.

The City considered the type and condition of the streets affiliated with the subject site, the category of streets under the LCP, and the level of service of the streets and intersections. The certified LUP discusses Level of Service (LOS) standards as follows:

> Level of Service (LOS) standards provide a qualitative indicator based on a quantitative analysis of the functional capacity of a roadway or intersection. LOS standards describe the relative ease or congestion of traffic movement on a roadway or at an intersection. LOS "A" represents free flow conditions and LOS "F" represents jammed conditions where traffic flow is at or over the capacity of the roadway and consequently moves very slowly…

The streets in the project vicinity include Ocean View Drive to the south, Harbor Avenue to the west, an unnamed frontage road to the east that parallels Hwy 1/South Main Street and which provides access to commercial businesses and an RV Park north of the site, and Hwy 1/Main Street. Except for the latter, all these streets are classified as "Local Streets" in the Circulation Element of the certified LUP. A "Local Street" is defined as "low-speed, low-volume street that provides access to adjacent land. Local streets are designed for trips within neighborhoods and to Collector and Arterial streets, and not to serve through-traffic." Hwy 1/Main Street is classified as an Arterial Street under the LCP, meaning "a medium-speed, medium capacity roadway that provides travel and access within the City and access to highways."[15] The LUP rates intersections in the City, including the intersection nearest the project site – Hwy 1/Ocean View Drive, which it states will rate as LOS Level C by the year 2011.

As explained in the City's findings, a traffic study was completed for the AutoZone project proposed for the subject site in 2019 (under the ownership of a prior property owner), which was denied by the City in January of 2020. The reasons for denial of the AutoZone project related primarily to project nonconformity with LCP policies related to the establishment of formula businesses/big box retail and community design policies. The AutoZone traffic study was developed in consultation with Caltrans who advised as to the extent of the study area and traffic scenarios to consider. The study areas were evaluated for four scenarios: (1) existing conditions; (2) existing conditions with the AutoZone project; (3) future conditions; and (4) future conditions with the AutoZone project and also considering the cumulative potential future traffic generation from a separate Hare Creek Shopping Center project, which was being contemplated for a property south of the site near the intersection of Hwy 1/Main Street and Highway 20.

The AutoZone traffic study determined that that proposed project had the potential to impact five intersections: (1) north of the site, the unsignalized intersection of unnamed frontage road and Hwy 1/Main Street; (2) south of the site, the intersection at Ocean View Drive and the unnamed frontage road; (3) east of the site, the signalized intersection at Hwy 1/Main Street and Ocean View Drive; (4) about a half-mile southeast

[15] See https://www.city.fortbragg.com/home/showpublisheddocument/704/637710004830970000.

of the site, the signalized intersection at Hwy 1/Main Street and Highway 20; (5) a half mile southeast of the site, an unsignalized intersection of Hwy 20 and Boatyard Drive.

The City's findings explain the conclusions of the AutoZone traffic study and why in that case the traffic projected to be generated from the AutoZone project would not impact LOS at any intersections inconsistent with the LCP (Exhibit 11, page 56):

> *Additionally, the Autozone Traffic Study found that even with 55.34 per peak hour trips and 387 trips per day, only the eastbound left turn from Ocean View Drive to Highway 1 fell from a LOS of C to D, which is an allowable level of service per the Coastal General Plan. No signalizations were warranted for that project. The Traffic Study also determined that the project would not result in queue lengths at intersections that exceed existing capacity. Therefore, this proposed project will not exceed current LOS limits per Policy C-1.3 of the Coastal General Plan. And Per Policy C-2.3 a traffic study was not required for this project.*

The City's findings explain the number of vehicular trips per day anticipated from the proposed Grewal mixed use project as amended, how that number compares to the numbers from the AutoZone traffic study, and findings for why a new traffic study was not required for this project. As noted in the City's findings, the proposed project is projected to generate less than 406 vehicular trips per day per the Institute of Transportation Engineers Trip Generation Manual, and this amount is not expected to reduce the LOS at any of the studied intersections below acceptable levels. The City's determination for why no new traffic study was needed was based on recommendations from Caltrans and on an evaluation from Tahoe Design & Engineering dated Jun 24, 2025 (Exhibit 11, pages 178-181). Essentially, the Tahoe study cites the following reasons for why no new traffic study is needed: (1) the project's traffic load is considered insufficient to reduce the LOS at any of the surrounding intersections below acceptable levels; (2) the project's siting is in an area where a prior recent traffic study (AutoZone) was completed, which remains applicable to the current project; (3) existing intersections operate at healthy LOS levels (LOS A, B, and C), as confirmed by the City's Public Works Department, and given the low trip generation of the proposed project, it is not anticipated to cause a decline in LOS; and (4) Caltrans concluded that no new traffic study was warranted for this project due to the project's anticipated reduction in overall Vehicle Miles Traveled (VMT) and its conclusion that the project would have minimal impacts on Highway 1 intersections. Specifically, the City's findings state (Exhibit 11, page 111):

> *All of the intersections are under the jurisdiction of Caltrans, with the exception of the intersection of Ocean View Drive and the unnamed frontage road. Caltrans reviewed the proposed project and did not request a traffic study, as this residential apartment project would generate an estimated 406 vehicular trips per day per the ITI Trip Generation Manual, this is equivalent to the level of trips that would have been generate by the Autozone project and that project's traffic study found that the project would not impact Level of Service at any of the intersections, therefore the*

project will not exceed current LOS limits per Policy C-1.3 of the Coastal General Plan. And Per Policy C-2.3 a traffic study was not required for this project.

However, the City determined, per LUP policies PF-1.2, C-1.2, C-1.4, C-2.1 C-2.12, C-9.1, C-9.2, and IP section 17.30.090 cited above, that the proposed project will necessitate street and frontage improvements and certain signage improvements to ensure adequate road facilities and LOS standards. The City imposed various special conditions related to required road improvements and traffic mitigation on the amended project, including, but not limited to, the following:

- **Special Condition 18** was imposed to allow southbound traffic on the frontage road to merge with eastbound traffic on Ocean View Drive without impacting the operations of the traffic signal at Highway 1 and Ocean View Drive. The City's findings state that "there is sufficient additional stacking room between the Ocean View Drive/Frontage Road intersection and the Ocean View Drive/Harbor Avenue intersection to the west to accommodate the anticipated additional queue length for eastbound left and eastbound through traffic." As imposed by the City Special Condition 18 states:

  "At the time of development and prior to the issuance of the occupancy permit, the applicant shall obtain an encroachment permit from Caltrans and install appropriate Keep Clear signage and street markings at the intersection of Ocean View Drive and the frontage road (Intersections Highway 1/Ocean View Drive and Ocean View Drive/Frontage Rd) and the applicant shall obtain an encroachment permit from the City of Fort Bragg and install appropriate "Keep Clear" signage and street markings at the Intersection of Harbor Ave and Ocean View Road."

- **Special Condition 19** requires the applicant to obtain an encroachment permit from Caltrans and place a "No Left Turn" sign for eastbound traffic existing the frontage road onto Highway 1 north of the site to prevent traffic from turning northbound (left) onto Highway 1 at this unsignalized intersection.

- **Special Condition 22** requires, prior to issuance of a Certificate of Occupancy for the project, various public improvements to be completed by the applicant under the direction of the City's Department of Public Works, including (a) … Harbor Avenue shall be improved along the length of the parcel frontage including a 37' fully paved Right of Way and parking lane. … Installation of sidewalk, curb, corner ramps, gutter and conform paving along the project frontage on the east side of Harbor Ave. … and (b) Installation of sidewalk, curb, corner ramps, gutter and conform paving along the project frontage on the west side of Frontage road. The condition requires that all frontage and utility improvements (ADA compliant driveway aprons, corner ramps, sidewalk, curb, gutter, conform paving, etc.) shall be implemented according to current City standards.

- **Special Condition 46** specifies that if a four-way stop sign is warranted by traffic conditions at the intersection of Harbor Ave and Ocean View within 4 years of completion of the project, the applicant shall obtain an encroachment permit and install the required 4-way stop sign.

Additionally, the City imposed **Special Condition 20** related to transit access. Consistent with LUP policies C-8.1 and LU-10.3 requiring encouragement of transit use and facilitating the extension of transit services where feasible, this condition requires the applicant to work with the Mendocino Transit Authority (MTA) and the school district to determine if the addition of a transit and/or school bus stop at the property is warranted / feasible. If a transit/school bus stop is feasible and desirable, the applicant is required to install a bus stop in the sidewalk at a location per the request of MTA/School District prior to obtaining a building permit for the project.

Moreover, as previously discussed, the amended permit, as conditioned by the City, requires construction of a public access path across the parcel with associated signage directing the public to Pomo Bluffs Park north of the site. Consistent with LUP policies C-2.9, C-9.3, and LU-10.3, the public access amenity is required to be implemented by **Special Condition 44**.

Finally, the City's findings include a parking analysis and determination that the approved project, as conditioned, with conform with all parking requirements of the certified LCP.

In conclusion, there is a high degree of legal and factual support for the City's determination that the approved CDP amendment, as conditioned, will protect coastal access and recreation, mitigate traffic impacts, and minimize vehicle miles traveled consistent with the LCP policies cited above and the public access policies of the Coastal Act.

4. Water Quality & Hydrology Contentions

As noted previously, the project site is near suburban homes on Todd Point outside of the incorporated City limits. These homes rely on domestic wells as their primary water source, and thus the maintenance of groundwater quality is a critical concern for the community. As summarized above, the appeals generally raise three different contentions related to water quality. First, appeals contend that the City's approval did not address the fact that circa 2018 there were ten bore holes/exploratory wells drilled on the site for which there is no evidence of proper sealing or decommissioning. Improperly filling, or leaving unfilled and abandoned, bore holes could result in migration of documented site contaminants (including petroleum, coolant, fuel, animal waste, etc.) through these conduits and the porous soils of the area, thereby contributing pollution to the residential groundwater wells of Todd Point. Second, appeals contend that because the City did not require a new groundwater evaluation for the project but instead relied on an old, outdated report for an adjacent site, the City's approval fails to consider the project's impacts on the Todd Point aquifer to ensure maintenance of existing levels of groundwater recharge and to consider cumulative hydrologic impacts. As such,

appellants allege the approved project may impact the aquifer and groundwater wells that rely on it, and mitigation measures included to mitigate these impacts are, appeals contend, insufficient. Third, the appellants claim that the City's approval of the project could lead to pollutants in the environment that generally could degrade water quality.

Excerpts of Applicable LCP Policies:

> **Policy OS-2.2**: Protect Aquifers: Protect groundwater aquifers.
>
> **Policy OS-3.1**: Soil Erosion: Minimize soil erosion to prevent loss of productive soils, prevent landslides, and maintain infiltration capacity and soil structure.
>
> **Policy OS-9.1**: Minimize Introduction of Pollutants. Development shall be designed and managed to minimize the introduction of pollutants into coastal waters (including the ocean, estuaries, wetlands, rivers, streams, and lakes) to the extent feasible.
>
> **Policy OS-9.2**: Minimize Increases in Stormwater Runoff. Development shall be designed and managed to minimize post-project increases in stormwater runoff volume and peak runoff rate, to the extent feasible, to avoid adverse impacts to coastal waters.
>
> **Policy OS-9.3**: Maintain Biological Productivity and Quality of Coastal Waters. Development shall be designed and managed to maintain, and restore where feasible, the biological productivity and quality of coastal waters, consistent with sections 30230, 30231, and other relevant sections of the California Coastal Act…
>
> **Policy OS-10.1**: Construction-phase Stormwater Runoff Plan. All development that requires a grading permit shall submit a construction-phase erosion, sedimentation, and polluted runoff control plan. This plan shall evaluate potential construction-phase impacts to water quality and coastal waters, and shall specify temporary Best Management Practices (BMPs) that will be implemented to minimize erosion and sedimentation during construction, and prevent contamination of runoff by construction chemicals and materials.
>
> **Policy OS-10.2**: Post-Construction Stormwater Runoff Plan. All development that has the potential to adversely affect water quality shall submit a post-construction polluted runoff control plan ("Runoff Mitigation Plan"). This plan shall specify long-term Site Design, Source Control, and, if necessary, Treatment Control BMPs that will be implemented to minimize stormwater pollution and erosive runoff after construction, and shall include the monitoring and maintenance plans for these BMPs.
>
> **Policy OS-10.3**: Emphasize Site Design and Source Control BMPs. Long-term post-construction Best Management Practices (BMPs) that protect

water quality and control runoff flow shall be incorporated in the project design of development that has the potential to adversely impact water quality…

Policy OS-11.1: Use Integrated Management Practices in Site Design. The city shall require, where appropriate and feasible, the use of small-scale integrated management practices (e.g., Low Impact Development techniques) designed to maintain the site's natural hydrology by minimizing impervious surfaces and infiltrating stormwater close to its source (e.g., vegetated swales, permeable pavements, and infiltration of rooftop runoff).

Policy OS-11.3: Minimize Impervious Surfaces. Development shall minimize the creation of impervious surfaces (including pavement, sidewalks, driveways, patios, parking areas, streets, and roof-tops), especially directly connected impervious areas, where feasible…

Policy OS-11.4: Infiltrate Stormwater Runoff. Development shall maximize on-site infiltration of stormwater runoff, where appropriate and feasible, to preserve natural hydrologic conditions, recharge groundwater, attenuate runoff flow, and minimize transport of pollutants…

Policy OS-11.5: Divert Stormwater Runoff into Permeable Areas. Development that creates new impervious surfaces shall divert stormwater runoff flowing from these surfaces into permeable areas, where appropriate and feasible, to enhance on-site stormwater infiltration capacity.

Policy OS-11.8: Landscape with Native Plant Species. The City shall encourage development to use drought-resistant native plant species for landscaping, to reduce the need for irrigation and landscaping chemicals (e.g., pesticides and fertilizers).

Policy OS-11.9: Provide Storm Drain Inlet Markers. Markers or stenciling shall be required for all storm drain inlets constructed or modified by development, to discourage dumping and other illicit discharges into the storm drain system.

Policy OS-11.10: Continue Operation and Maintenance of Post-Construction BMPs. Permittees shall be required to continue the operation, inspection, and maintenance of all post-construction BMPs as necessary to ensure their effective operation for the life of the development.

Policy OS-12.2: Additional Requirements for Developments of Special Water Quality Concern. All Developments of Special Water Quality Concern (as identified in Policy OS-12.1, above) shall be subject to the following four additional requirements to protect coastal water quality:

1) Water Quality Management Plan. The applicant for a Development of Special Water Quality Concern shall be required to submit for approval a Water Quality Management Plan (WQMP), prepared by a qualified licensed professional, which supplements the Runoff Mitigation Plan required for all development. The WQMP shall include hydrologic calculations per City standards that estimate increases in pollutant loads and runoff flows resulting from the proposed development, and specify the BMPs that will be implemented to minimize post-construction water quality impacts.

2) Selection of Structural Treatment Control BMPs. As set forth in Policy OS-10.4, if the review authority determines that the combination of Site Design and Source Control BMPs is not sufficient to protect water quality and coastal waters as required by Policy OS-9.3, structural Treatment Control BMPs shall also be required. The WQMP for a Development of Special Water Quality Concern shall describe the selection of Treatment Controls BMPs, and applicants shall first consider the BMP, or combination of BMPs, that is most effective at removing the pollutant(s) of concern, or provide a justification if that BMP is determined to be infeasible.

3) 85th Percentile Design Standard for Treatment Control BMPs. For post-construction treatment of runoff in Developments of Special Water Quality Concern, Treatment Control BMPs (or suites of BMPs) shall be sized and designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event (with an appropriate safety factor of 2 or greater) for flow-based BMPs.

4) Goal for Runoff Reduction. In Developments of Special Water Quality Concern, the post-development peak stormwater runoff discharge rate shall not exceed the estimated pre-development rate for developments where an increased discharge rate will result in increased potential for downstream erosion or other adverse habitat impacts.

Policy OS-14.1: Minimize Polluted Runoff and Pollution from Construction. All development shall minimize erosion, sedimentation, and the discharge of other polluted runoff (e.g., chemicals, vehicle fluids, concrete truck wash-out, and litter) from construction activities, to the extent feasible.

Policy OS-14.2: Minimize Land Disturbance During Construction. Land disturbance activities during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, to the extent feasible, to avoid increased erosion and sedimentation. Soil compaction due to construction activities

shall be minimized, to the extent feasible, to retain the natural stormwater infiltration capacity of the soil.

Policy OS-14.3: Minimize Disturbance of Natural Vegetation. Construction shall minimize the disturbance of natural vegetation (including significant trees, native vegetation, and root structures), which are important for preventing erosion and sedimentation.

Policy OS-14.4: Stabilize Soil Promptly. Development shall implement soil stabilization BMPs (including, but not limited to, re-vegetation) on graded or disturbed areas as soon as feasible.

Policy OS-14.5: Grading During Rainy Season. Grading is prohibited during the rainy season (from November 1 to March 30), except in response to emergencies, unless the review authority determines that soil conditions at the project site are suitable, and adequate erosion and sedimentation control measures will be in place during all grading operations.

In addition, numerous IP standards implementing the above LUP water quality protection policies are found in certified IP Article 6 chapters 17.62 (Grading, Erosion, and Sediment Control) and 17.64 (Stormwater Runoff Pollution Control).

Discussion

The approximately 2.6-acre lot is currently vacant, vegetated, and undeveloped. The lot is located over 400 feet back from the bluff edge above the Noyo River, and there are no wetlands or watercourses on the site. The site is flat with no natural drainages and is located in FEMA Zone X (which means moderate to low flood potential).

As approved by the City, the project as conditioned will result in the development of new impervious surfaces on the currently fully pervious site consisting of building footprints, parking lot, and sidewalks covering approximately (slightly more than) half of the site. The other (slightly less than) half of the site will remain generally permeable, reserved for common open space, private open space, landscaped areas, and “bioretention planters.” The proposed landscaping plan includes the planting of 73 trees and the use of all native, regionally appropriate plant species for the Mendocino Coast region (as conditioned by the City’s approval, as discussed further in the below ESHA finding, **Special Condition 13** requires the use of only native plants as part of the project’s landscaping, and **Special Condition 14** requires ongoing invasive plant management on the site to ensure native landscaping is maintained and no problematic invasive species are allow to grow and proliferate).

The City’s findings and conditions related to water quality protection measures and stormwater management design are extensive and detailed (Exhibit 11, pages 112-125). The City’s findings include a table summarizing existing pervious and impervious surfaces on Todd Point. The table notes that all development on Todd Point currently covers 1.31% of the 63 million square feet on the Point. The proposed project would

increase impervious surfaces by 0.08%, which, according to the City's findings, is not significant for the watershed. However, the LCP categorizes the project as a "Development of Special Water Quality Concern," since it's a housing development project of 10 or more dwelling units. As such, the LCP includes specific requirements for BMPs and stormwater runoff management.

The findings address how the increase in stormwater runoff from the project's resulting increase in impervious surfaces will be managed to avoid erosion, maintain infiltration rates, and address pollutants, as required by the LCP. Generally, stormwater runoff from some of the buildings will be captured in cisterns and allowed to infiltrate into the groundwater at a slow rate onsite during non-rainy conditions. Additionally, the project is designed to pretreat and infiltrate stormwater from the parking lot and remaining buildings through underground stormwater pipes to bioswales, from which any stormwater overflow would be conveyed to the drainage swale along the north side of Ocean Drive where it could infiltrate further into the groundwater system.

The design of the stormwater management system was based in part on a drainage study prepared by JTS Engineering Consultants dated January 2025. The purpose of the study was to complete a preliminary stormwater detention analysis of the project site and a hydrologic and hydraulic analysis of the proposed facilities along Ocean View Avenue. The preliminary study notes that a final drainage study will be needed to support the final construction documents of the project. The study assessed existing and proposed hydrology factoring in 10-year as well as 100-year storm events with the goal of limiting "peak flow from the project site to the downstream system to the existing condition peak flow." The study describes the stormwater management system of the project in part as follows:

> *"In existing conditions, most of the project site area drains to Harbor Avenue by sheet flowing over the native soil. The proposed project shall contain bio-retention planters along the west side of the property, which collect runoff within the project site. From the bio-retention planters, runoff shall route to underground detention facilities connected to a pump, which will discharge to the proposed curb and gutter system along Unnamed Road at a point where the stormwater will drain to the existing drain inlet at the northeast corner of the Ocean View Drive and Harbor Avenue intersection, which drains to the ditch and culvert system along Oceanview Drive. The facilities along Oceanview Drive will be upsized as a part of this project."*

The study based its design on calculations for a system designed to infiltrate the stormwater from an 85th-percentile-24-hour storm event as required by the LCP. The City's findings describe the results of the engineering firm's hydrology calculations and stormwater design as follows (Exhibit 11, page 113, emphasis added):

> *"The project will mitigate this stormwater flow by installing underground storage pipes with a weir and orifice outflow design. The actual outflow will be controlled using a pump that will ultimately route to the roadside*

> *ditches along Ocean View Avenue. The 10- year and 100- year outflow from the project site is designed as 0.299 and 0.352 cubic feet per second, respectively, which is below the peak discharge of existing conditions. In other words, there would be less peak flow runoff from the site after it is constructed than there is now. This was modeled using the design condition of only the 300 feet of 48-inch pipe. Additionally, the model did not include the infiltration afforded by the bioswale system. However, the bioswales would actually infiltrate more stormwater on site as would the rainwater capture tanks which are a Special Condition in this report. The Applicant is required to submit a final drainage report to the Department of Public Works as part of the Building Permit application to ensure that post construction stormwater runoff is less than pre-construction stormwater runoff."*

According to the City's findings, 24,942 square feet or 30% of the site will be composed of impermeable parking lot and sidewalks that will connect directly to the recommended bioswale system, which will be designed to pretreat and partially infiltrate stormwater from the parking lot. As noted in the above findings, the applicant is required by conditions of approval to submit a final drainage report to the Department of Public Works as part of the Building Permit application to ensure that post construction stormwater runoff is less than pre-construction stormwater runoff.

The 2025 study built off an early hydrologic study completed for the Todd Point area. The City describes the earlier study's findings and integrates this past information with the findings of the updated study to consider the project's potential effects on the Todd Point groundwater aquifer as required by LUP Policy OS-2.2 (Exhibit 11, page 123, emphasis added):

> *Per this policy and Program OS 2.2.2 a Hydrological Study was prepared for Todd Point in 1995 which analyzed the existing ground water storage capacity of the site and found Todds point current ground water storage capacity to be 348-acre feet of water storage. Furthermore, the study found that all ground water consumption on Todd's point in 1995 came to 6.1-acre feet per year. In 1995 there were 39 single family residences with wells that relied on the aquafer. In 2025 there are 58 single family homes with wells that rely on the aquifer. The hotel, trailer park restaurant and homes on Ocean drive that are located in the City of Fort Bragg are hooked up to City Water and so don't use ground water. Water use in 2025 for these 58 single family residences would be 9.22 acre feet of water per year. The study includes a formula to calculate ground water recharge that is lost due to impervious surfaces. Per that formula, the 53,068 SF of impervious surface of this project would result in a net loss of 1.21-acre feet of recharge to the ground water system, if no groundwater from the site's impervious surfaces was allowed to infiltrate on site. However, the project does propose to infiltrate significant water on site so the actual reduction to ground water would be less. Regardless there is a sufficiently large ground water reservoir of Todds Point that the proposed*

project would not impact ground water availability for residents as illustrated below:

Total Groundwater Storage on Todds Point	*348.00 acre feet*
Current Ground Water Use	*9.22 acre feet*
Proposed Project Ground Water Impact	*1.21 acre feet*
Total available unutilized ground water	*337.57 acre feet*

In sum, because the project is designed and required by conditions to infiltrate a significant volume of stormwater onsite, and with the various other stormwater management and water quality protection provisions of the approved project as permitted, the City's findings conclude that the actual reduction of water to the groundwater aquifer and risk to water quality presented by the project is low.

The City's approval includes various special conditions to address stormwater runoff and ensure stormwater is appropriately infiltrated onsite as required and to ensure stormwater infrastructure is appropriately sized to manage runoff. Conditions include, but are not limited to, the following:

- **Special Condition 23** requires the applicant to install appropriately sized (per hydrology calculations) water catchment tanks for buildings 3, 4, 5 and 7 to be utilized to water landscaping during non-storm conditions and to allow stormwater to slowly infiltrate onsite through a designed stormwater infiltration basin. According to the City's findings, these four buildings have a combined footprint of approximately 20,300 square feet, leaving just 8,000 square feet of building footprint from which stormwater will flow into the storm drain system.

- **Special Condition 28** requires the applicant to submit a Water Quality Management Plan, a SWPPP, and a Runoff Mitigation Plan (RMP), which collectively must demonstrate compliance with the Mendocino County Low Impact Design Manual (LID Manual)[16] and with the hydromodification requirements established by the State Water Resources Control Board's Municipal Separate Storm Sewer System (MS4) Phase II permit (WQO 2013-0001-DWQ) Post Construction Storm Water Management Program (E.12.f), which specifies the following requirements:[17]

  (f) Storm Water Treatment Measures and Baseline Hydromodification Management Measures

  After implementation of Site Design Measures, remaining runoff from impervious DMAs must be directed to one or more facilities designed to infiltrate, evapotranspire, and/or bioretain the amount of runoff specified in Section E.12.e(ii)(c) Numeric Sizing Criteria for Storm Water Retention

[16] https://www.mendocinocounty.gov/home/showpublisheddocument/43360/637583284035530000.

[17] https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2013/wqo2013_0001dwq.pdf.

and Treatment. The facilities must be demonstrated to be at least as effective as a bioretention system with the following design parameters:

1) Maximum surface loading rate of 5 inches per hour, based on the flow rates calculated. A sizing factor of 4% of tributary impervious area may be used.
2) Minimum surface reservoir volume equal to surface area times a depth of 6 inches.
3) Minimum planting medium depth of 18 inches. The planting medium must sustain a minimum infiltration rate of 5 inches per hour throughout the life of the project and must maximize runoff retention and pollutant removal. A mixture of sand (60%-70%) meeting the specifications of American Society for Testing and Materials (ASTM) C33 and compost (30%-40%) may be used.
4) Subsurface drainage/storage (gravel) layer with an area equal to the surface area and having a minimum depth of 12 inches.
5) Underdrain with discharge elevation at top of gravel layer.
6) No compaction of soils beneath the facility, or ripping/loosening of soils if compacted.
7) No liners or other barriers interfering with infiltration.
8) Appropriate plant palette for the specified soil mix and maximum available water use.

As conditioned by the City, final plans must be submitted for the City's approval prior to the issuance of the Building Permit. Also required to be submitted prior to issuance of the Building Permit, as required by IP section 17.64.045, **Special Condition 29** requires submittal of a final stormwater analysis and plan demonstrating (in part) that:

a. Stormwater runoff has been minimized by incorporation of Low Impact Development (LID) strategies that minimize impermeable areas, maximize permeable areas, and that slow, spread, and sink runoff to recharge groundwater and minimize runoff;

b. Treatment control Best Management Practices have been sized and designed to retain and infiltrate runoff produced by all storms up to and including the 85th percentile (0.83" in 24-hours) based on the size of the development; and

c. All drainage channels, conduits, culverts, and appurtenant facilities will have sufficient capacity to convey a 100-year flood.

With respect to the capacity of existing drainage infrastructure offsite that the required onsite stormwater system will drain to, the City's findings note that there is a 24-inch diameter culvert that conveys stormwater along Ocean Drive westward to an ocean outfall near Todd Point. Per **Special Condition 31**, the applicant is required to provide, prior to issuance of the building permit, an analysis, reviewed by a qualified engineer,

confirming the sufficiency of the existing infrastructure in this area to handle any increase in runoff from the site or otherwise submit plans to improve the drainage conveyance system along Ocean Drive so that it can adequately convey site runoff. If any upgrades to the City's infrastructure are required, upgrades are required to be completed by the applicant as an amendment to the project as required by the City's Storm Drain Master Plan, which identifies the following potential upgrade as needed for this neighborhood:

> *5.5.8.1 Culvert Replacement: Ocean View Drive Project: A project is proposed to replace existing culverts and regrade drainage ditches on Ocean View Drive. … It is also recommended that the drainage ditches on both sides of Ocean View Drive be cleaned and regraded to 2' x 2' x 3'. This project is designated as a medium priority because the existing culverts are undersized for the current levels of development and drainage ditches are in need of maintenance. Because of the growth potential in the Todd Point area this project is considered development driven…*

In addition to the above findings and conditions related to stormwater management, the City's Public Works Department recommended a special condition related to water quality protection requiring installation of a trash capture device to ensure consistency with the municipal stormwater management program and Statewide Trash Provisions. **Special Condition 25** was thus included to require the applicant to install, operate, and maintain certified full capture trash devices in the development-related storm drains to prevent trash runoff via storm drain systems. As explained in the City's findings:

> *These devices are designed to capture trash particles ≥5 mm in size, effectively preventing their transport into downstream water bodies. Trash capture devices installed as part of the project's stormwater management strategy shall be included in an ongoing operations and maintenance plan and comply with annual reporting requirements to ensure the continued effectiveness of the devices.*

The City's findings (Exhibit 11, pages 121-122) also address how the project is required to comply with LUP policies OS-14.1-14.5 cited above during the construction process to minimize the potential for polluted runoff during construction and other construction-phase Best Management Practices (BMPs) as well as to minimize the potential for dust emissions through the requirements of IP section 17.30.080. **Special Condition 27** requires the applicant to undertake annual inspection and maintenance tasks for all on-site BMPs as specified by the civil engineer and/or the Department of Public Works. Furthermore, the City's approval includes **Special Condition 24** prohibiting the applicant from using inorganic landscaping chemicals to further protect water quality.

Finally, regarding the contention related to old bore holes on the site and the potential for improperly filled holes to act as a conduit for pollutants to migrate to the groundwater aquifer, none of the appeals provide evidence that there are any existing unfilled or improperly filled bore holes on the site, only that such holes were drilled on the site during past site investigations. Regardless, the City responded to this concern in

responses to comments submitted on the original appeal by pointing to the numerous special conditions highlighted above for water quality protection – in particular **Special Condition 28**.

Therefore, there is a high degree of legal and factual support for the City's determination that the approved amended CDP, as conditioned, will protect water quality, including groundwater, consistent with the LCP.

5. ESHA Contentions

Three of the appeals contend the project may impact sensitive plant and bird habitat areas inconsistent with the ESHA protection policies of the LCP, which include, but are not limited to, the following:

> **Policy OS-1.1**: Definition of ESHA. "Environmentally sensitive habitat area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.
>
> > Protection of environmentally sensitive habitat areas is one of the essential aspects of the Coastal Act. Fort Bragg has several environmentally sensitive habitat areas including, but not limited to, portions of coastal bluffs, biologically rich tide pools, nesting grounds, kelp beds, wetlands, riparian habitats, and rare, threatened, or endangered plants or plant communities.
> >
> > Areas that may contain environmentally sensitive habitat areas include, but are not limited to, areas indicated by Map 0S-1: Open Space and Environmentally Sensitive Habitat Areas…
>
> **Policy OS-1.7** Development in areas adjacent to Environmentally Sensitive Habitat 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.
>
> **Policy OS-1.13**: Landscaping Adjacent to ESHA. All development located within or adjacent to environmentally sensitive habitat areas shall be conditioned to:
>
> a) Require all proposed plantings be obtained from local genetic stocks within Mendocino County. If documentation is provided to the review authority that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside the local area, but from within the adjacent region of the floristic province, may be used; and if local genetic stocks within the floristic province are unavailable, the Director may authorize use of a commercial native mix, provided it is clear of invasive seed. Director may also authorize use of a seed mix that is

selected for rapid senescence and replacement with native stock; and

b) Require an invasive plant monitoring and removal program; and

c) Prohibit the planting of any plant species on the property that is (a) listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, and/or by the State of California, or (b) listed as a 'noxious weed' by the State of California or the U.S. Federal Government.

Policy OS-5.1 Native Species: Preserve native plant and animal species and their habitat.

Policy OS-5.2: 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.

Policy OS-5.3: Require site planning and construction to maintain adequate open space to permit effective wildlife corridors for animal movement between open spaces.

Policy OS-5.4: Condition development projects, requiring discretionary approval to prohibit the planting of any species of broom, pampas grass, gorse, or other species of invasive non-native plants deemed undesirable by the City.

In addition, numerous IP standards implementing the above LUP ESHA protection policies are found in certified IP Article 3 chapter 17.34 (Landscaping Standards) and Article 5 chapter 17.50 (Land & Marine Resource Protection).

Discussion

Two biological studies and reports have been completed for the project site – one in 2024 and an earlier study in 2018 to support an earlier development proposal (for a commercial AutoZone store, prior to the applicant's ownership). Neither report identified any special status species, wetlands, natural drainages, or sensitive natural communities on or adjacent to the site. The 2024 biological report recommends a preconstruction bird survey to ensure that no active nests of raptors or other avian species will be impacted by the project. Consistent with this recommendation and with the LCP's ESHA protection provisions cited above, the City imposed **Special Condition 11** requiring the applicant to complete a pre-construction bird survey within and adjacent to any proposed disturbance area for nesting raptors and other protected bird species within 14 days prior to disturbance. If any nesting raptors or protected birds are identified during such pre-construction surveys, areas with active nests must be protected with an appropriately sized no disturbance buffer around the nesting site to avoid disturbance or destruction of the nest site until after the breeding season or after a qualified wildlife biologist determines that the young have fledged. Inclusion of this

condition ensures that development will protect and not significantly degrade any environmentally sensitive bird nesting habitat areas.

The City's approval will allow for the removal of most or all of the 11 trees currently growing on the site (a mix of immature Bishop pine, shore pine, Douglas fir, and invasive Monterey pine trees), and one appeal alleges that the trees support a lichen species that is listed as rare in Oregon (while noting that the species is not listed as rare in California). The City's findings discuss the infeasibility of developing the approved project on the site in a manner that retains and protects the 11 trees. However, the City included **Special Condition 12** directing the applicant to retain, as feasible, any Bishop Pine trees on the site (the City's findings identify as many as four trees that may be feasible to retain). Bishop pine is not a rare species, but Bishop pine forest is a sensitive natural community that would potentially meet the definition of ESHA under the City's LCP. However, there is no forest habitat on the subject property but rather a small, isolated assemblage of young, scattered trees surrounded by open grassy fields and urban and suburban development. Additionally, as the LCP generally prohibits the planting of invasive species and requires the planting of native species in site landscaping, the project's plans to remove the invasive Monterey pine trees from the site are consistent with these policy directives.

Although no ESHA is found on the subject site, the City's findings note that the approved project as conditioned will protect any surrounding ESHA in the vicinity as well as nearby parks and recreation areas by requirements to use only native species in the landscaping palate and to eradicate any invasive species on the property. As proposed, the project proposes an almost entirely native plant landscaping plan, and as such will "preserve native plant species and the habitats" on site consistent with LUP Policy OS-5.1. The City referred the project to CDFW for comment, and in response to CDFW's comments on the landscaping plan, the City incorporated a recommendation to use all native plants only in site landscaping. **Special Condition 13** requires the use of only native plants as part of the project's landscaping, and **Special Condition 14** prohibits the applicant from planting or allowing to volunteer any invasive species plants listed on the California Invasive Plant Council website, consistent with LUP Policy OS-5.4.

In conclusion, there is no ESHA on or adjacent to the project site affected by the City's decision, and there is a high degree of legal and factual support for the City's determination that the approved CDP amendment, as conditioned, will protect natural resources consistent with the LCP policies cited above.

6. Hazards Contentions

One of the appeal contentions briefly mentions that the City did not require a new geotechnical report for the project but instead relied on the 2018 report. Presumably the appeal implies that there is insufficient legal and factual support for the City's conclusion that the project design minimizes geologic hazard risks. Appeals also contend that City's approval did not address safe evacuation for Todd Point residents in the event of a tsunami, and the high traffic volumes generated by the project will impair the ability of all residents to safely evacuate.

Excerpts of Applicable LCP Policies:

> **Policy SF-1.1**: Minimize Hazards: New development shall: (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard; and (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
>
> **Policy SF-1.3**: Geotechnical report required. Applications for development located in or near an area subject to geologic hazards, including but not limited to areas of geologic hazard shown on Map SF-1, shall be required to submit a geologic/soils/geotechnical study that identifies all potential geologic hazards affecting the proposed project site, all necessary mitigation measures, and demonstrates that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Such study shall be conducted by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and shall be prepared consistent with the requirements of Section 18.54.040(C) of the Coastal Land Use and Development Code. Refer to Map SF-1: Geologic Hazards. Refer to the General Plan Glossary for definitions of these terms.
>
> **Policy SF-2.1**: Seismic Hazards: Reduce the risk of loss of life, personal injury, and damage to property resulting from seismic hazards.
>
> **Policy SF-2.2**: Require professional inspection of foundations and excavations, earthwork, and other geotechnical aspects of site development during construction on those sites specified in soils, geologic, and geotechnical studies as being prone to moderate or high levels of seismic hazard.

There are no policies or standards related to emergency evacuation included in the City's certified LCP.

In addition, IP standards implementing the above LUP Hazards policies are found in certified IP Article 5 chapter 17.54 (Hazards and Shoreline/Bluff Development).

Discussion

The subject site is located at an elevation of over 100 feet above mean sea level, and as noted above, is a flat, level site in an area of moderate to low flood risk. The site is not within an area of geologic hazard shown on LUP Map SF-1.[18] The project site is over 400 feet inland from the nearest coastal bluff edge.

[18] See https://www.city.fortbragg.com/home/showpublisheddocument/728/637710005470200000.

According to a 2018 geotechnical engineering report completed for the project site produced by Salem Engineering Group, Inc. (prepared for the earlier AutoZone proposal under the prior landowner), the primary hazard associated with the site is related to seismic activity, and there is no tsunami risk associated with the site:

> *"Based on the proximity of several dominant active faults and seismogenic structures, as well as the historic seismic record, the area of the subject site is considered subject to relatively high seismicity. The seismic hazard most likely to impact the site is ground-shaking due to a large earthquake on one of the major active regional faults. Numerous moderate to large earthquakes have affected the area of the subject site within historic time. The nearest fault to the project site is associated with the North San Andreas Fault system located approximately 6.5 mile from the site. There are no known active fault traces in the immediate project vicinity."*
>
> *…*
>
> *The site is located within a coastal area. However, due to the project site elevation (±107 MSL), tsunamis (seismic sea waves) are not considered a significant hazard at the site.*
>
> *Seiches are large waves generated in enclosed bodies of water in response to ground shaking. No major water-retaining structures are located immediately up gradient from the project site. Flooding from a seismically-induced seiche is considered unlikely."*

The report concludes, based upon the data collected during the investigation and from a geotechnical engineering standpoint, that the site is suitable for the proposed construction of the proposed (at that time) retail store.

The City's findings address site hazards in part as follows:

> *The site is located 420 feet inland from the coastal bluff overlooking Noyo Harbor and, therefore, is not subject to hazards associated with coastal bluff erosion. All hazards associated with earthquakes will be addressed by the building permit process under the authority of the California Building Code….*
>
> *However, while the geotechnical report provides confidence that the project is feasible given geotechnical conditions of the site, the applicant should have the report updated to reflect the loads of the proposed buildings. Therefore, … Special Condition [33] is recommended for this project…*

Special Condition 33 attached to the permit amendment requires the applicant to submit, prior to obtaining a Grading Permit, an updated Geotechnical Study for the proposed project for review and approval by the Director of Public Works. All recommendations included in the Geotechnical Study are required to be incorporated

into the final civil plans and engineering and construction drawings for the building permit application.

As noted in the 2018 geotechnical report quoted above, there is no tsunami risk associated with the site. However, the City considered emergency evacuation access in its consideration of this project in case there is a tsunami warning in the region in the future that necessitates emergency evacuation of residents living closer to the bluff edge in the Todd Point area. The following traffic and road improvements imposed as conditions on the approved project as amended will facilitate emergency evacuation access:

- **Special Condition 18**: At the time of development and prior to the issuance of the occupancy permit, the applicant shall obtain an encroachment permit from Caltrans and install appropriate Keep Clear signage and street markings at the intersection of Ocean View Drive and the frontage road (Intersections Highway 1/Ocean View Drive and Ocean View Drive/Frontage Rd) and the applicant shall obtain an encroachment permit from the City of Fort Bragg and install appropriate "Keep Clear" signage and street markings at the Intersection of Harbor Ave and Ocean View Road

- **Special Condition 19**: At the time of development and prior to the issuance of the occupancy permit, the applicant shall obtain an encroachment permit from Caltrans and place a "No-Left Turn" sign for eastbound traffic exiting the frontage road onto Highway 1.

- **Special Condition 45**: Prior to issuance of the building permit, the applicant shall insure that the "traffic visibility area" on their property at the intersection of Ocean View Drive and Harbor Ave. complies with the City's zoning code and is less than 42 inches in height.

- **Special Condition 46**: If a four-way stop sign is warranted by traffic conditions at the intersection of Harbor Ave and Ocean View within 4 years of completion of the project, the applicant shall obtain an encroachment permit and install the required 4-way stop sign.

In conclusion, the site is not within an area of high geologic, flood, or fire hazard, and there is a high degree of legal and factual support for the City's determination that the approved CDP amendment, as conditioned, minimizes seismic risks and, as conditioned, will facilitate traffic flow during emergency evacuation in the event of a tsunami, consistent with the LCP.

7. Adequacy of Services Contentions

One of the appeals contends that the City's approval did not demonstrate that there are adequate services for both the approved development and future planned development in the City. Specifically, the City's findings "didn't discuss water requirements for landscaping…" and "…there is no evidence that capacity for other known and

foreseeable development was considered, as required by LUP Policy PF-1.2. for water and sewer facilities and for coastal access roads.

Excerpts of Applicable LCP Policies:

The Public Facilities and Land Use Elements of the certified LUP require the following:

> **Policy PF-1.2**: Ensure Adequate Services and Infrastructure for New Development. No permit for development shall be approved unless it can be demonstrated that such development will be served upon completion with adequate services, including but not limited to potable water; wastewater collection, treatment and disposal; storm drainage; fire and emergency medical response; police protection; transportation; schools; and solid waste collection and disposal; as applicable to the proposed development.
>
> a. Demonstration of adequate water and sewer facilities shall include evidence that adequate capacity will be available within the system to serve the development and all other known and foreseeable development the system is committed to serving, and that the municipal system will provide such service for the development;
>
> …
>
> **Policy PF-1.3**: Ensure Adequate Service Capacity for Priority Uses.
>
> a. New development that increases demand for new services by more than one equivalent dwelling unit (EDU) shall only be permitted in the Coastal Zone if,
>
> • Adequate services do or will exist to serve the proposed development upon completion of the proposed development, and
>
> • Adequate services capacity would be retained to accommodate existing, authorized, and probable priority uses upon completion. Such priority uses include, but are not limited to, coastal dependent industrial (including commercial fishing facilities), visitor serving, and recreational uses in commercial, industrial, parks and recreation, and public facilities districts. Probable priority uses are those that do not require an LCP amendment or zoning variance in the Coastal Zone.
>
> b. Prior to approval of a coastal development permit, the Planning Commission or City Council shall make the finding that these criteria have been met. Such findings shall be based on evidence that adequate service capacity remains to

accommodate the existing, authorized, and probable priority uses identified above.

Policy LU-10.2: Locating New Development. New residential, commercial, or industrial development, except as otherwise provided in the LCP, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources….

Policy LU-10.4: 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

As cited above, LUP policies require that adequate water, wastewater, storm drainage, road, and other facilities be demonstrated for development projects, and demonstration of adequacy shall ensure sufficient capacity is reserved for priority uses under the LCP (coastal dependent industrial, visitor serving, and recreational). As the discussions regarding adequacy of storm drainage and roads facilities are discussed in previous findings, this section will focus on water and wastewater services.

The subject site is in an urban services area where municipal water and sewer services are available. The Public Facilities Element of the certified LUP provides general background on the City's sewer and water systems in part as follows (note – this background discussion is approximately 18 years old):

B. Water Supply and Distribution

The City's current water supply system consists of the Newman Reservoir, the Simpson diversion, and a direct diversion in the Noyo River (which includes a wet well in the Noyo River, a pump station at the Noyo River, and various conveyances to the water treatment plant).

The City currently obtains about 50 percent of its water from the Noyo River. Under its existing temporary license, the City is entitled to draw up to 1,500 acre feet of water per year from the Noyo River so long as withdrawals do not exceed 3.0 cubic feet per second and specified amounts are maintained in the river to meet the needs of the fish population. The City currently uses about 36 percent of this entitlement. The City's Water Permit contains limits on how much water can be pumped from the Noyo River. These conditions were established in the past by the State Department of Health Services because, at the time, it was concluded that the City could not withdraw sufficient water from the

> Noyo River to meet its needs while retaining the required flows within the river necessary to support the fish population. To comply with these Permit conditions, the City requires that new development implement measures that limit new water demand.
>
> The City is developing new water storage facilities to ensure adequate water during years of severe drought, including the installation of a new 45-acre foot reservoir at Newman Gulch. The City is also seeking additional water storage capacity to meet the needs of a buildout development scenario in the City of Fort Bragg…
>
> In the year 2007, the City produced 291,423,000 gallons of water from its three sources, or 113.6 gallons per day per person. Buildout over the next 10 years would generate a projected 1,900 additional people which would require production of an additional 200,000 gallons of water per day. The City will have sufficient water supply to meet this demand, though it may not have sufficient water storage. New development in the City will be required to pay its fair share of new water system improvements.
>
> C. Sewer System
>
> Sewage treatment and disposal are provided by the Fort Bragg Municipal Improvement District No. 1. The District is larger than the City; it includes much of the proposed Sphere of Influence…
>
> The treatment and disposal facility currently disposes of about 640,000 gallons of treated wastewater per day (Average Dry Weather Flow - ADWF). The projected increase in population of about 1,900 people over the next ten years will increase wastewater flows to the plant by about 173,000 gallons per day ADWF.
>
> The plant has a rated capacity of 1,000,000 gallons per day ADWF which is sufficient to meet the demand of the projected population increase. However, due to spikes in the inflow to the facility during wet weather (caused by infiltration and inflow into the collection lines), the plant's wet weather capacity is frequently exceeded, resulting in violations of the facility's National Pollutant Discharge Elimination System (NPDES) permit.
>
> The City has installed a new secondary digester at the plant and will make additional improvements to the collection system to address infiltration and inflow problems. The new digester will allow closing down of the primary digester to allow cleaning and maintenance of this digester. Until the necessary improvements to the plant are fully funded and constructed, wet weather capacity at the plant will continue to be limited. The District is able to meet projected wastewater treatment and disposal demands. Future development will need to pay its fair share of any additional improvements that are needed.

The City's findings calculate that the revised project approved under the permit amendment will result in a water demand of 7,005 gallons per day. This calculation is

based on a 2024 Impact Fee Nexus Study completed by the City, which calculated usage rate of 80 gallons/person/day for apartments; 75 gallons/hotel room/day; and 65 gallons/1,000-sq. ft retail unit/day. The City's findings estimate the following budget for the mixed-use project (Exhibit 11, page 53; also page 107):

Water Budget Proposed 83-unit Mixed Use Project at 1151				
Unit Size	Number of Units	Estimated Residents/Unit	Total Water Use/ Year (gallons)	Total Water Use/Day (gallons)
Studio	6	1.2	175,200	480
1-bedroom	34	1.5	992,800	2,720
2-bedroom	43	3	1,255,600	3,440
1000 SF Retail	1	0	29,200	65
4 Hotel Room E	4	0	116,800	300
Total	**88**	**187.2**	**2,569,600**	**7,005**

The City's findings note that the proposed use of ~7,000 gallons/day and 2.5 million gallons/year would increase water demand by 1.2%.

The City's findings explain that the City has completed significant sewer and water infrastructure projects in recent years to ensure that there is sufficient water and sewer capacity to serve reasonably foreseeable future development in the City, including priority uses in the coastal zone. The City's findings include a list of significant water and sewer system upgrade projects completed in recent years or in process or planned for the near future, which will offset the demand created by the project, including the following:

- Summers Lane Reservoir. Constructed in 2016, the 45-acre-foot reservoir stores water delivered from Waterfall Gulch and increases the availability of water to the City by providing an additional 15 million gallons of raw water storage to supplement the City's water supply during the late summer months when flows are low at the City's three water sources.

- Package Desalination Plant. The City has constructed and is currently operating a package desalination system, which allows the City to pump brackish water from the Noyo River during high tides and low stream flows, which significantly increases the time periods that the City can collect water. Through this system, the City can withdraw water during high tides when the water is brackish and can store it in the raw water pond for future treatment. The desalination system can process up to 144,000 gallons per day in drought conditions (for reference, total water demand in a drought year is about 550,000 gallons per day, according to City staff).

- Water Treatment Plant Upgrade. The City's water treatment system has recently been upgraded to improve efficiencies and water production capacity, rehabilitation of the two Filter Treatment Units, and several other upgrades.

- Water Meter Conservation Project. This project, started in 2021 and nearing completion, will result in the conservation of 20 million gallons of water per year (~54,795 gallons per day).

- Raw Water Line Project. The City is in the final phases of construction to replace the raw water line that runs from the unnamed creek on Simpson Lane to the raw water ponds. This project is designed to eliminate significant water leaks from the distribution system will eliminate more than 1 million gallons of water loss per year or about 2,740 gallons per day).

- Future Water Storage Project. In 2022, the City acquired a 582-acre site (outside of the coastal zone) to establish three additional 45-acre-foot reservoirs (~135-acre feet/60 million gallons total). This project is in the design and engineering phase with completion potentially in 2027.

- Offshore desalination wave energy buoy. This pilot project is undergoing permitting (including a CDP application pending with the Commission) and would provide all water use at the City's Wastewater Treatment Facility. Upon completion, this project will produce half a million gallons of desalinated water per year.

- Waste Water Treatment Facility Upgrade. Completed in 2019, a $17 million upgrade project included the replacement of the outdated trickling filters and anaerobic digestion system with an activated sludge treatment system. This system was designed to provide services for the full buildout of the City, including the Mill Site.

The City's findings conclude that these projects will result in an additional 201,534 gallons of water available per day, which combined will more than offset the proposed project's water demand of ~7,000 gallons per day. The City's findings state (Exhibit 11, page 108) that "The already completed package desalination plant is sufficient, by itself, to provide 28 times more water than is needed by the proposed development."

The City's conditions of approval applicable to adequacy of services include, but are not limited to, the following:

- **Special Condition 15** requires the final utility hookup configuration to be approved by the Public Works Director prior to issuance of the building permit.

- **Special Condition 16** requires the applicant to pay residual water capacity charges after completing any storm drain improvements and prior to final of the Building Permit to ensure that the project results in payment of fair share fees

towards water system infrastructure and future capital improvements, as required by the LCP.

- **Special Condition 17** requires the applicant to ensure sewer and wastewater infrastructure is properly and timely constructed.

Finally, as previously discussed, the approved project as conditioned will include landscaping with all native plants appropriate to the Mendocino Coast region. The use of regionally appropriate native plants is inherently water-saving.[19] Also as previously discussed, **Special Condition 23** requires the applicant to install appropriately sized (per hydrology calculations) water catchment tanks for buildings 3, 4, 5 and 7 to be utilized to water landscaping during non-storm conditions. Thus, water requirements for landscaping will be negligible.

In conclusion, there is a high degree of legal and factual support for the City's determination that the approved CDP amendment, as conditioned, will be served with adequate services, including by reserving sufficient water and wastewater service capacity for priority uses under the LCP. In addition, as discussed in the above findings, there are no significant coastal resources affected by the decision.

8. Invalid Contentions

Three additional contentions raised by appellants include the following:

- The noise study was flawed, noise levels from the project will exceed acceptable levels and disturb the peace and enjoyment of the existing low-noise-level surrounding neighborhoods, and no adequate mitigation measures were required to reduce noise levels generated by the project.

- By failing to notify neighbors of the November 2024 public hearing (when the Council pre-approved density bonus incentives), and by failing to require story poles or any other prominent hearing notice on the site, the City failed to provide adequate notice of the scope of the project.

- The City failed to conduct meaningful environmental review or consider cumulative impacts related to traffic, infrastructure capacity, stormwater runoff, and other issues. The City improperly relied on certain CEQA exemptions that are not appropriate in this case.

These concerns raised by the appellants do not allege an inconsistency of the local approval with a policy or standard of the certified LCP. Therefore, these contentions are not valid grounds for an appeal. Nonetheless, the City's findings do address each of these issues. With respect to noise, the policies of the Noise Element are not part of the certified LCP and do not govern the review and approval of CDPs. However, the City's July 14, 2025 staff report includes a noise analysis based on field-verified measurement data that concludes that (1) noise from the approved project as conditioned would

[19] See https://www.cnps.org/gardening/why-natives/benefits-of-california-native-plants.

consist of typical residential noises such as intermittent noise from vehicle use and outdoor socializing that will blend into the background noise of 60 dB from the highway for the nearby residents, and (2) any increase in noise to nearby residents from the parking lot would be offset by a reduction in noise from Highway 1 (Exhibit 11, pages 60-63). The City attached conditions of approval to mitigate any noise impacts, including **Special Condition 5** requiring the applicant to construct a 5-foot-high soundwall between the parking lot and Harbor Ave prior to the final of the building permit, and **Special Condition 48** limiting construction activities to hours between 7:00 am and 7:00 pm.

With respect to noticing, the City's NOFA and supporting findings address this contention in detail (Exhibit 11, page 46).

Finally, though the appellants' contentions regarding CEQA do not expressly assert that the approved project is inconsistent with the certified LCP, the approved CDP amendment does include conditions requiring fulfillment of mitigation measures specific to traffic, infrastructure capacity, stormwater runoff, and other issues discussed in the above findings. Various mitigation measures have been required by the City as enforceable CDP conditions to ensure that the proposed development will avoid significant effects on the environment.

C. Conclusion – No Substantial Issue Determination

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity, 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 project does or does not raise a substantial issue of LCP and Coastal Act (where applicable) conformance. 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 County; (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 or with the public access policies of the Coastal Act. As discussed in Findings IV-B(1)-(8) above, there is a high degree of legal and factual support for the City's determination that the approved 83-unit mixed unit project, as conditioned, with the density bonuses and incentives granted, will not have an adverse effect on coastal resources and is consistent with the LCP. Not only will the approved project provide new affordable housing opportunities for persons of low and moderate income in the

coastal zone, consistent with Coastal Act section 30604(g), the LCP, and State Density Bonus Law, the project also includes several priority visitor serving elements consistent with the intent of the Visitor Highway Commercial (CH) land use and zoning designation and with LCP policies that prioritize visitor-serving uses. The City's approval includes requirements (in Special Conditions 7, 39, and 43) that the ground floors of Buildings 3 and 5 on the eastern, highway-fronting side of each building be occupied by priority visitor-serving uses, as required by the LCP. The uses that will occupy these spaces, as discussed above, include a ~1,000-square-foot commercial / retail facility and four visitor-serving hotel suites to be managed by the applicant's adjacent Emerald Dolphin Inn. As required by Special Condition 40, one of the four suites will be offered at a lower cost rate, which is consistent with several of the City's LUP priority use policies. Requiring the proposed visitor-serving commercial/retail use and hotel suites to occupy the ground floors of Buildings 3 and 5 is appropriate, as these are the two buildings closest to and fronting the highway, the other buildings will either be set back behind Buildings 3 and 5 or set further back on the property not readily fronting the highway, and the LCP allows non-visitor-serving uses in the CH zoning district to occupy the rear, non-highway-fronting sides of buildings. Additionally, the approved project as conditioned will construct a public access path across the parcel with associated signage directing the public to Pomo Bluffs Park north of the site (required to be implemented by Special Condition 44) and the installation of a public bench in front of Building 3 (required by the LCP as a component of mixed-use project and by Special Condition 42). Including these public access amenities provides additional visitor-serving elements and integrates the development with nearby access points to facilitate coastal access, as required by the LCP. Thus, allowing residential uses in the CH zoning district will not create an adverse precedent for future CDP decisions, because the approved project as conditioned strikes an appropriate balance between providing new housing in the coastal zone (including affordable housing opportunities for persons of low and moderate income) and protecting priority visitor-serving uses, including lower cost overnight accommodations and coastal access amenities.

As to project extent and scope and significance of coastal resources affected by the City's decision, though this is a relatively large housing project for the City's coastal zone, the project is limited to a 2.6-acre property adjacent to the southern end of the City boundary that will have no significant effect on coastal resources. As discussed in the above findings, there are no significant visual resources affected by the City's decision, there are no environmentally sensitive habitat areas, wetlands, or natural drainages on or adjacent to the site, the site is not within an area of high geologic, flood, or fire hazard, and the City's findings demonstrate that the approved project as conditioned will be served by adequate services, including improved local roadways, onsite drainage/stormwater infrastructure, and connections with municipal water and sewer services. As the site is within a half mile of three different coastal access points, the City's findings and conditions demonstrate that the approved project as conditioned will not adversely impact public coastal access, includes public access enhancements, appropriately mitigates the project's traffic impacts, and will minimize vehicle miles traveled. The City's findings also demonstrate that the project, as designed with significant open space and permeable areas, will infiltrate a significant volume of stormwater onsite, thereby minimizing any effect on groundwater and domestic wells

west of the site. The City's approval includes various special conditions to address water quality protection, stormwater runoff, and to ensure stormwater improvements are appropriately sized to manage runoff. When combined with the first factor and the factor of the low precedential value of the City's decision for future interpretations of its LCP, the combination of these four factors weighs against finding a substantial issue.

Finally, while the project does raise issues of regional and statewide significance (including, but not limited to, development of affordable housing in the coastal zone, protection of visitor serving priority uses, including lower cost overnight accommodations, and protection of water quality, coastal access, and ESHA), the City imposed numerous conditions addressing these issues and provided substantial legal and factual support for its determination that the approved project as conditioned will protect all coastal resources consistent with LCP requirements.

Therefore, especially given the high degree of factual and legal support for the City's decision, its numerous conditions of approval imposed to protect coastal resources, including water quality, public access, and other coastal resources, and the fact that there are no significant coastal resources affected by the City's decision, consideration of the five factors together support the conclusion that the City's approval of CDP Amendment 8-24/A does not raise a substantial issue of LCP conformance. Thus, the Commission finds that Appeal Number A-1-FTB-25-0024 does not present a substantial issue with respect to the grounds on which the appeal was filed under Coastal Act section 30603, and the Commission declines to take jurisdiction over the CDP application for this project.

Because the Commission finds that A-1-FTB-25-0024 raises no substantial issue, the City's CDP amendment is final and effective, and with that finality of local action, the original CDP approval is rendered as having no legal effect. Thus, the appeal of the original permit is effectively moot, and the contentions raised under Appeal No. A-1-FTB-25-0013 for the original permit approval also do not present a substantial issue.

Appendix A: Substantive File Documents

1. Appeal File No. A-1-FTB-25-0013
2. Appeal File No. A-1-FTB-25-0024
3. City of Fort Bragg's Local Record for CDP No. 8-24
4. City of Fort Bragg's Local Record for CDP No. 8-24/A
5. Fort Bragg 2019 Housing Element
6. City of Fort Bragg Local Record for CDP 9-18 (AutoZone, Inc.)
7. LACO Associates Technical Memorandum (Traffic Impact Analysis) prepared for AutoZone Corp. dated October 8, 2018.
8. Relevant Policies & Standards of City of Fort Bragg's certified Local Coastal Program