APPENDIX A

Letter from Remy, Moose and Manley to the City of Fort Bragg RE: Best Development Grocery Outlet Draft EIR (SCH # 2022050308) – Responses to legal and other issues raised in comments from Mr. Jacob Patterson

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LLP

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Via Electronic Mail
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Re: Best Development Grocery Outlet Draft EIR (SCH # 2022050308) – Responses to legal and other issues raised in comments from Mr. Jacob Patterson

Dear Ms. Gurewitz:

On behalf of Best Properties (Best), the Applicant for the proposed Best Development Grocery Outlet project (Project), we submit the following information and analysis with the intention of assisting the City of Fort Bragg (City) in responding to certain legal and other issues raised by Jacob Patterson in his November 1, 2022, comments on the Draft Environmental Impact Report (DEIR) for the Project.

Because Mr. Patterson raises legal arguments in addition to factual contentions, the Applicant thought it proper for its legal team to weigh in. Candidly, we have done so in anticipation of possible litigation that might be filed if the Fort Bragg City Council should approve the Project. To that end, we submit below responses to select legal, quasi-legal, and factual issues for which we thought our expertise would be useful to City staff and De Novo Planning as they work together on the Final EIR.

The Applicant submits this letter to provide the City and the public with what we hope are helpful clarifications and additional information relating to the Project in order to contextualize and explain some of the issues and questions raised by this comment letter. If the City agrees with our analysis and rebuttals, the City is free to use any

information presented in this letter as part of its efforts to prepare the Final EIR.

We have made our responses as objective and straightforward as possible in the hope that the City will find them to be credible and persuasive. The Applicant fully recognizes, of course, that both California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 et seq.) and the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq. ["Guidelines"]) require the City to exercise its independent judgment in analyzing the Project's potential environmental effects and in deciding how best to mitigate or avoid those effects. (See Pub. Resources Code, § 21082.1, subd. (c)(1); Guidelines, § 15084, subd. (e).)

RESPONSES TO COMMENTS

Rather that set forth his comments in letter form, the commenter provided his input in a less traditional manner—by highlighting text within an electronic version of the DEIR and inserting his comments within the document beside the highlighted text. The commenter assigned each comment a number (for the most part). To best ensure comments are understood by readers of this letter, we include several identifiers: (1) the comment number assigned by the commenter (e.g., Comment 001, 002) or an indication where a comment number was not assigned (i.e., Comment N/A); (2) the DEIR text, or an equivalent summation, that either the commenter highlighted or was the focus of the comment, alongside its page number; and (3) the comment in *** italicized blue font and bookended with asterisks ***.

Because our responses to Mr. Patterson's comments are organized topically in order to avoid repetition of issues, the comment numbers do not always appear consecutively. Our presentation is organized as follows. The first section below responds to general and miscellaneous comments. We next respond to comments on Project alternatives. We then follow the order of resource topics as they appear in the DEIR. Please note that we do not respond to each and every one of Mr. Patterson's multitudinous comments. Instead, we focus only on the ones for which we believe our

expertise and input will be most helpful.

I. GENERAL/MISCELLANEOUS

A. Comment 001 : DEIR, p. ES-1 – "Project counsel stated that '[a]lthough Best believes that, given the small size of the Project and its minimal environmental effects, a spirited legal defense of the MND could be mounted, any such effort could consume as much as three years or more, given how slowly the California court system moves. Best has therefore concluded that the better and more prudent course of action will be to have the City prepare an EIR and put the Planning Commission and, if need be, the City Council back into a position to consider the Project anew based on such an EIR.'"
*** This sentence should be deleted because it is merely the opinion of the applicant and not relevant information about the project that merits inclusion. It is "advocacy". *** (*See also Comment 006* [*DEIR, p. 1.0-1*].)

Response : There is no need for the City, as requested, to delete this purely factual statement, which is not "advocacy." Here, the DEIR is merely quoting, with perfect accuracy, statements that our law firm made on behalf of Best, in which we explained our reasons for asking the City to prepare an EIR for the Project. This communication is a matter of historical record. Nothing in CEQA prohibits verbatim quotations of communications from a project applicant to a lead agency. Indeed, the quoted material provides useful background information for readers of the DEIR, some of whom may have been unaware that the City Council had previously approved the Project in July 2021 based on a Mitigated Negative Declaration (MND) and that litigation had ensued.

Furthermore, the quoted is statement is not advocacy. Merriam-Webster defines "advocacy" as "the act or process of supporting a cause or proposal." (Meriam Webster, *Dictionary*, https://www.merriam-webster.com/ [accessed Nov. 4, 2022].) The quoted text does not express support for the Project. Rather, the text provides relevant background information as to why the Applicant chose not to undergo lengthy litigation over the MND. Mr. Patterson has no basis for questioning the sincerity or accuracy of the reasons provided.

It is true that our letter characterized the project as "small." Considering the breadth of projects covered by CEQA – such as city- or county-wide general plans and massive public works projects – this characterization is and remains accurate. Our own professional judgment is that, because of the small size of the Project, the City had the

option of approving the 1.63-acre Project based on the Class 32 categorical exemption for infill development, which applies to qualifying projects up to five acres in size. Although we make this point only in passing, as the City chose not to pursue this option, we note that many courts have upheld agencies' reliance on the Class 32 categorical exemption for projects far more intensive than the 16,157 square foot (sf) Project, which would replace an existing 16,436-sf vacant former office building, for a net *reduction* of 279 square feet of physical space. (See, e.g., *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249 [14-story multifamily residential building with underground parking]; *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329 [five-story mixed-use building with 98 residential units, 7,770 sf of commercial space, and 114 parking spaces]; *Protect Tustin Ranch v. City of Tustin* (2021) 70 Cal.App.5th 951 [16-pump (32-fuel position) gas station with a canopy, related equipment, landscaping, and 56 new parking stalls].)

An EIR is intended to be an *informational* document (Guidelines, §§ 15002, subd. (a), 15121) and must identify all areas of controversy known to the lead agency (*id.* § 15123, subd. (b)). A discussion of the prior litigation on the Project and the thought process behind the Applicant's decision to ask the City to prepare an EIR is relevant and useful background information.

In short, nothing in the CEQA statute or Guidelines precludes this type of information from being included in the EIR. CEQA actually encourages the inclusion of relevant background information on proposed projects that were subject to earlier litigation. (See *County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 7–10 [complete administrative record for a project as revised after a lead agency's loss in litigation should include material relating to the original project approval]; *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 333–336 [same].)

B. Comment 007: DEIR, p. 1.0-3 – "Comments received in response to the NOP were considered in preparing the analysis in this EIR."
*** How? This assertion isn't actually evident in the DEIR as currently written. ***

Response: CEQA does not require documentation within a Draft EIR as to where and how a lead agency considered comments received in response to the Notice of Preparation (NOP). Nor does CEQA require responses to any such scoping comments.

In fact, CEQA does not require a lead agency, in issuing an NOP, to solicit comments from the general public. Rather, NOPs are addressed to responsible agencies and trustee agencies. (Pub. Resources Code, § 21080.4, subd. (a); Guidelines, § 15082, subd. (a).)[1] And only those agencies are entitled to ask a lead agency to include information relevant to their potential project approvals or to the trust resources regarding which they have some responsibility. (Guidelines, § 15082, subd. (b).)

The Guidelines *suggest* that "early public consultation" may help agencies to resolve "potential problems that would arise in more serious forms later in the review process." (Guidelines, § 15083.) That is what the City did here. In widely distributing the NOP, however, the City did not incur any obligation to meet informational demands made by members of the public or to provide in the DEIR a detailed explanation of how the document reflects particular items of input received through scoping. In any event, the commenter provides no evidence that the City, when preparing the EIR, did not consider any particular comments received in response to the NOP.

C. Comment N/A: DEIR, p. 3.1-6 – List of "Thresholds of Significance" that are "[c]onsistent with Appendix G of the CEQA Guidelines." *** None of these checklist questions serve as thresholds of significance, which are completely lacking for aesthetic impacts. *** (See also Comments 023, 028, 029, 036, 061, 070, 098, 100, 129, 143, 147 [DEIR, pp. 3.1-9, 3.1-12, 3.2-16, 3.3-23, 3.4-17, 3.5-6, 3.5-31, 3.6-7, 3.7-41, 3.8-6, 3.8-15].)

Response: A recurring theme in Mr. Patterson's comments is that the City erred in using thresholds of significance that are derived from language found in the sample Initial Study checklist found in Appendix G to the Guidelines. The commenter cites no legal support for his criticism, however, and none exists. The City acted within its discretion, and followed a very common practice, in adopting language from Appendix G for this purpose.

"CEQA grants agencies discretion to develop their own thresholds of significance." (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068 (*Save Cuyama*), citing Guidelines, § 15064, subd. (d)).) "An ironclad

[1] Members of the public may be entitled to receive a copy of an NOP, but only where they have previously contacted a lead agency and requested copies of such documents. (See Pub. Resources Code, § 21092.2, subd. (a).)

definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area." (Guidelines, § 15064, subd. (b)(1).)

Where an agency wants to formally adopt significance thresholds for general use, each threshold should be "an identifiable quantitative, *qualitative* or performance level of a particular environmental effect, noncompliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant." (Guidelines, § 15064.7, subd. (a).)[2] Hence, thresholds need not, as Mr. Patterson seems to believe, always be quantitative. Qualitative thresholds are perfectly proper and are commonly used by lead agencies for a variety of resource areas. Not every impact analysis (e.g., aesthetics) lends itself to quantitative analysis.

Also common and proper is the practice of using thresholds of significance derived from language in the Guidelines Appendix G. The language is easily adaptable for such a purpose in that it poses questions about the nature, kind, and extent of potential impacts to various environmental resources. And the questions reflect the interface between CEQA and other environmental laws governing subjects such as air and water quality, biological resources, cultural resources, climate change, hazards and hazardous materials, local land use planning, housing, transportation, water supply planning, and the like. The questions also reflect input given to the California Natural Resources Agency (CNRA) from state agencies such as the Air Resources Board and the Department of Fish and Wildlife and from leading CEQA practitioners and technical experts.

Another good reason for using language adapted from the questions found in Appendix G is that CNRA has fashioned the language in order to focus CEQA lead agencies on particular aspects of particular topics. Thus, Appendix G itself instructs that "lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected." (Guidelines, appen. G, Evaluation of Environmental Impacts, ¶ 8.)

[2] Although CEQA encourages lead agencies to "develop and publish thresholds of significance," and provides rules for adopting thresholds for general use, lead agencies are free to use Appendix G checklist questions on a case-by-case basis without formal adoption. (See *Golden Door Properties, LLC v. County of San Diego* (2018) 27 Cal.App.5th 892, 902–903).

Indeed, the practice of relying on thresholds derived from Appendix G is so prevalent that one petitioner in a leading case argued that agencies were *required* to use such language as thresholds, and lacked discretion to take a different approach without first engaging in a formal public process. In rejecting the inflexible approach advocated by that petitioner, the court said nothing to suggest that, *where they want to*, agencies either must or cannot fashion thresholds from that language. (*Save Cuyama*, *supra*, 213 Cal.App.4th at p. 1068 ["the County was not required to explain why it did not use Appendix G's thresholds of significance"; "[t]hose thresholds are 'only' a 'suggest[ion]'"].)

Specific examples of Mr. Patterson's meritless objections to the City's use of thresholds derived from Appendix G are addressed below.

- Comment 029 [Air Quality] (DEIR, p. 3.2-16.): *** These are not the applicable thresholds from the MCAQMD, just the checklist questions. ***

  Response: As just explained, qualitative thresholds, including thresholds based on Guidelines Appendix G questions, are acceptable for use in EIRs. Here, moreover, the DEIR fleshes out the qualitative threshold language by invoking *quantitative* thresholds recommended by the Mendocino County Air Quality Management District (MCAQMD). (See DEIR, p. 3.2-16.) These quantitative thresholds of significance were used to analyze two out of five of the Project's impacts to air quality, all of which are less than significant even without mitigation. (*Id.* at pp. 3.2-20 – 3.2-22.)

- Comment 036 [Biological Resources] (DEIR, p. 3.3-23): ***None of these are actually thresholds of significance.*** (See also Comments 040, 047 [DEIR, pp. 3.3-27, 3.3-30].)

  Response: As explained at length above, thresholds based on Guidelines Appendix G questions are acceptable for use in EIRs. Furthermore, Guidelines section 15065, subdivision (a)(1), imposes certain mandatory qualitative thresholds for biological resources, namely, that a "lead agency shall find that a project may have

a significant effect on the environment" if the proposed project would "substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; [or] substantially reduce the number or restrict the range of an endangered, rare or threatened species."

These "mandatory findings of significance" (all qualitative), along with thresholds derived from questions from the "Biological Resources" section of Appendix G, are all reflected in the DEIR's thresholds of significance for biological resources, and are assessed through a variety of means, including determining whether or not special-status species or habitat are known to exist on the Project site. (DEIR, p. 3.3-27.) Thus, a finding that no special-status species, habitat, or wetlands as defined by Section 404 of the Clean Water Act are known to exist onsite, or that feasible (and commonly employed) mitigation measures will significantly reduce the impact to any of these resources that may occur onsite, would result in a finding that a potential impact to those resources is less than significant. (*Ibid.*; see Comments 040, 047 [DEIR, pp. 3.3-27, 3.3-30].

- <u>Comment 100</u> [Noise] (DEIR, p. 3.6-7): ***The actual thresholds of significance are based on the standards in the cited sources and this should be revised to reflect the nactual [sic] numbers rather than reciting the checklist questions that aren't actual thresholds of significance.***

  <u>Response</u>: As just explained above, qualitative thresholds, and thresholds based on Guidelines Appendix G questions, are acceptable for use in EIRs. Nevertheless, the DEIR compares the Project's various quantified operational and construction noise levels against the City's quantified noise standards when assessing potential impacts as a means to demonstrate compliance with the Appendix G-based thresholds. (DEIR, pp. 3.6-7 [Table 3.6-4], 3.6-15.)

- <u>Comment 143</u> [Utilities and Service Systems—Wastewater] (DEIR, p. 3.8-6): ***These purported thresholds of significance relating to wastwerwater [sic] treatment do not actually contain any quantifiable review criteria and must be*

*revised to do so.***

Response: As explained earlier, qualitative thresholds, and thresholds based on Guidelines Appendix G questions, are acceptable for use in EIRs. Nevertheless, to determine if the Project will violate the Appendix G-based wastewater thresholds, the DEIR looks quantitatively at the design flow capacity of the Fort Bragg Wastewater Treatment Plant (WWTP), calculated in million gallons per day, and the actual average daily wastewater flow volume of the facility, also using million gallons per day, to correctly determine that the WWTP can accommodate the Project because, in large part, it can meet the City's "wastewater service demands through buildout of the General Plan," inclusive of the Project, which is an allowable use under the site's General Plan land use designation. (DEIR, p. 3.8-7.)

- Comment 147 Utilities and Service Systems—Water Supply] (DEIR, p. 3.8-15): ***These purported thresholds do not include objective or measurable criteria and must be revised accordingly.***

  Response: Once again, qualitative thresholds, and thresholds based on Guidelines Appendix G questions, are acceptable for use in EIRs. Nevertheless, the DEIR looks quantitatively at the City's water storage capacity, calculated in million gallons, and the Project's maximum possible water requirements by use, pursuant to the City's current Water System Study and Master Plan, to correctly determine that the City has adequate capacity to serve the Project. (DEIR, pp. 3.8-16 – 3.8-17.) Refer to Section IX.A, *infra*, for more detail on the adequacy of the EIR's water supply analysis.

II. ALTERNATIVES TO THE PROJECT

A. Comment 004: DEIR, p. ES-3 – "The alternatives analyzed in this EIR include the following three alternatives in addition to the proposed Project." *** The selected alternatives are inadequate because they fail to include other even more environmentally superior alternatives that would reduce the identified significant impacts compared to the proposed project. *** (See also Comments

065, 066, 181–261 [DEIR, pp. 3.4-348, 3.4-40, and 5.0-1 – 5.0-21].)

Response: The commenter makes several comments criticizing the range of Project alternatives and the alternatives analysis. A consolidated response is presented below. We begin with some background legal principles.

Under CEQA, an EIR must "describe a range of reasonable alternatives to the project" that "would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project[.]" (Guidelines, § 15126.6, subd. (a).) The significant effects of alternatives "shall be discussed, *but in less detail* than the significant effects of the project as proposed." (Guidelines, § 15126.6, subd. (d), italics added.)

Recognizing the broad variety of contexts in which proposed projects are proposed, the courts have applied a "rule of reason" when assessing the adequacy of analyses of alternatives within EIRs. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565 (*Goleta*); *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal. App. 4th 1252, 1264.) What is reasonable varies from one situation to another. "There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason." (Guidelines, § 15126.6, subd. (a); *Mount Shasta Bioregional Ecology Center v. Center of Siskiyou* (2012) 210 Cal.App.4th 184, 199 (*Mount Shasta*) ["there is no rule specifying a particular number of alternatives"].) Similarly, there are *"[n]o ironclad rules . . . regarding the level of detail required* in the consideration of alternatives. EIR requirements must be 'sufficiently flexible to encompass vastly different projects with varying levels of specificity.'" (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 745–746 (*Al Larson*), italics added.)

CEQA only requires the range of alternatives to have "'enough of a variation to allow informed decision-making.'" (*Cal. Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 988 (*Santa Cruz*), quoting *Mann v. Community Redevelopment Agency* (1991) 233 Cal.App.3d 1143, 1151 (*Mann*).) An agency is allowed to narrow a larger universe of potential alternatives to a more manageable range. (Guidelines, § 15126.6, subd. (c); *In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1162–

1167 (*In re Bay-Delta, etc.*); *Village Laguna of Laguna Beach v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1028–1029.)

Furthermore, the duty to identify and adequately describe feasible project alternatives belongs to the public agency alone, and not project opponents. (*Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 406 (*Laurel Heights*); *Goleta*, *supra*, 52 Cal.3d at p. 568.) "An EIR need not consider every conceivable alternative to a project" suggested by commenters (*In re Bay-Delta etc.*, *supra*, 43 Cal.3d at p. 1163.) The mere fact that a project opponent or critic can conceptualize an additional alternative that a lead agency could have added to the EIR does not make the EIR deficient. A "project opponent or reviewing court can always imagine some additional study or analysis that might provide helpful information," but the fact that additional information "might be helpful does not make it necessary." (*Laurel Heights*, *supra*, 47 Cal.3d at p. 415; Guidelines, § 15204, subd.(a).) Thus, a reviewing court must uphold an agency's selection of alternatives "unless the challenger demonstrates 'that the alternatives are manifestly unreasonable and that they do not contribute to a reasonable range of alternatives.'" (*Santa Cruz*, *supra*, 177 Cal.App.4th at p. 988.)

Notably, courts have upheld EIRs that included only one alternative other than the mandatory no project alternative and EIRs that included only the no project alternative and nothing more. (See, e.g., *Marin Municipal Water District v. KG Land California Corporation* (1991) 235 Cal.App.3d 1652, 1664–1666 [no project and one other]; *Save Our Access-San Gabriel Mountains v. Watershed Conservation Authority* (2021) 68 Cal.App.5th 8, 30–33 [only the no project alternative]; *Mount Shasta*, *supra*, 210 Cal.App.4th at pp. 196–199 [same].) Whether such a limited number of alternatives is sufficient is a function of the rule of reason as applied to the facts of the situations at hand.

Also notable is the principle that "an EIR is not ordinarily an occasion for the reconsideration or overhaul of fundamental land-use policy" as set forth in the governing general plan or local coastal program (LCP). (*Goleta*, *supra*, 52 Cal.3d at p. 573.) Where a landowner or developer proposes a project that is consistent with applicable General Plan and zoning designations, it makes little sense to question the propriety of the

proposed land use, as that propriety was determined in connection with previous legislative decisions. As the California Supreme Court has explained, "such ad hoc reconsideration of basic planning policy [is] not only unnecessary, but would [be] in contravention of the legislative goal of long-term, comprehensive planning." (*Id.* at p. 572.) "[T]he keystone of regional planning is consistency—between the general plan, its internal elements, subordinate ordinances, and all derivative land-use decisions." (*Ibid.*)

Conversely, an EIR for a proposed project that requires substantial amendments to the existing planning framework may require an especially robust range of alternatives, including the option of developing the proposed land use at a different location. (*Id.* at pp. 574–575.) The need for multiple alternatives, including those involving different sites, would be particularly acute where a proposed project would have severe environmental impacts.

Based on these general legal principles, an EIR for a small project that is consistent with the general plan and LCP, and that lacks any significant unavoidable environmental impacts, may get by, under the rule of reason, with a relatively abbreviated alternatives analysis. The Best Grocery Outlet project is such a project.

Here, as discussed in the DEIR, the Project provides three alternatives to the proposed Project: (1) the "No Project (No Build) Alternative," (2) the "Building Reuse Alternative," and (3) the "Decreased Density Alternative." (DEIR, p. 5.0-2.) Under the rule of reason, this set of options constitutes a reasonable range of alternatives. These three options, in addition to proposed Project itself, provide "enough of a variation" to permit a reasoned choice under CEQA. (Guidelines, § 15126.6, subd. (a); *Santa Cruz*, *supra*, 177 Cal.App.4th at p. 988.)

The commenter repeatedly argues that the DEIR should have included an "alternative site layout" or "configuration" by which the proposed structure would be placed on a different part of the project site. (Comments 184–186, 190, 192.) But the DEIR did not need to consider such an additional alternative because the City had discretion to determine the appropriate range of alternatives, and the City selected other alternatives that, taken together, provided a sufficient variation of options to permit a reasoned choice under CEQA. (Guidelines, § 15126.6; *In re Bay-Delta etc.*, *supra*, 43 Cal.4th at p. 1163.)

The DEIR's alternatives are not "manifestly unreasonable." Nor do they fail to "contribute to a reasoned range." (*Santa Cruz*, *supra*, 177 Cal.App.4th at p. 988.) Moreover, the commenter does not present any evidence that an "alternative site layout" would reduce impacts or better fulfill Project objectives. Notably, the proposed Project has less-than-significant effects on visual resources. (DEIR, pp. 3.1-6 – 3.1-12.) Thus, no significant environmental effects would be avoided or reduced by moving the proposed building to a different part of the subject property in order to preserve the existing view of the Chevron gas station located west of the project site. (See DEIR, p. 3.1-19 [Figure 3.1-4]).

The DEIR's three alternatives also satisfy the CEQA requirement that alternatives meet most project objectives while substantially lessening at least one significant impact. The alternatives section of the DEIR explicitly discloses both where the alternatives substantially lessen project impacts that would be significant without mitigation and the extent to which each alternative would satisfy the Project's objectives. (See DEIR, pp. 5.0-18 – 5.0-19 [Table 5.0-1], 5.0-20 – 5.0-21.)

The commenter claims that the DEIR's analysis of certain alternatives is insufficient because it also includes information regarding how the alternatives will reduce impacts that are already less than significant under the proposed Project (see Comments 197 [criticizing the DEIR for analyzing the Decreased Density Alternative's impacts on open space and General Plan consistency, which are already less than significant under the Project], 198 [criticizing the DEIR for analyzing the No Project Alternative's impacts generally because they include several impacts that are already less than significant under the Project], 200 [same for the No Project Alternative's air quality impact analysis], 230 [criticizing the DEIR for analyzing the Decreased Density Alternative's impacts on aesthetics], 231 [same]). (DEIR, pp. 5.0-3 – 5.0-5, 5.0-13.) As discussed above, however, the DEIR explains how each alternative will reduce at least one impact that is significant without mitigation under the proposed Project. This meets the letter of the law. Nothing in CEQA precludes an agency from providing *more* information regarding an alternative's impacts in addition to the required discussion.

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Moreover, CEQA provides no specific guidance as to which of a project's significant impacts should be the driver for the formulation of alternatives. Rather, as noted above, alternatives need only "substantially lessen *any* of the significant effects of the project…." (Guidelines, § 15126.6, subd. (a), italics added.) Nor do the alternatives need to focus exclusively on significant unavoidable effects of a project. Rather, an alternative may address *any* category of impact that might be reduced to less than significant levels by mitigation. This is because "alternatives and mitigation measures have the same function—diminishing or avoiding adverse environmental effects." (*Laurel Heights*, *supra*, 47 Cal.3d at p. 403.)

The DEIR analyzed each alternative's impacts on aesthetics, air quality, biological resources, greenhouse gases, climate change and energy, land use, noise, transportation and circulation, and utilities. (DEIR, pp. 5.0-3 – 5.0-17.) In light of this thorough analysis, neither CEQA nor sound reasons of public policy required the City to incur the expense and burden of conducting substantial design and engineering work on the EIR alternatives, as demanded by the commenter (see, e.g., Comments 211–213, 216, 223–225, 228, 229, 232, 233, 237, 243, 247, 261 [DEIR, pp. 5.0-7 – 5.0-5.0-9, 5.0-11 – 5.0-17, 5.0-21]), in order to flesh out further details. (Guidelines, § 15126.6, subd. (d); *Goleta*, *supra*, 52 Cal.3d at p. 566; *Al Larson*, *supra*, 18 Cal.App.4th at pp.745–746; *Mann*, *supra*, 233 Cal.App.3d at p. 1151.) Moreover, the fact that the commenter disagrees with the conclusions that the DEIR reached with regard to each alternative's impacts (see, e.g., Comments 204, 209, 210, 239, 242, 244, 245, 252 [DEIR, pp. 5.0-6 – 5.07, 5.0-15 – 5.0-17]) does not demonstrate that those conclusions were deficient. (*North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 627–628 (*North Coast*).)

For example, the commenter inaccurately makes several claims that the DEIR's analysis of the alternatives is inadequate because the DEIR, in the commenter's view, incorrectly concluded that the proposed Project will not conflict with the Coastal General Plan. (See Comments 182, 195, 197, 204, 207, 218, 219, 220, 236 [DEIR, pp. 5.0-1, 5.0-3, 5.0-6 – 5.0-7, 5.0-10 – 5.0-11, 5.0-14].) As discussed later in this letter, however, the City's analysis of the Project's consistency with its own General Plan polices is

reasonable and sufficient. Therefore, the DEIR's analysis of the alternatives' consistency with these policies is likewise adequate.

The commenter also argues, repeatedly, that the Building Reuse Alternative is the environmentally superior alternative and can meet all of the Project's objectives. (See, e.g., Comment 194 [DEIR, p. 5.0-3].) His opinions on these points are not dispositive in the sense that they do not make the Building Reuse Alternative any kind of presumptive best option.[3] When a Final EIR and the proposed Project come before the City Council, the elected members of that body will decide whether the Building Reuse Alternative is the best outcome from their standpoint.

As CEQA Guidelines section 15126.6, subdivision (a), makes clear, an alternative included in an EIR need only be "potentially feasible." The Building Reuse Alternative meets this standard. As the court in *Santa Cruz* explained, "[t]he issue of feasibility arises at two different junctures: (1) in the assessment of alternatives in the EIR and (2) during the agency's later consideration of whether to approve the project. [Citations.] But 'differing factors come into play at each stage.' [Citation.] For the first phase—inclusion in the EIR—the standard is whether the alternative is potentially feasible. [Citations.] By contrast, at the second phase—the final decision on project approval—the decision-making body evaluates whether the alternatives are actually feasible. [Citation.] At that juncture, the decision-makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible. [Citation.]" (177 Cal.App.4th at p. 981.)

Here, as always, the publication of the DEIR represents the "first juncture" at which the issue of *potential* feasibility of alternative arises. To the extent that City staff and the EIR consultant have offered their opinions regarding the extent to which the alternatives do or do not meet particular project objectives, or seem to give more weight to one objective than another, these staff and consultant opinions will not be binding on the City Council if and when the Council considers the "actual feasibility" of alternatives. That time will come at the "second juncture" at which the feasibility of alternatives is considered, namely, when the City Council, after certifying the Final EIR but prior to project approval, must consider the feasibility of any alternatives that could reduce the

[3] See Section II.B, *infra*, regarding why the commenter's subjective views on project objectives and how they would best be met are in no way binding on the City Council.

severity of significant unavoidable effects of the project. (See CEQA Guidelines, § 15181, subd. (a)(3).) Mr. Patterson's opinions on the merits of the alternatives will also be part of the mix.

Notably, if and when the City Council determines the "actual feasibility" of the EIR alternatives, including the Building Reuse Alternative, the Council will have broad discretion to consider policy outcomes and to give weight to competing project objectives. (See *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417 ["'feasibility' under CEQA encompasses 'desirability' to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors"]; *Santa Cruz, supra,*177 Cal.App.4th at p. 1001 [same]; *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1507–1508 (*County of Napa*) [upholding CEQA findings rejecting alternatives in reliance on applicant's project objectives]; see also *Santa Cruz, supra,*177 Cal.App.4th at p. 1001 ["an alternative 'may be found infeasible on the ground it is inconsistent with the project objectives as long as the finding is supported by substantial evidence in the record'"]; *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 314–315 [court upholds agency action where alternative selected "entirely fulfill" a particular project objective and "would be 'substantially less effective' in meeting" the lead agency's "goals"]; *In re Bay-Delta etc., supra*, 43 Cal.4th at pp. 1165, 1166 ["feasibility is strongly linked to achievement of each of the primary program objectives;" "a lead agency may structure its EIR alternative analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal"]; and *Sequoyah Hills Homowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715 [court upholds finding rejecting lower density housing alternative as infeasible, citing city council's conclusion the fact that "'the houses would be necessarily more expensive than those of the proposed project' … would defeat the project objective of providing the 'the least expensive single-family housing for the vicinity'"].)

If and when the Council reaches its ultimate determinations regarding the feasibility of alternatives, the City Council will be free to weigh not only the assessment by the EIR authors of the extent to which the alternatives do or do not meet various project objectives, but also to weigh input from members of the public, including that of

Mr. Patterson. All such input may be reasonable and thoughtful; but the ultimate obligation to weigh competing policy considerations lies with the City Council.

In actuality, there will be no need for the City Council ever to reach the question of whether this alternative, or the other two addressed in the EIR, are infeasible, in that the proposed Project does not have any significant unavoidable environmental effects. Much of the discussion above of the distinction between "potential feasibility" and "actual feasibility" is academic, in that here all significant impacts can be reduced to less than significant levels through the adoption of feasible mitigation measures. (See DEIR, p. 4.0-26.) The Council will therefore not be under any obligation to assess the feasibility of alternatives. (See *Laurel Hills Homeowners Association v. City Council of City of Los Angeles* (1978) 83 Cal.App.3d 515, 520–521 ["if … feasible mitigation measures substantially lessen or avoid generally the significant adverse environmental effects of a project, the project may be approved without resort to an evaluation of the feasibility of various project alternatives contained in the environmental impact report"].)

Here, if the issue of the actual feasibility of the Building Reuse Alternative somehow does arise during the Council's deliberations, the project Applicant will strenuously argue that, although the Building Reuse Alternative was *potentially* feasible for purposes of inclusion in the DEIR, the City Council should reject the alternative as *actually infeasible*.

A feasibility assessment of the Building Reuse Alternative was prepared by Thomas Jones, former Vice President of Hilbers Inc., a reputable national contracting and engineering firm specializing in office, commercial, and grocery store development. He has 34 years' construction experience and has worked on more than twenty Grocery Outlet stores. (See attached *Feasibility study for reuse of an existing building Franklin Blvd* ("Jones feasibility analysis") [August 5, 2022].) For reasons set forth in detail, Mr. Jones explained why the Reuse Alternative is infeasible.

The Jones feasibility analysis concluded that the existing building on the Project site is riddled with structural and logistical issues and ultimately "has no reuse value for a Grocery Outlet…." Specifically, the analysis explains that the building "fails to meet current building codes," is "practically inaccessible for those with disabilities," and would require a "major seismic upgrade" to meet current codes. The structure is "extremely

energy inefficient," "has insufficient and outdated electrical services," and has a "roof structure that will not allow any additional mechanical loads or modifications," such as additional heating or air conditioning. The building also has asbestos that further limits modifications. Furthermore, the existing structure has inadequate storage for a grocery store and floors insufficient to support the forklifts needed for stocking a grocery store. The analysis then accurately concluded that use of the existing building under the Building Reuse Alternative is entirely infeasible. Accordingly, based on this information, the City Council will be able to find, and should find if the issue arises, that this alternative is infeasible.

The commenter objects to statements in the DEIR that Terry Johnson of Best has already stated his opinion that the existing structure on the Project site cannot feasibly be reused. Mr. Patterson refers disparagingly to what he calls "unverified and self-serving assertions from the applicant;" and he demands that the DEIR be modified to include an analysis of the "actual feasibility" of the Building Reuse Alternative. (Comments 258, 261 [DEIR, p. 5.0-21].)

The commenter's demand is unwarranted, as case law is clear that EIRs need not address the economic feasibility of alternatives. (See, e.g., *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 689–691; *County of Napa*, *supra*, 121 Cal.App.4th at pp. 1506–1508.) As was explained earlier, actual feasibility is determined, if ever, at the time at which the final decision-making body, having certified a Final EIR, is ready to consider the merits of a proposed Project. The mechanism for assessing actual feasibility is the so-called "CEQA Findings" adopted pursuant to Public Resources Code section 21081, subdivision (a), and Guidelines section 15091, subdivision (a).

Consistent with this approach, Guidelines section 15131, subdivision (c), states that "[e]conomic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project."

Here, the City Council, if need be, could rely on the aforementioned Jones feasibility analysis because that document is now a part of the City's administrative record for the proposed Project. And the analysis is unquestionably substantial evidence in that it was prepared by an industry expert using a fact-based assessment. (See, e.g., Pub. Resources Code, § 21082.2 ["[s]ubstantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts"].) We suggest including the Jones feasibility analysis as an appendix to the upcoming Final EIR so that all interested members of the public will have access to the reasoning put forward by Mr. Jones.

B. Comments 182–183: DEIR, p. 5.0-1 – "Project Objectives..."
*** The first three objectives are achieved by any version of the project. The 4th objective is subjective. And the 5th objective is not achieved by the proposed project for the same reasons the project is not consistent with the Citywide Design Guidelines concerning site layout and parking lot design as well as related CGP policies. ***
*** The first 3 objectives are achieved by all alternatives except "No Project"*

Response: Mr. Patterson's criticisms of, and observations about, the objectives raise no legal issues. CEQA requires lead agencies to establish project objectives to include in an EIR. The project objectives help the agency "develop a reasonable range of alternatives to evaluate in the EIR and … aid decision makers in preparing findings or a statement of overriding considerations, if necessary." (Guidelines, § 15124, subd. (b); *In re Bay-Delta etc.*, *supra*, 43 Cal.4th at p. 1163.) The City has broad discretion to formulate its own project objectives. As one court stated:

> CEQA does not restrict an agency's discretion to identify and pursue a particular project designed to meet a particular set of objectives. CEQA simply requires the agency to thereafter prepare and certify a legally adequate EIR that provides the agency and the public alike with detailed information regarding the proposed project's significant environmental impacts, as well as reasonable alternatives that "would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen [those impacts].
>
> (*California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 276–277 (*California Oak*); see also *In re Bay-Delta etc.*, *supra*, 43 Cal.4th at p. 1166 ["[a]lthough a lead agency may not give a project's purpose an artificially narrow definition, the lead agency may structure its alternatives analysis around a reasonable definition of underlying purpose and need not study

alternatives that cannot meet that basic goal"].)

The commenter's interpretations of Project objectives and whether or not the alternatives meet the objectives are not binding on the City. Neither do City staff or an EIR consultant's opinions bind City Council. Rather, as explained earlier, City Council will consider the "actual feasibility" of the alternatives, if at all, when, after certifying the FEIR but prior to project approval, the Council considers the feasibility of any alternatives that could reduce the severity of significant unavoidable effects of the project. (See Guidelines, § 15091, subd. (a)(3).) At that time, the City Council will be free to weigh not only the views of the EIR authors, but also those of the public. And also at that time, Mr. Patterson's opinions of the project objectives may be of interest. They raise no legal issues regarding the adequacy of the EIR, however.

III. AESTHETICS AND VISUAL RESOURCES

A. <u>Comment N/A</u>: DEIR, p. 3.1-6 – "The Project site is not located 'along the ocean' or within a 'scenic coastal area' within the meaning of Coastal General Plan Policy CD[-]1.1, which provides that "[p]ermitted development shall be designed and sited to protect views to and along the ocean and scenic coastal areas..." *** The northernmost portion of the project site includes views TO the ocean, which is distinct from "along". *** (See also Comments 025, 090 [DEIR, pp. 3.1-10, 3.5-22].)

<u>Comment 016</u>: DEIR, p. 3.1-7 – "These views are interrupted by two large trees, which substantially obscure pedestrians' and drivers' views of the ocean." *** This is false, the trees only block views of the sky not views of the ocean from a pedestrian or vehicular vantage point. *** (See also Comments 022, 025, 091 [DEIR, pp. 3.1-9, 3.1-10, 3.5-22].)

<u>Comment 017</u>: DEIR, p. 3.1-7 – "The vacant Mill Project site could be developed under existing zoning, and a new structure could completely block the existing interrupted view of the Chevron Station and ocean." *** These hypothetical future view-blocking developments are too speculative and don't reflect the actual baseline conditions. *** (See also Comments 025, 091 [DEIR, pp. 3.1-10, 3.5-22].)

<u>Response</u>: The DEIR determined that the Project would not result in a substantial adverse impact on a coastal scenic vista because, first and foremost, the "Project site is not located 'along the ocean' or within a 'scenic coastal area' within the meaning of Coastal General Plan Policy CD[-]1.1[.]" (DEIR, p. 3.1-6.) Therefore, the

Project cannot have an impact on coast views. The DEIR then went beyond this reasonable conclusion and looked more into the Project's consistency with Coastal General Plan Policy CD-1.1, which provides, in full:

> Permitted development shall be designed and sited to protect views to and along the ocean and scenic coastal areas, to minimize the alternation of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance views in visually degraded areas.
>
> (*Ibid.*)

To further demonstrate the Project's consistency with this policy, the City reasonably interpreted and applied the policy. More specifically, the City considered the facts along with the plain language in Policy CD-1.1 and reasonably determined, as mentioned above, that the Project site is "not located 'along the ocean' or within a 'scenic coastal area' within the meaning of Policy CD[-]1.1, as the site is on the landward side of Highway 1, and there is intervening commercial development between the site and Highway 1." (DEIR, p. 3.5-22.) Thereby, "views...along the ocean and scenic coastal areas" would not be impacted by the Project. (*Ibid.* [quoting Policy CD-1.1].)

The City then reasonably determined that, because the Project "is replacing an existing structure with one of the approximate same size," and because other nearby structures already obstruct the ocean view from "the middle and southern portions of the project site," these supposed views "to" the ocean would not be impacted by the Project because they are already obstructed. (DEIR, p. 3.5-22.) The City further reasonably determined that the other "existing view of the ocean from the far northern portion of the site" would not be impacted because, for one, it "is not easily discernible by pedestrians and is interrupted by two large trees and a Chevron Station and intervening vacant lot between the project site and Chevron Station and the ocean." (*Ibid.*; see also DEIR, Figure 3.1-4.) This limited view is "not easily discernible," in large part, because of the distance, development, and climate—the ocean is more than a quarter of a mile away, is continuously obstructed by layers of trees and the Chevron gas station (*ibid.*), and is often shrouded in marine layer (*id.*, p. 3.2-1 – 3.2-2).

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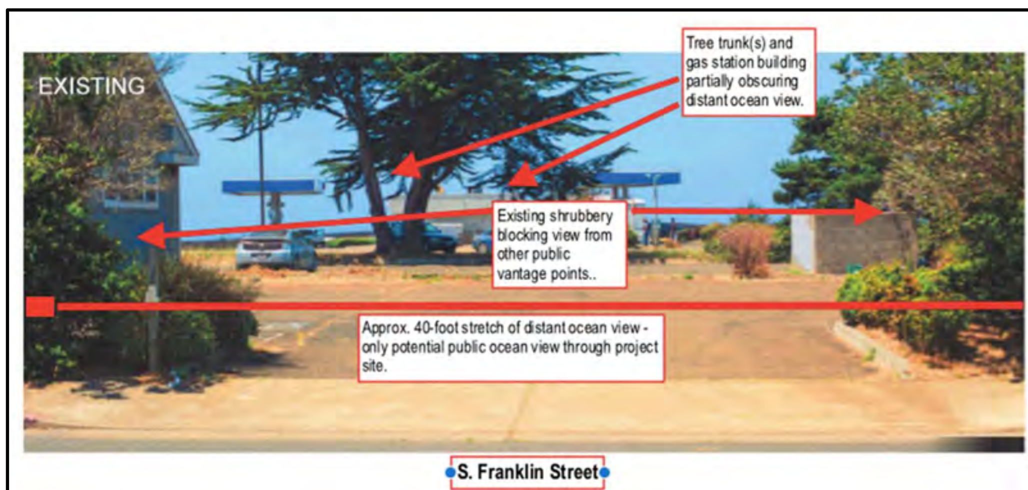
It is also a fleeting view. Currently, this view from the north of the Project site is only available to passersby along a maximum 40-foot stretch[4] of S. Franklin Street, through one of the existing access points. (See DEIR, p. 3.1-19 [Figure 3.1-4].) The remainder of any potential ocean view is nearly completely blocked by existing onsite shrubbery and development. (*Ibid.*) Further, a large portion of these passersby are driving in vehicles, given both the overall commercial/office development in the surrounding area and the fact that this stretch of S. Franklin connects N. Harbor Drive to South Street and to the other side of S. Franklin (both of which are commercial/office corridors), thus making that 40-foot view even more fleeting. Below is a marked-up version of a portion of the DEIR's Figure 3.1-4 that visually depicts what has just been described.



This specific view also is not easily discernible because "two large trees" on the northwest border of the Project site "substantially obscure pedestrians' and drivers' views of the ocean." (DEIR, p. 3.1-7.) The commenter disagrees with this assessment and contends "the trees only block views of the sky not views of the ocean from a pedestrian

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[4] We calculated the figure of 40 feet through the use of the following tools:

> Google Earth version 9.175.0.1 (July 2018 [or newer]). 825, 845, 851 S. Franklin Street, Fort Bragg, CA, 95437, 39°25'47"N, 123°48'17"W, earth.google.com [accessed Nov. 8, 2022].
>
> Google Street View (Apr. 2021). 825, 845, 851 S. Franklin Street, Fort Bragg, CA, 95437, google.com/maps [accessed Nov. 8, 2022].

or vehicular vantage point" (Comment 016 [DEIR, p. 3.1-7]); but this contention is factually inaccurate. The trunk of the southern-most tree directly blocks a portion of the distant ocean view from ground level, as shown in the above figure. The trunk of the northern-most tree does not block as much of the distant ocean view because that supposed view is already blocked by the Chevron gas station building. These visual interferences (trees and the gas station) reduce the already fleeting view by, probably, 15 to 20 feet, making the 40-foot viewpoint along S. Franklin street even more fleeting, at between 20 to 25 feet. This viewpoint shrinks even further when vehicles are lined up at the gas pumps and further blocking any view, which one safely assumes occurs consistently throughout the day.

The City also concluded that the vacant lot directly west, in between the Project site and the Chevron station, could be developed with a sizable commercial structure, which would then "completely block the existing interrupted view of the Chevron Station and ocean." (DEIR, p. 3.1-7.) The commenter claims this reasoning is "hypothetical," "too speculative," and does not "reflect the actual baseline conditions." (Comment 017 [DEIR, p. 3.1-7].) The City's conclusion here is reasonable, however, and not overly speculative given the type of commercial developments immediately adjacent to this vacant parcel (gas station, motel, pizza restaurant) and given that a comparable development is allowed by-right under existing land use designation and zoning. To be sure, the City has carefully planned for this exact type of "future growth and development," inclusive of "[c]ommercial land uses...along Franklin Street corridor[,]" in its General Plan and set its policies accordingly to "support a concentrated development pattern by encouraging infill development on vacant and underutilized sites throughout the City." (Coastal General Plan, Element 2 - Land Use, p. 2-1 [Purpose]; see also p. 2-18 [Policy LU-1.1, "Implement the Land Use Designations Map by approving development...consistent with the land use designations"].)

The fact that Mr. Patterson may see things differently does not undermine the City staff's interpretation of the City's own planning documents. Indeed, the City is entitled to deference with respect to its interpretation of its General Plan and other City enactments. "It is well settled that [an agency] is entitled to considerable deference in the interpretation of its own General Plan." (*Gray v. County of Madera* (2008) 167

Cal.App.4th 1099, 1129–1130; see also *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1015 ["an agency's view of the meaning and scope of its own ordinance is entitled to great weight"].) "A reviewing court accords 'great deference' to an agency's determination that a project is consistent with its own general plan, recognizing that 'the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity.'" (*San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 26; see also *Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1563.)

An agency's "broad discretion to construe its [general plan] policies in light of the plan's purposes" (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782 (*Endangered Habitats League*)) "stems from the well-settled principles of court respect for the [constitutional] separation of powers" (*San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 515; Cal. Const., art. III § 3). Unless "no reasonable person could have reached the same conclusion on the evidence before it," a court must "defer to an agency's factual findings of consistency." (*Endangered Habitats League*, *supra*, 131 Cal.App.4th at p. 782; see also *No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 243 (*No Oil*); *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 637.)

Furthermore, Mr. Patterson makes too much of the fact that "baseline" conditions currently do not include development on lots to the seaward side of the Chevron station. The fact that such development is not yet in place is not the sole basis for the City's conclusion, under CEQA, that Impact 3.1-1 would be less than significant (Project implementation would not result in substantial adverse effects on a scenic vista). Such development is foreseeable and could possibly be in place by the time the Project commences actual operations, in which case the development could be treated as part of "existing conditions." (See *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 509.)

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More to the point, however, nothing in CEQA or CEQA case law suggests that the loss of a very small, fleeting view of the ocean through a gas station must, as a matter of law, be considered significant regardless of whether additional development in the area is foreseeable. To the contrary, the courts have recognized that modest degradations of the visual environment can reasonably be found to be less than significant. (See, e.g., *North Coast*, *supra*, 216 Cal.App.4th at pp. 627–628 [the fact that a large new water tank on a hillside would be visible to the public did not render the visual impact significant]; *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 243–244 [visual impact was less than significant despite acknowledgement in the EIR that "the visual character of the site would undergo a 'high level' of change"].)

Importantly, much of the City's analysis in this context goes to the meaning of the City's own policies and thus has nothing to do with CEQA. CEQA principles such as "baseline" have no place in a city's interpretation of its own general plan, which is subject to broader principles of construction that recognize the need for reviewing courts to give deference to agencies' interpretations of their own enactments. Where general plan interpretation is concerned, the primary guiding principle is one of reasonableness. (See, e.g., *No Oil*, *supra*, 196 Cal.App.3d at p. 243.)

Here, the City is assessing the consistency of the Project with Policy CD-1.1. As part of that assessment, the City has reasonably taken into account the planned development, allowed by right, of the undeveloped lot west of the Project site. There is nothing arbitrary or irrational about this approach to interpreting and applying Policy CD-1.1.

The City also reasonably determined that the Project "is compatible with the character of the surrounding area" (DEIR, p. 3.5-22 [see Policy CD-1.1]) because "[t]he surrounding neighborhood land uses include Highway Visitor Commercial to the west and south, General Commercial to the north and east, and Office Commercial to the Northeast," and are developed accordingly. (See also *id.*, pp. 3.1-6 – 3.1-7.) Certainly, a Grocery Outlet will fit in amongst the surrounding businesses—Chevron, Mountain Mike's Pizza, Arco, Super 8 by Wyndham, etc.—at least one of which (Super 8) is larger in scope and size the proposed Project. In addition, the Project building "will be composed of elements and details representative of Fort Bragg's architectural heritage"

with "window and door treatments giv[ing] homage to the smaller shops along the main downtown street's detailing as well as the Hardie Board (wood composite) wood paneling, masonry, and providing a variety of the materials on the elevations to add visual interest." (*Id.*, pp. 2.0-3, 2.0-19 [Figure 2.0-6], 3.1-13 – 3.1-19 [Figures 3.1-1 – 3.1-4].)

The City painstakingly and appropriately interpreted Policy CD-1.1, based on the policy's plain language and the specific facts associated with the Project, and "in light of the [General Plan's] purposes," and ultimately concluded that the Project does not conflict with this policy. (*Endangered Habitats League*, *supra*, 131 Cal.App.4th at p. 782.) Only if "no reasonable person could have reached the same conclusion on the evidence before it" do "an agency's factual findings of consistency" lose deference. (*Ibid.*) The City's interpretation is thoughtful and reasonable, evidenced by the fact that several reasonable and qualified City staffers and consultants reached the same conclusion.

B. Comment N/A: DEIR, p. 3.1-6 – "Have a substantial effect on a scenic vista."
*** How, what is the criteria for "substantial"? ***

Response: To determine whether an impact to a scenic vista will be substantial, the DEIR used consistency with General Plan provisions and policies related to scenic and/or protected views as criteria. (See Section III.A, *supra*; DEIR, pp. 3.1-6 – 3.1-9.) This approach is common and acceptable. "An agency has considerable discretion to decide the manner of the discussion of potentially significant effects in an EIR." (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 515 (*County of Fresno*).) The ultimate question is whether substantial evidence supports the analysis and conclusions reached in an EIR. (*Ibid.*) Here, it does, and the commenter presents no evidence to the contrary.

The DEIR explains in detail why the Project does not conflict with these provisions and policies that the City has formally adopted for planning development in this already-developed area, and then reasonably interprets them for this purpose. In doing so, the City accounted for the existing development on the Project site and in the vicinity of the Project site. The City's determination that aesthetic impacts will be less than significant is consistent with the general principle that the aesthetic impacts of a new "building in a highly developed area" normally should not be found to be significant. (See, e.g., *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 592.)

The Project will essentially redevelop an infill site on which a currently useless structure already exists. This physical context is an important consideration. As noted earlier, "[a]n ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area." (Guidelines, § 15064, subd. (b)(1).) Given the infill nature of the Project, an interpretation or application of CEQA leading to a reduction in proposed building intensity would be environmentally counterproductive. As noted earlier, the proposed 16,157 sf Project, if approved, would result in a net *reduction* of 279 square feet of physical space compared with the existing 16,436-sf structure on the site. If this net reduction in building intensity were to be characterized as resulting a *significant* aesthetic effect requiring feasible mitigation[5] in the form of a reduction in size, such an outcome would undermine the City's efforts to facilitate infill development, with its attendant long-term environmental benefits.

If density and intensity of use, without more, are understood to create significant aesthetic effects that should be mitigated, then the obvious solution would be to approve projects with less density and intensity. But such an outcome on an already developed infill site would result in an inefficient use of urban land and therefore more sprawl and greater air pollutant and greenhouse gas (GHG) emissions in the long run.

The long-term environmental benefits of infill development are well known. (See, e.g., Gov. Code, § 65041.1, subd. (a)(1) [describing state planning priority to "promote infill development and equity by rehabilitating, maintaining, and improving existing infrastructure that supports infill development and appropriate reuse and redevelopment of previously developed, underutilized land that is presently served by transit, streets, water, sewer, and other essential services"]; University of California Berkeley School of Law, Center for Law, Energy & the Environment (CLEE), *Integrating Infill Planning in California's General Plans: A Policy Roadmap Based on Best-Practice Communities* (Sept. 2014), https://www.law.berkeley.edu/files/CLEE/Infill_Template_--_September_2014.pdf [accessed Dec. 2, 2022].)

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[5] See Pub. Resources Code, § 21002 (policy requiring feasible mitigation of significant environmental effects).

Here, the City appropriately construed and applied CEQA in a holistic way that considered the aesthetic impact of a modest infill project on a developed site within a larger environmental context. Accordingly, the DEIR reasonably found this potential impact to be less than significant.

C. Comment 019: DEIR, p. 3.1-8 – "Similar size buildings could be developed across South Street and South Franklin Street on the currently vacant lots in the future that would balance the building massing along the streets."
*** This is not accurate and those vacant lots are too small to accommodate a similar sized building. ***

Response: The DEIR discusses these vacant lots on South Street (north of the Project site) and S. Franklin Street (east of the Project site) in the context of the area's zoning for commercial uses. While both vacant lots are smaller in size than the Project site and differently shaped, they could still be developed by-right with commercial structures that are similar in size as the Project. For example, these vacant lots could be developed with buildings that have more than one level (such as the Seabird Lodge, located adjacent to the vacant lot on South Street), resulting in square footage comparable to that of the proposed structure. (See DEIR, p. 3.1-8 ["buildings in the Project area are one to two stories in height"].) A building need not be the same exact dimensions as another to be considered the same overall size. In any event, the commenter provides no evidence that these vacant lots could not be developed with buildings comparable in size to the one proposed here. As noted earlier, the Project will result in less square footage than is found in the existing unused office structure on the Project site.

Notwithstanding, even if these lots are developable only with buildings smaller than the proposed structure, such a possibility does not undermine or alter the DEIR's conclusion here that the Project will "fit the surrounding neighborhood environment." (DEIR, p. 3.1-7.) As is stated in the Project Description chapter, "[t]he Project site is located immediately adjacent to commercial developments to the north, south, and west, and approximately 500 feet north of the Noyo River. Current businesses adjacent to the western site boundary include Super 8, Mountain Mike's Pizza, and a Chevron station. The Seabird Lodge is across South Street to the north of the Project site, and the Harbor Lite Lodge is located across North Harbor Drive to the south of the Project site." (*Id.* at

pp. 2.0-1 – 2.0-2.)

D. Comment 020 : DEIR, p. 3.1-8 – "Additionally, planting street trees at regular intervals on both sides of the streets is a cost-effective visual intervention. Street trees that are spaced regularly on both sides of the street increasingly contribute to the sense of visual enclosure and affect the aspect ratio and visual definition as they mature."
*** Irrelevant: no street trees are proposed as part of this project! ***

Response: The Project will include "trees and vegetation along the property boundaries within the proposed parking lot" with trees "planted primarily along the north, south, and east boundaries, with a few along the west boundary." (DEIR, p. 2.0-4.) Trees planted along the north boundary will run parallel with South Street and trees planted along the east boundary will run parallel with S. Franklin Street. These trees will indeed be planted near the street and will enhance the aesthetic value of the Project site and its surrounding area. Therefore, it is relevant to discuss these trees in this context. here. Nevertheless, at its discretion, if the City so chooses, it could clarify the text in the FEIR and change "street trees" to "trees being planted along the periphery of the Project site and parallel to the street," and alter the other text accordingly.

E. Comment 024 : DEIR, p. 3.1-10 – "A less than significant impact would occur [re. Impact 3.1-2: Project implementation would not substantially damage scenic resources, including, but not limited to, trees, rock outcroppings and historic buildings within a state scenic highway]."
*** How? This has the same issues as the prior impact area that also lacked applicable thresholds or any supporting analysis. ***

Response: As stated on the onset of the analysis of this impact analysis, the "project would be located on city streets and not along a highway." (DEIR, p. 3.1-10.) Therefore, by definition, the Project could not "substantially damage scenic resources…within a state scenic *highway*." The DEIR goes on to explain the Project site's distance from Highway 1 and the many structures and business that separate it from the highway, as well as the fact that neither "[n]either of the two highways near the Project site, State Highway 1 and State Highway 20, are [designated] state scenic highways." (*Ibid.*) As previously stated in this letter, "[a]n agency has considerable discretion to decide the manner of the discussion of potentially significant effects in an EIR." (*County of Fresno*, *supra*, 6 Cal.5th at p. 515.) The language of Impact 3.1-2 presents a

straightforward and commonplace threshold of significance (see Section I.C, *supra*) related to state scenic highways, and the DEIR thoroughly discusses and analyzes the potential impact, going above and beyond what is required by the threshold itself. The City's "considerable discretion" here was diligently employed.

IV. BIOLOGICAL RESOURCES

A. Comment 012: DEIR, p. 2.0-3 – "Currently, four ornamental trees are located in the northwestern portion of the Project site, and additional ornamental trees are located along the South Street frontage. It is possible that the existing trees could be preserved as part of the proposed landscaping plan; however, it is likely that tree removal in some capacity would be required."
*** Tree removal is a concern and is inconsistent with the discussion during the prior related review. *** (See also Comment 026 [DEIR, p. 3.1-11].)

Response: The trees being considered for removal are "ornamental" and not protected species; therefore, their removal does not present a significant impact to biological resources under CEQA. (DEIR, pp. 3.3-4, 3.3-25 – 3.3-26.) Likewise, removal of these trees will not significantly impact aesthetics as they are "not part of the natural scenic landscape" and will be replaced "with landscaping selected for the local climate, including the planting of 37 new trees." (*Id.*, p. 3.1-10.) Notwithstanding, the DEIR states that it is possible these trees can be preserved. (*Id.*, p. 2.0-3.)

B. Comment 039: DEIR, p. 3.3-27 – "Additionally, the proposed Project would eliminate the disturbed grass areas on the southern portion of the Project site, which serve as potential low-quality foraging habitat for birds throughout the year."
*** This correct admission conflicts with other statements. *** (See also Comments 037, 038, 041 [DEIR, pp. 3.3-26, 3.3-27].)

Response: The commenter agrees that the Project site offers some "low-quality foraging habitat for birds throughout the year" on its "southern portion"; however, the commenter believes this statement "conflicts with other statements." The commenter does not indicate which other statements are in conflict, but for the sake of this response, we will presume the commenter refers to information that the DEIR provides on habitat for the Great Blue Heron. (See Comments 037 and 039 [DEIR, pp. 3.3-26, 3.3-27].) On this issue, the DEIR states that, while the species have been identified on properties nearby the Project site, the has not been identified on the Project site. (DEIR, p. 3.3-27.)

Also, the DEIR informs us that sites where the Great Blue Heron may forage (e.g., be observed "eating gophers and other rodents") do not necessarily qualify as "an aquatic resource, or specifically blue heron habitat" because the heron is "a highly mobile bird that can thrive in upland...in the presence of food resources." (*Id.*, p. 3.3-26.)

These statements do not conflict. "[L]ow-quality foraging habitat for birds" is not the same as "blue heron habitat" or an "aquatic resource." Great Blue Heron habitat includes "driest part of islands...in cervices beneath loosely piled rocks or driftwood, or in caves" (DEIR, p. 3.3-13 [Table 3.3-3]) and/or, per the California Department of Fish and Wildlife (CDFW), "shallow estuaries and fresh and saline emergent wetlands, as well as perches and roosts in secluded tall trees and offshore kelp beds" (*id.*, p. 3.3-26). These definitions do not describe the Project site, which is highly developed and disturbed and is an urban infill development site, situated in the middle of other urban development. (See DEIR, pp. 3.1-2 ["Project site is located on...urban and built-up land, surrounded by parcels utilized for commercial businesses, residences, and two vacant lots," 3.1-10 ["City of Fort Bragg, which includes the Project site, is mapped and designated as an Urbanized Cluster [by "the U.S. Bureau of the Census"], 3.1-1 ["the Project site is located on urban and built-up land per the California Department of Conservation"], 3.1-23 [Project site within "LZ3 (urban)" area for Title 24 lighting standards], 2.0-13 [Figure 2.0-3], 3.1-13 – 3.1-19 [Figures 3.1-1 – 3.1-4]; *California Oak, supra,* 188 Cal.App.4th at *p.* 281 [upholding EIR conclusion of less-than-significant impact to sensitive species because project site is within "'urbanized areas'" with "'little or no remaining natural vegetation and limited wildlife habitat values…[n]o sensitive natural communities, special-status species, wetlands or important wildlife movement corridors" and "'[g]iven the absence of any sensitive biological or wetland resources'" onsite].)

Further, no aquatic resources occur onsite, as demonstrated by various sources: the "NRCS Web Soil Survey (2022)," which "identifies the Project site as 'Urban land'"; the "Fort Bragg Wetland Report (Wildland Resource Managers, March 2022)," which "provides the same conclusions that there are no aquatic resources present on the Project site;" and the qualified biologists who conducted multiple field surveys for the site. (DEIR, p. 3.3-5; see also Section IV.D, *infra.*) In any event, the commenter provides no evidence that Great Blue Herons regularly occur onsite or that the site qualifies as heron

or aquatic habitat.

The loss of this "low-quality foraging habitat for birds" as a result of Project development is not, in and of itself, a significant impact because of the large amount of similar foraging land that exists in the Project area and bioregion.[6] (See DEIR, p. 3.3-27; Comment 041.) Notably, the Great Blue Heron's diet consists primarily (75 percent) of fish (*id.*, p. 3.3-26), making dry land inland foraging a secondary source of food.

Some additional context should be helpful. The Great Blue Heron is not listed as threatened or endangered under state or federal law. (DEIR, p. 3.3-13 [Table 3.3.3: Special Status Wildlife and Fish Species Which May Occur in Project Area].) Thus, the relevant significance threshold is whether the Project would "[h]ave a *substantial* adverse effect, either directly or through habitat modifications," on the species. (DEIR, p. 3.3-23, italics added.) This specific threshold is consistent with the general definition of "significant effect on the environment" found in CEQA Guidelines section 15382, namely, "a *substantial*, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." (Italics added.) Relevant, too, is the legal principle that, even where an agency identifies a significant effect, "[t]he goal of mitigation measures is not to net out the impact of a proposed project, but to reduce the impact to insignificant levels." (*Save Panoche Valley v. San Benito County* (2013) 217 Cal.App.4th 503, 529 (*Save Panoche*).)

It is common for well-meaning commenters on projects to assume that *any* impact (such as habitat loss) that is not "netted out" must be significant. In other words, *any* loss of habitat, regardless of the quality or size of the habitat, is significant. This assumption is simply incorrect. Here, Mr. Patterson has made no attempt to argue that the Project will have "a *substantial* adverse effect, either directly or through habitat modifications," on the entire *species* (Great Blue Heron). As noted above, the Project site is, at most, low-

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[6] The commenter, in comments elsewhere on the DEIR's analysis of wetland impacts, references comments made by "Leslie Kashiwada" for support. While we have no direct knowledge that Leslie Kashiwada is an expert on terrestrial biological resources in the area, nor do we concede as much (Leslie Kashiwada herself admits: "I am the first to admit that I am not a botanist"), we note here that Leslie Kashiwada finds that "[t]he loss of blue heron hunting grounds isn't a major issue because, as noted, there are other fields herons can access...there is still ample open space to the west, and along the shoreline of the river and coast."

quality foraging habitat that is clearly inferior to the preferred habitat described above. "The Great Blue Heron is the largest and most widespread heron in North America." (California Nature Mapping Program, NatureMapping Animal Facts: Great Blue Heron [http://naturemappingfoundation.org/natmap/ca/facts/birds/great_blue_heron.html (viewed on November 30, 2022)].) Here, any lost acreage of habitat is tiny, almost infinitesimal, when viewed in context.

Although CEQA mitigation measures often use performance standards such as ratios of one to one or two to one, which have the effect of netting out particular categories of impacts, it is simply not true, as a general matter, that an impact per se is significant under CEQA any time there is a net loss of habitat or a net loss of individual members of a particular species.

C. Comment 042: DEIR, pp. 3.3-28 – 3.3-29 – "With mitigation [Mitigation Measure 3.3-2 to 'minimize impacts on special-status bat species'], this impact would be less than significant."
*** But how is this accomplished? This unsupported assertion is not explained nor is the effectiveness of the mitigation measure evaluated as is required. *** (See also Comments 043, 052 [DEIR, pp. 3.3-29, 3.3-32].)

Response: The DEIR explains that special-status bats (the hoary bat) "have not been documented on the Project site" and that, despite the possibility that the existing structure may provide some bat habitat, "no evidence of bat roosting on the Project site was present" during two site surveys using specialized survey techniques for bats. (DEIR, p. 3.3-28.) However, because there exists some "possibility that bats could establish a roost in the abandoned building in the future" prior to demolition, Mitigation Measure 3.3-2 requires a pre-construction survey by a "qualified biologist…from dusk until dark" to determine if any roosts exist and, if they do, either perform appropriate "evictions and exclusion techniques" or, in the case of maternity roosts, establish buffers and avoid roost destruction until the end of the "pupping season." (*Id.*, pp. 3.3-28 – 3.3-29.) Measures that include pre-construction surveys, avoidance, and/or evictions are common and upheld by courts as "substantial evidence that the negative impacts [to] special-status species' will be sufficiently reduced." (*Save Panoche*, *supra*, 217 Cal.App.4th at p. 524; see also, e.g., *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1274–1278; *Bay Area Clean Environment, Inc. v. Santa Clara County* (2016) 2

Cal.App.5th 1197.)

Again, some context should be helpful. As with Great Blue Herons, the bats at issue are not formally listed as endangered or threatened. (DEIR, p. 3.3-14 [Table 3.3.3]). Thus, the operative significance threshold is whether the project would "[h]ave a *substantial* adverse effect, either directly or through habitat modifications," on the species. (DEIR, p. 3.3-23, italics added.) Even in the unlikely event that some bats may experience mortality due to the project, such deaths, though extremely unfortunate, would not have a *substantial* effect on the entire species, given its widespread abundance. According to a "life history account" of the species available from CDFW:

> [t]he hoary bat *is the most widespread North American bat*. May be found at any location in California, although distribution [is] patchy in southeastern deserts. This *common*, solitary species winters along the coast and in southern California, breeding inland and north of the winter range. During migration, may be found at locations far from the normal range, such as the Channel Islands (Brown 1980) and the Farallon Islands (Tenaza 1966). Habitats suitable for bearing young include all woodlands and forests with medium to large-size trees and dense foliage. Hoary bats have been recorded from sea level to 4125 m (13,200 ft). There is evidence that sexes are separate during the warm months, females being more abundant in the northeastern U.S., males in the west. Both sexes occur on the winter range. During migration in southern California, males are found in foothills, deserts and mountains; females in lowlands and coastal valleys (Vaughan and Krutzsch 1954).
>
> (nrm.dfg.ca.gov › FileHandler, [downloaded Novem. 30, 2022], italics added.)

D. Comments 044 –046: DEIR, pp. 3.3-29 – 3.3-30 – "Impact 3.3-4: The proposed Project would not adversely affect federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means (Less than Significant)."
*** [Several comments rebutting the conclusions reached in the DEIR associated with impacts to wetlands]. ***

Response: The DEIR bases its conclusion on impacts to wetlands in part on the Fort Bragg Wetland Report prepared for the site by Wildland Resource Managers, included as Appendix D to the DEIR, as well as the Grocery Outlet Fort Bragg, California Property Biological Review, also prepared by Wildland Resources Managers, included as Appendix C to the DEIR. Expert biologists employed by this consultant surveyed the land using U.S. Army Corps of Engineers (USACE) methodology and California Code of Regulations definitions, including performing soil sampling at four

locations onsite and assessing the site for plant and animal "wetland species." (DEIR, pp. 3.3-29 – 3.3-30, Appendix D [pp. 2–4].) No indicators of wetlands of any type were found to occur onsite. (*Id.*, p. 3.3-29.)

In addition, as the DEIR explains, these earlier studies were confirmed by later work conducted by the DEIR authors themselves. "Field surveys and habitat evaluations for the entire Project site were performed on March 29, 2022 and April 20, 2022 (De Novo Planning Group, 2022). The purpose of the of these most recent surveys by De Novo Planning Group was to assess the habitat, evaluate potential for special status species, *test for aquatic resources/wetlands*, *and to verify/validate conditions and assessments reported in past studies and regulatory databases*. These 2022 field surveys occurred within the floristic period for the region. The details of what was observed in these 2022 surveys by De Novo Planning serve as the basis for the analysis in this section. The past studies corroborate De Novo's findings, and is a validation that the site conditions have not significantly changed since 2019." (DEIR, p. 3.3-24, italics added.)

These scientific, fact-based assessments made by two sets of expert biologists provide ample substantial evidence to support the DEIR's conclusions with respect to potential impacts on wetlands, which is exactly what CEQA requires. (See, e.g., Pub. Resources Code, § 21082.2 [significance conclusion must based on "substantial evidence"; "[s]ubstantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts"]; see also Guidelines, § 15384; *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 917 [court upholding EIR consultant's analysis]; *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396–1398 (*Association of Irritated Residents*) [same].)

The commenter asserts otherwise and references comments made by "Leslie Kashiwada" for support. To our knowledge, however, neither the commenter nor Leslie Kashiwada are experts in wetlands and wetland identification. (See, e.g., *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1423 ["residents' unsubstantiated opinions and concerns about the Projects' effects on [resource]...did not constitute substantial evidence"].) The commenter, to our understanding, has legal training and is not a biologist. In her comments on the DEIR, Leslie Kashiwada, admits that she lacks

expertise to make the same type of assessments made by Wildland Resources Managers and De Novo Planning ("I am the first to admit that I am not a botanist"). Our understanding is that her expertise is in Biological Oceanography. (See Fort Bragg Headlands Consortium, *The Consortium Team*, https://www.fortbraggheadlandsconsortium.org/consortium-members.html [accessed Nov. 30, 2022].)

Ms. Kashiwada also incorrectly contends that the "location of the [soil] test pits" are not identified and expresses concern that soil testing was not conducted "along the western boundary of the property." The actual soil sampling locations are identified in the DEIR's Appendix D (p. 3), which shows that two locations are in fact situated near the western boundary of the Project site.

"[S]peculation" and "unsubstantiated opinion or narrative" are "not substantial evidence." (Pub. Resources Code, § 21082.2, subd. (c); see also Guidelines, § 15384, subd. (a).) The DEIR presents substantial evidence that no wetlands exist onsite, while the commenter presents only "unsubstantiated opinion," inclusive of references to another commenter who provides non-expert, incorrect information. (*Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1359 ["feelings are not facts to govern environmental decisions"].)

Regardless, even if Ms. Kashiwada had true expertise with respect to the identification of wetlands, "[d]isagreement among experts does not make an EIR inadequate[.]" (Guidelines, § 15151.)

E. Comments 050: DEIR, p. 3.3-32 – "Species of broom, pampas grass, gorse, or other species of invasive non-native plants deemed undesirable by the City would not be utilized in the proposed landscaping."
*** [How is this prohibition incorporated into the project? ***

Response: As stated in the DEIR, General Plan Policy OS-5.5 requires the City to "[c]ondition 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." (DEIR, p. 3.3-22.) Thus, "[t]he proposed Project is conditioned so that landscaping would not include invasive nonnative plants." (*Id.*, p. 3.5-16.) The Applicant will be legally bound to comply with Project Conditions

of Approval, and the City will be bound to enforce them. As a result, these species would not and could not be used in Project landscaping.

V. GREENHOUSE GASES, CLIMATE CHANGE AND ENERGY

A. Comment 054: DEIR, p. 3.4-2 – "If the temperature of the ocean warms, it is anticipated that the winter snow season would be shortened. Snowpack in the Sierra Nevada provides both water supply (runoff) and storage (within the snowpack before melting), which is a major source of water supply for the State. The snowpack portion of the supply could potentially decline by 50% to 75% by the end of the 21st century (National Resources Defense Council, 2014). This phenomenon could lead to significant challenges securing an adequate water supply for a growing state population. Further, the increased ocean temperature could result in increased moisture flux into the State; however, since this would likely increasingly come in the form of rain rather than snow in the high elevations, increased precipitation could lead to increased potential and severity of flood events, placing more pressure on California's levee/flood control system." *** This paragraph is irrelevant to Fort Bragg and this project and should be removed. Our local water supply is not fed by Sierra snow melt. *** (See also Comments 056–058, 060 [DEIR, pp. 3.4-3 –3.4-4].)

Response: This comment suggests that CEQA somehow disallows the inclusion in EIRs of information that is not strictly and directly relevant to the impacts of particular projects. We know of no case law to that effect. It is true that the Legislature has said that "[t]o provide more meaningful public disclosure, reduce the time and cost required to prepare an environmental impact report, and focus on potentially significant effects on the environment of a proposed project, lead agencies shall, in accordance with Section 21100, focus the discussion in the environmental impact report on those potential effects on the environment of a proposed project which the lead agency has determined are or may be significant. Lead agencies may limit discussion on other effects to a brief explanation as to why those effects are not potentially significant." (Pub. Resources Code, § 21002.1, subd. (e).) Despite this directive, we see no harm in the inclusion of information about climate change that is highly relevant to the concerns of the State of California as a whole, if not to Fort Bragg as a single City within the State.

The paragraph to which the commenter objects presents relevant environmental setting information with respect to the concerns of the State. The DEIR discusses the Sierra Nevada snowpack in the context of climate change and water supply throughout

the State. Although the City's water supply may not be directly fed by the Sierra Nevada snowpack, issues associated with the snowpack and the entire "Sierra Nevada region are in the interests of the entire state." (California Natural Resources Agency (2018), *California's Fourth Climate Change Assessment, Sierra Nevada Region Report*, p. 6, https://www.energy.ca.gov/sites/default/files/2019-11/Reg_Report-SUM-CCCA4-2018-004_SierraNevada_ADA.pdf [accessed Nov. 10, 2022].)

CEQA does not preclude an EIR from including a discussion of climate change, or any subject matter, that is relevant to California as a whole, if not directly relevant to the jurisdiction at issue. (See also Comment 060 [demand to remove setting information pertaining to agriculture and forests and landscapes] [DEIR, p. 3.4-4].) This information is not harmful and in fact provides useful details that advance CEQA's directive that an EIR be an informational document. (Guidelines, §§ 15002, subd. (a), 15121.)

The commenter then requests that the water resources section in the Greenhouse Gases, Climate Change and Energy chapter discuss "local conditions," specifically "intrustion [sic] and impacts to the City's water intake on the Noyo River and how that should be incorporated into the City's water model." (Comment 057 [DEIR, p. 3.4-3].) As previously stated in this letter, "[a]n agency has considerable discretion to decide the manner of the discussion of potentially significant effects in an EIR." (*County of Fresno*, *supra*, 6 Cal.5th at p. 515.) This discretion extends to how an EIR presents its environmental setting. CEQA does not dictate what exact environmental setting information must be included in an EIR for climate change, but only that it "include a description of the physical environmental conditions in the vicinity of the project." (Guidelines, § 15125, subd. (a).) That directive is met here.

Moreover, any request to analyze and/or modify "the City's water model," as appears to be made by the commenter here, is inapposite. (Comment 057 [DEIR, p. 3.4-3].) Such analysis would far exceed the scope of this EIR, which analyzes the potential impacts of the proposed Project *only* and *not* the functionality of the entirety of "City's water model." If the City were to undertake an update of its "water model" (if such a planning tool exists), then this type of analytical request may be appropriate at that time for that theoretical future project, which would occur separate and apart from the proposed Project.

The commenter's request for additional information regarding the City's water supply in the context of climate change also ignores the fact that CEQA analyses relating to climate change are intended to focus on the effects of GHG *emissions* from proposed projects. By its plain terms, Guidelines section 15064.4, which identifies agencies' obligations to consider GHG-related impacts, requires a singular focus on the effects of project emissions. This section is entitled, "Determining the Significance of Impacts from Greenhouse Gas Emissions," and the directives in the section are consistent with that limited focus.

This same exclusive focus on emissions is also evident from the two questions relating to climate change posed in the sample Initial Study checklist found in Appendix G to the CEQA Guidelines. Those questions ask whether a proposed project would either "[g]enerate greenhouse gas *emissions*, either directly or indirectly, that may have a significant impact on the environment" or "[c]onflict with an applicable plan, policy or regulation adopted for the purpose of reducing the *emissions* of greenhouse gases." (Italics added.)

The limited focus on emissions is a result of the original 2007 legislative directive by which the Governor's Office of Planning and Research (OPR) and the California Natural Resource Agency (CNRA) developed and promulgated the subsequent CEQA Guidelines dealing with GHG emissions. This statute, Public Resources Code section 21083.05, was amended again in 2012, but its focus on emissions is still unmistakable:

> The Office of Planning and Research shall periodically update the guidelines for the mitigation of *greenhouse gas emissions or the effects of greenhouse gas emissions* as required by this division, including, but not limited to, effects associated with transportation or energy consumption to incorporate new information or criteria established by the State Air Resources Board pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code.
>
> (Italics added.)

The exclusive focus on emissions associated with transportation and energy consumption, and the failure to require analysis of issues such as climate change adaptation or the loss of carbon sequestration, was the product of political compromise embodied in Senate Bill 97 of 2007 (Stats. 2007, ch. 185). That legislation was caught up in the fraught budget negotiations of that year:

> For two months this summer, Republican lawmakers blocked adoption of the state budget in part because of concerns about whether and how global warming should be considered an issue for CEQA purposes. Manufacturing, development, petroleum and other interests urged lawmakers to keep global warming issues out of environmental reviews for land use plans, transportation plans, development projects and anything else that could be a "project" under CEQA. Their concerns stemmed from recent litigation over the lack of global warming considerations in environmental impact reports, including a suit (since settled) that Attorney General Jerry Brown filed over San Bernardino County's updated general plan (see *CP&DR*, July 2007; *In Brief*, September 2007). As part of the budget settlement, the Legislature approved SB 97 (Dutton), which exempts transportation and flood control projects funded by the 2006 state bonds from global warming considerations.
>
> However, the bill concedes to environmentalists on the primary point: global warming is a CEQA issue. The bill directs OPR to prepare "guidelines for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions." The bill gives OPR a July 1, 2009, deadline, and mandates that the Resources Agency adopt the Guidelines by January 1, 2010. The legislation further requires OPR to update the Guidelines periodically based on state Air Resources Board (ARB) information and criteria.
>
> (*Greenhouse Gas Guidelines May Get Political From Outset*, California, Climate change, Environment Watch, Paul Shigley, California Planning and Development Report, Vol. 22 No. 10 Oct 2007 [Sep 24, 2007].)[7]

After the Legislature, in 2006, had enacted the Global Warming Solutions Act of 2006 (commonly known as AB 32), some legislators were concerned that, through pending litigation filed by then-Attorney General Jerry Brown and others, the courts might conclude that then-extant CEQA documents for major projects might be set aside for failure to address GHG-related impacts. Through SB 97, these documents were immunized against legal arguments to the effect that that they were inadequate for failing to address GHG-related impacts. The Legislature also chose to delay the issuance of new CEQA Guidelines dealing with greenhouse gas emissions until 2010 in order to allow for a kind of transition period until analysis of GHG emissions – but not adaptation or sequestration – could be phased in.

[7] The quoted article may be viewed online at: https://www.cp-dr.com/articles/node-1794

These requirements and limitations were set forth in former section 21097 of the Public Resources Code, which expired by its own terms in 2010:

> (a) The failure to analyze adequately the effects of greenhouse gas emissions otherwise required to be reduced pursuant to regulations adopted by the State Air Resources Board under Division 25.5 (commencing with Section 38500) of the Health and Safety Code in an environmental impact report, negative declaration, mitigated negative declaration, or other document required pursuant to this division for either a transportation project funded under the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2 of the Government Code), or a project funded under the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Chapter 1.699 (commencing with Section 5096.800) of Division 5), does not create a cause of action for a violation of this division.
>
> (b) Nothing in this section shall be construed as a limitation to comply with any other requirement of this division or any other provision of law.
>
> (c) This section shall apply retroactively to an environmental impact report, negative declaration, mitigated negative declaration, or other document required pursuant to this division that has not become final.
>
> (d) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

As this language makes clear, SB 97 was no ordinary CEQA bill. It did not unleash OPR and CNRA to promulgate whatever CEQA Guidelines provisions they saw fit on the broad subject of climate change. Rather, the direction given was very precise: the exclusive focus was to be on the effects of GHG emissions, with emphasis on emissions from transportation sources and energy consumption. Section 15064.4 and Appendix G reflect this precise direction. One legal commentator described the political climate that led to SB 97 as follows:

> There was a significant debate in 2007 whether legislation should be enacted to protect EIRs against legal challenges based on AB 32. After substantial debate, the Legislature adopted only a limited provision to protect certain bonded infrastructure projects against such challenges. For all other projects, the Legislature directed the Office of Planning and Research (OPR) to prepare guidelines for mitigating the effects *of GHG emissions* by July 1, 2009, and directed the Resources Agency to adopt these guidelines by Jan. 1, 2010.

(*Legal Perspectives on Recent California Climate Change Legislation*, Bureau of National Affairs (2009), p. 231:2091, italics added.)[8]

In short, it is clear that CEQA does not require the kind of information demanded here by Mr. Patterson, which would, in an EIR for a small infill retail project replacing an existing vacant structure, require the City to undertake extensive work on modeling its long-term water supplies in light of climate change. The DEIR appropriately focuses on the GHG emissions of the Project itself.

B. Comment 055 : DEIR, p. 3.4-2 – "Sea level has risen approximately seven inches during the last century and it is predicted to rise an additional 22 to 35 inches by 2100, depending."
*** Sea level rise is efefctively [sic] ignored in this DEIR even though it is acknowledged as predicted. The primary imapcts [sic] on this project will be to the adequacy of the water supply and infrastructure. *** (See also Comments 059, 080 [DEIR, pp. 3.4-3, 3.5-12].)

Response: The DEIR discusses the rise in sea level resulting from climate change as background information in the larger context of the environmental setting for the "Effects of Global Climate Change." (DEIR, pp. 3.4-2 – 3.4-4.) Sea level rise, however, is not a factor for the Project, which is "approximately 117 feet to 122 feet above mean sea level" (*id.*, p. 2.0-1) and inland from Noyo Bay, Noyo River, and Highway 1 (*id.*, p. 2.0-11 [Figure 2.0-2]). Thus, a sea level increase of 35 inches by the year 2100 will not impact the Project or Project site. Regardless, CEQA is not concerned with an existing adverse environmental condition affecting a project, but only with how that project may affect the environment. (See *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 377–378; see also *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 473-474; *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196 Cal.App.4th 1604, 1613–1617; .) And, there is no evidence that the Project will exacerbate sea-level rise or, more to the point, cause any significant environmental impacts associated with sea-level rise.

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[8] This document can be viewed at: https://www.hklaw.com/-/media/files/insights/publications/2009/03/legal-perspectives-on-recent-california-climate-ch/files/legal-perspectives-on-recent-california-climate-ch/fileattachment/maclean319.pdf

C. Comment 063: DEIR, p. 3.4-25 – "If the project demonstrates that it is consistent with these plan documents, the proposed Project would not be anticipated to generate GHG emissions...."
*** OK, but where is this necessary analysis of the project's consistency with these plan documents? ***

Response: This analysis can be found in the DEIR's discussion of Impact 3.4-1, specifically on pages 3.4-29 to 3.4-36. In particular, Tables 3.4-3 and 3.4-4 present the Project's consistency with applicable measures associate with Senate Bill (SB) 32 and Mendocino Council of Government's (MCOG's) 2017 Regional Transportation Plan & Active Transportation Plan (RTP).

D. Comment 064: DEIR, p. 3.4-37 – "Other Project energy uses include fuel used by vehicle trips generated during Project construction and operation, fuel used by off-road construction vehicles during construction activities, and fuel used by Project maintenance activities during Project operation."
*** The project is inherently wasteful because it demolishes the existing building requiring avoidable demolition and construction activities compared to building reuse, which is not analyzed. *** (See also Comments 065 and 066 [DEIR, pp. 3.4-38, 3.4-40].)

Response: The Project is not "inherently wasteful" of energy just because it proposes to demolish an existing structure. Demolition accounts for only a fraction of total construction mobile energy use (see DEIR, p. 3.4-39 [Table 3.4-5]), and, as demonstrated above, the existing building cannot be reused as a grocery store (see Section II.A). In any event, the commenter provides no evidence that building reuse "would significantly reduce the energy consumption of this project." (Comment 065 [DEIR, p. 3.4-38].)

In actuality, given the existing building's general lack of suitability for modern commercial use (see Section II.A, *supra*), it is quite possible that any effort to modify it would result in far more construction and operational energy consumption than the Project because of the amount of remediation work required to make it suitable for any commercial purpose (e.g., "existing roof structure will not allow mechanical loads or modifications" to install necessary heating and cooling "for energy efficiency and current environmental needs;" a "major seismic upgrade would be needed" because the building does not meet current codes; the "entire electrical system" would need to be replaced to "be much more energy efficient;" current building configuration violates the "Americans

with Disabilities Act" and therefore the building would need to be reconfigured; the building has asbestos that would need to be painstakingly remedied, whereas demolition "would result in encapsulating the asbestos" and hauling it off "without any environmental impact"). (See attached Jones feasibility analysis.)

In any event, the concept of "wasteful, inefficient, or unnecessary consumption use of energy, or wasteful use of energy resources," as it appears in Guidelines section 15126.2, subdivision (b), focuses on issues other than whether building demolition will be necessary to make way for a project. Under that section, the relevant issues are "transportation-related energy, during construction and operation," as well as "building code compliance" and, possibly, "the project's size, location, orientation, equipment use and any renewable energy features that could be incorporated into the project."

VI. LAND USE

A. Comments 075 to 092 : DEIR, pp. 3.5-9 to 3.5-13, 3.5-15, 3.5-20 – 3.5-22 – "Additionally, as shown in Table 3.5-1, the proposed Project, in City Staff's opinion, is consistent with all of the applicable General Plan policies that aim to avoid or mitigate an environmental effect." (DEIR, p. 3.5-1) *** This statrement [sic] is not justified as discssed [sic] elsewhere; it is only consistent with some policies. *** (See also Comments 027, 074, 097, 132 [DEIR, pp. 3.1-11, 3.5-8, 3.5-30, 3.7-43].)

Response: The commenter disagrees with the conclusion that the proposed Project is consistent with the applicable General Plan policies (see Table 3.5-1 of the DEIR) and argues, instead, that the Project conflicts with several General Plan policies.

Notably, EIRs are not required to include assessments of a proposed project's consistency with *all* applicable General Plan policies. Rather, the relevant requirement is that an EIR should "discuss any inconsistencies between the proposed project and *applicable* general plans, specific plans and regional plans." (Guidelines, § 15125, subd. (d), italics added.) Thus, the City's DEIR was not required to present a "comprehensive" list of general plan policies and perform a consistency analysis on each one, as the commenter suggests in Comment 073 (DEIR, p. 3.5-8). The EIR went beyond the call of duty by addressing those policies that City staff believes are applicable and, further, those with which it believes the Project could possibly be inconsistent.

Individual policies and arguments are addressed below, and organized in table format for the reader's ease. At the beginning of each response, in a bracketed note, we demarcate whether the commenter highlights the text of the policy itself ("[Policy]") or text from the DEIR's consistency analysis with the Project ("[Consistency Analysis]").

Comment	Page No.	Policy	DEIR Text	Comment	Response
076	3.5-9	LU-4.1	"and thus would not detract from the economic vitality of established commercial businesses."	*How? This isn't explained or supported, only asserted to be true.*	[Consistency Analysis] Policy LU-4.1, in relevant part here, requires the City to "[r]egulate the establishment of formula businesses...to ensure that their locations, scale, and appearance do not detract from the economic vitality of established commercial businesses...." The DEIR determined that the Project would not "detract from the economic vitality of established commercial businesses" because "[l]and uses in the immediate vicinity of the project site include lodging, restaurant, café, retail and auto repair." Also because "[b]oth the proposed project (retail) and adjacent existing businesses are permitted land uses by right adhering to the intent of the CH zoning district." This City fully explains its determination here, which is supported by the fact of the existence of several comparable formula businesses immediately surrounding the Project Site (Chevron, Mountain Mike's Pizza, Arco, Super 8 by Wyndham, etc.), at least one of which is sizably larger than the proposed Project (Super 8). The City also explains that the Project is allowed by-right within the existing zone and will include architectural and façade details that are "representative of Fort Bragg's architectural heritage." Earlier in the DEIR, in the discussion of Impact 3.5-2, the City concluded that the project will not

Comment	Page No.	Policy	DEIR Text	Comment	Response
					cause “urban decay” within the City. (DEIR, pp. 3.5-30 – 3.5-31.) For more detail on the character of the area and how the Project fits in, and also on agency deference for interpreting its general plan, refer to Section III.A. These Project design components are not just “asserted to be true,” as the commenter suggests; they will become conditions of approval that bind the Applicant’s compliance and the City’s enforcement. And, regardless, CEQA presumes that a project will be implemented as proposed and not as someone opposing the Project suggests it might. (See, e.g., *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1119 (*Berkeley Hillside Preservation*).)
077	3.5-10	LU-4.1	“to ensure the appearance does not detract from the economic vitality of established commercial businesses.”	*But how? No analysis is provided.*	[Policy] See above response to Comment 076. None of the established surrounding business provide the same service as the proposed Project. They provide gas, lodging, dining, auto repairs, etc. They do not provide groceries and therefore will not lose business as a result of the Project. More likely, surrounding business will see a boost in sales, as people come to purchase groceries and use other nearby services for convenience, such as purchasing gasoline. As noted above, the DEIR, in the discussion of Impact 3.5-2, concluded that the project will not cause “urban decay” within the

Comment	Page No.	Policy	DEIR Text	Comment	Response
					City. (DEIR, pp. 3.5-30 – 3.5-31.) Moreover, this new Grocery outlet would not significantly reduce patronage of other grocery stores in Fort Bragg (although notably none exist in the immediate vicinity of the Project site). The Project would actually draw a large bulk of its local customer base from existing Grocery Outlet shoppers who currently drive to the Grocery Outlet in Willits but would now be able to shop at the Fort Bragg location instead, once operable, as documented by one of the Project's transportation consultants. (DEIR, Appendix G [pp. 8–9] ["[m]any speakers [at a Planning Commission meeting] described driving to the existing Grocery Outlet Store in Willets [sic] and stated that they would patronize the new store in Fort Bragg"].) Refer also to Section VIII.C, *infra*, for more information on this redistribution Grocery Outlet shoppers.
078	3.5-10	LU-4.4	"The building will be composed of elements and details representative of Fort Bragg's architectural heritage"	*How? This assertion is not explained or supported*	[Consistency Analysis] LU-4.4 mandates that "[c]ommercial uses in and adjacent to residential areas shall not adversely affect the primarily residential character of the area." The City determined that the Project is consistent with this policy for several reasons. First, the City explains that the Project site is surrounded primarily by commercial uses in three directions ("to the west, north, and south) and adjacent to residential only in direction but separated by a

Comment	Page No.	Policy	DEIR Text	Comment	Response
					roadway ("east of the site across S. Franklin Street are five single-family residences [and] one multi-family residential building"). Next, it is explained that the proposed grocery store would be limited in height, at a "maximum of 28 feet tall" at its top canopy and that its facades would include specialized treatments and rooflines that would add "visual interest" and "align with buildings on adjacent properties to avoid clashes in building height." These design elements all contribute to the Project harmonizing with the limited surrounding residential development. Then, and as highlighted by the commenter, the City explains that the building's design elements, specifically that the "building will be composed of elements and details representative of Fort Bragg's architectural heritage" including "window and door treatments [that will] give homage to the smaller shops along the main downtown street's detailing as well as the Hardie Board (wood composite) wood paneling, masonry, and providing a variety of the materials on the elevations to add visual interest," would ensure the Project would "blend with the existing surrounding development," including the adjacent residences. (DEIR, p. 3.5-10.) The commenter contends that this assertion is not explained or supported, and requests more detail, but it is sufficiently explained and supported. As

Comment	Page No.	Policy	DEIR Text	Comment	Response
					stated above, CEQA presumes that a project will be implemented as proposed. (*Berkeley Hillside Preservation*, *supra*, 60 Cal.4th at p. 1119.) Therefore, it is presumed that the Project will be constructed to the architectural and design specifications described in the EIR, which were developed with the specific purpose of mirroring the area's existing character. It is also assumed that these architectural and design specifications will be included as an enforceable condition of approval for the Project. Also as stated above (in Section III.A), the fact that Mr. Patterson may see things differently does not undermine the City staff's interpretation of the City's own planning documents. As explained further Section III.A, the City is afforded great deference in how it interprets its General Plan policies. Refer to response to Comment 076 and Section III.A for more details on these issues and how the Project will fit in with the character of the area, inclusive of the handful of adjacent residences that exist across S. Franklin Street.
079	3.5-11	LU-10.4	"when it has been demonstrated that the development will be served with adequate water" … "will be served with	*This assertion is not adequately supported in 3.7.*	[Policy/Consistency Analysis] Refer to Section IX.A, *infra*, on the sufficiency of water supply for the Project.

Comment	Page No.	Policy	DEIR Text	Comment	Response
			adequate water and wastewater treatment. All impacts related to utilities and services systems, including water and wastewater treatment, would be less than significant."		
080	3.5-12	PF-1.3	"Consistent. Water Supply"	*Not justified, sea level rise impacts are excluded.*	[Consistency Analysis] Refer to Section IX.A, *infra*, on the sufficiency of water supply for the Project and Section V.B, *supra*, on why sea-level rise is not a factor the Project.
081	3.5-13	PF-1.3	"the City was also able to obtain additional water storage capacity to meet the needs of a buildout development scenario in the City of Fort Bragg."	*Not accurate The City's water supply even with the reservoir is projected to be inadequate for existing development due to projected sea level rise.*	[Consistency Analysis] Refer to Section IX.A, *infra*, on the sufficiency of water supply for the Project and Section V.B, *supra*, on why sea-level rise is not a factor the Project.
082	3.5-13	PF-1.3	"Water supply analyses indicate the City has sufficient water supply to serve the projected buildout	*Not accurate or justified as discussed elsewhere.*	[Consistency Analysis] Refer to Section IX.A, *infra*, on the sufficiency of water supply for the Project.

Comment	Page No.	Policy	DEIR Text	Comment	Response
			of the City of Fort Bragg as currently zoned within the existing City Limits through 2040."		
083	3.5-15	OS-5.2	"preserve existing healthy trees" … "Consistent" … "These trees would likely be removed and replaced with landscaping selected for the local climate"	*Not justified. Removal of the existing trees directly conflicts!* (See also Comments 026, 049, 053 [DEIR, pp. 3.1-11, 3.3-3 – 3.3-32])	[Policy/Consistency Analysis] OS-5.2 requires "[t]o the maximum extent feasible and balanced with permitted use…that site planning, construction, and maintenance of development preserve existing healthy trees and native vegetation on the site." Refer to Section IV.A, *supra*, on the four ornamental trees to potentially be removed as part of the Project and Section IV.E, *supra*, on the preclusion of planting of nonnative invasive species as landscaping. This policy, importantly, includes the nonmandatory, flexible language (i.e., "maximum extent feasible"). A proposed project is only inconsistent with the governing general plan if it "conflicts with a general plan policy that is fundamental, *mandatory*, and clear." (*Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Supervisors* (1998) 62 Cal.App.4th 1332, 1341–1342 (*FUTURE*); see also *Endangered Habitats League*, *supra*, 131 Cal.App.4th at p. 782 ["[a] project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear"].)

Comment	Page No.	Policy	DEIR Text	Comment	Response
					Consistent with these legal principles, general plan policies that include vague, nonmandatory, or flexible language (i.e., "to the maximum extent feasible") should not be interpreted as though they set stringent quantitative standards that absolutely must be satisfied. These types of broadly-worded general plan "goals" should generally be understood to be aspirational, and should not be mistaken for policies that are "fundamental, *mandatory*, and clear." The language used in OS-5.2 is nonmandatory and flexible—aspirational even—and therefore the Project cannot be found to conflict with this policy. (*FUTURE*, *supra*, 62 Cal.App.4th at pp. 1341–1342.) Here, despite not being necessary, City staff has reasonably concluded that the Project does not conflict with Policy OS-5.2. If the City Council agrees, it will be afforded great deference on its interpretation. (See Section III.A.)
084	3.5-20	OS-15.2	"but does not qualify as one of the types of open space addressed by this policy"	*False, misstates policy.* (See also Comments 051, 053 [DEIR, p. 3.3-32])	[Consistency Analysis] OS-15. 2 requires that, "[d]uring the development review process, [the City and/or Applicant] protect and restore open space areas such as wildlife habitats, view corridors, coastal areas, and watercourses as open and natural." The City accurately determined that, although the "southern portion of the site is vacant with a dirt

Comment	Page No.	Policy	DEIR Text	Comment	Response
					driveway," it "does not qualify as one of the types of open space addressed by this policy." (DEIR, p. 3.5-20.) The commenter takes umbrage with this determination and asserts that it "misstates policy," but the commenter's view need not carry the day. The City's interpretation is reasonable. Nor does the commenter offer any evidence to support this assertion. An interpretation of a General Plan policy that prevented the development of parcels specifically identified for development would frustrate the policy of allowing development. General Plan provisions seemingly in tension with one another (e.g., pro-development and anti-development provisions) should be reconciled and harmonized to the extent reasonably possible. (*No Oil*, *supra*, 196 Cal.App.3d at p. 244–245.) The Project site is not designated or zoned for "Open Space," which, under the Land Use Element of the Coastal General Plan (p. 2-7), is the designation given to "areas of land which are largely unimproved and used for the preservation of natural resources and habitats, passive outdoor recreation, scenic resources, or for the protection of public health and safety (e.g., preservation of floodplains)." Rather, the Project site is planned and zoned for commercial development. (DEIR, p. 2.0-2 ["[t]he Project site has a City of Fort Bragg General Plan land use designation of Highway Visitor Commercial (CH) and a City

Comment	Page No.	Policy	DEIR Text	Comment	Response
					zoning designation of Highway Visitor Commercial (CH)"].) Moreover, the Project site does not contain "wildlife habitats, view corridors, coastal areas, [or] watercourses," as demonstrated in the analysis presented in the DEIR, Chapter 3.1 (Aesthetics and Visual Resources) and Chapter 3.3 (Biological Resources). Refer also to Section III.A, *supra*, on the lack of scenic views from the Project site and Sections IV.B–D, *supra*, on the lack of active bird and bat habitat and the lack of wetlands onsite.
085	3.5-20	C-1.3	"However, the Project would contribute their fair share to the cost of regional circulation improvements by paying adopted fees and making frontage improvements. In addition, the Project would contribute its fair share to the cost of cumulatively needed improvements to the SR 1 (Main Street) / South Street intersection."	*How? There is no enforceable requirement for these improvements or alleged special conditions. The DEIR should be revised to include these necessary improvements to justify a conclusion of consistency with this.*	[Consistency Analysis] C-1.3 requires "new development in the exceedance of roadway and intersection Levels of Service standards" to fund its "prorate 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." "Prorate share" and "fair share" are synonymous terms, and because Level of Service "would be exceeded" under cumulative conditions, it applies here. This policy is mandatory—the Applicant must comply with it and the City will enforce it. This fair-share contribution also will be included as a "Condition of Approval" that will bind both the Applicant and City to this requirement. (DEIR, p. 3.7-22 ["[t]he Grocery Outlet Store project proponents should contribute their fair share to

Comment	Page No.	Policy	DEIR Text	Comment	Response
					the cost of regional circulation improvements by paying adopted fees and making frontage improvements. In addition, the project should contribute its fair share to the cost of cumulatively needed improvements to the SR 1 (Main Street) / South Street intersection"].) Thus, this requirement is enforceable and the Project will be implemented with it intact. (See *Berkeley Hillside Preservation*, *supra*, 60 Cal.4th at p. 1119 [CEQA presumes that a project will be implemented as proposed].)
086	3.5-20	C-1.4	"specific time frames"	*This policy is about specific time frames but this purported consistency analysis omits that aspect*	[Policy] See below response.
087	3.5-21	C-1.4	"Assuming a $500,000 traffic signal, the project's contribution could be $84,500."	*But where is the specific time frame?*	[Consistency Analysis] C-1.4 requires "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." The commenter inquires about the time frame here. Policy C-1.4 is not triggered where a specific development is only paying a fair share fee to be used towards the completion of new public facilities required not only because of the specific development but also because of other past, present, and future development. Here, because the Project is only creating a portion of the need for certain new facilities, the policy does not

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					require a specific time frame for completing those facilities. The dates on which capital improvements funded by a fair share fee program are determined by the pace of development, as such development must occur before sufficient funding for the improvements has been provided to the City. The pace of development is affected by market factors and other external factors over which the City has no control (such as the need for Caltrans approval of improvements on facilities over which it has control). This issue was addressed in the Agenda Item Summary Report prepared in advance of the Planning Commission meeting of May 26, 2021, at which time the City was considering the Project in connection with a Mitigated Negative Declaration. On page 21, that report stated as follows: "The impacts of the Grocery Outlet Store project have been considered within the context of future traffic conditions in this area of Fort Bragg. Long term traffic conditions have been forecast and evaluated based on growth assumptions made in other recent traffic studies and based on understanding of other approved projects in this area. In a project plus future buildout scenario the project's cumulative impact could be

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					significant at the Highway 1 (Main Street)/South Street intersection based on General Plan policy, since the project will cause the intersection to operate at LOS E, which exceeds the LOS D minimum, and peak hour traffic signal warrants will be met at some time in the future. To address future conditions at this location it will be necessary to install traffic controls that stop the flow of traffic on Highway 1 in order to allow side street traffic to enter, such improvements may include a traffic signal or a roundabout. Any improvements within the state right of way require Caltrans approval. At this time, Caltrans has indicated that it will not permit any traffic controls at this location, and therefore agrees with the recommendation of the Traffic Study that frontage improvements and contribution to a fair-share funding mechanism be required for future improvement. According to the analysis, project trips represent 16.1% of the future new traffic at the Highway 1 / South Street intersection. Assuming a $500,000 traffic signal, the project's contribution could be $84,500. In accordance with Policies C- 1.2 to C-2.1 described above, the results of the traffic

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					study, and Caltrans comments; to ensure the project is adequately served by transportation facilities, cumulative impacts associated with nearby and future development is incorporated, and the developer is funding their pro-rata share of the cost associated with future transportation needs the Staff recommends the addition of Special Condition 16. Special Condition 16: A "Fair-Share" agreement shall be entered into by the applicant to fund future traffic improvements as necessary. The agreement shall be in the form approved by the Director of Public Works and the amount shall be based on a traffic study performed by a qualified professional at the cost to the applicant. The "Fair-Share" agreement shall be executed and funds deposited with the City prior to certificate of occupancy."
088	3.5-21	C-1.5	"establish a schedule from the date of collection of said fee for the expenditure of funds to construct roadway improvements that meets project needs. Where a	*This purported consistency analysis fails to address the schedule or completion time.*	[Policy] C-1.5 requires that, "[w]hen traffic impact fees are collected, establish a schedule from the date of collection of said fee for the expenditure of funds to construct roadway improvements that meets project needs. Where a project would cause a roadway or intersection to operate below the adopted traffic Level of Service standards, the roadway or intersection improvements should be completed in a timely manner but no later than five years after project

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			project would cause a roadway or intersection to operate below the adopted traffic Level of Service standards, the roadway or intersection improvements should be completed in a timely manner but no later than five years after project completion."		completion." The policy specifically states that the schedule for construction of roadway improvements will be established "when traffic impact fees are collected." The DEIR, in addressing the Project's consistency with this policy, is not required to contain a detailed schedule, as it is not known at present the time on which traffic impact fees will be collected. (See also the response to Comment 087 above.)
089	3.5-22	C-14.1	"The Project would contribute their fair share to the cost of regional circulation improvements by paying adopted fees and making frontage improvements. In addition, the Project would contribute its fair share to the cost of cumulatively needed	*How?*	[Consistency Analysis] See response to Comment 087 on the Project's fair-share contributions for roadway improvements.

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			improvements to the SR 1 (Main Street) / South Street intersection."		
090	3.5-22	CD-1.1	"to" … "the ocean"	*The issue for this project is that the new building will completely block the existing view TO the ocean through the project site from the S. Franklin Street right of way. That critical word "to" is conveniently omitted from this purported consistency analysis. The DEIR requires revision to discuss the views to the ocean and the significance of that change must be evaluated. Such analysis is currently omitted from the DEIR and this project is thus inconsistent with this applicable policy presenting a significant impact that is not acknowledged*	[Policy] Refer to the discussion in Section III.A, *supra*, on this specific policy and how and why the Project does not conflict with it.

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				or mitigated. This issue also relates the the [sic] project alternatives, which should be selected and evaluated based, in part, on reducing this particular impact compared to the proposed project.	
091	3.5-22	CD-1.1	"Consistent" … "along the ocean" … "the proposed structure will block an existing view of the ocean from the far northern portion of the project sit" … "interrupted by two large trees"	*The trees do not actually block any of the existing ocean views through the site and hypothetical future view-blocking development is too speculative and not part of the baseline conditions so it should be excluded from this analysis. The DEIR requires corresponding revision.*	[Consistency Analysis] Refer to the discussion in Section III.A, *supra*, on this specific policy and how and why the Project does not conflict with it.
092	3.5-22	CD-1.4	"to the maximum feasible extent." … "Consistent"	*Same issues as CD-1.1. Conclusion is not justified*	[Policy] CD-1.4 requires new development to "be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent." Refer to response to Comment 083 on the use of

Comment	Page No.	Policy	DEIR Text	Comment	Response
					this nonmandatory and vague language ("maximum extent feasible") in general plan policies. Refer also to the discussion in Section III.A, *supra*, on how and why the Project does not significantly impact any scenic views.

B. Comment 071 : DEIR, pp. 3.5-8 – "Impact 3.5-1: The proposed Project would not conflict with an applicable land use plan, policy, or regulation adopted to avoid or mitigate an environmental effect. (Less than Significant)" *** Note: the City Council can defer to or confirm staff's suggested interpreation [sic] in general but it can only do so when the interpretation is reasonable and such an interpretation is not incompatible with applicable rules of statutory interpretation or relevant court opinions concerning. Some of the staff interpretations of CGP policies in this DEIR appear to violate applicable rules (e.g., by ignoring words as if they are menaingless [sic] which violates the rule against "surplusage". ***

Response: Refer to Section III.A, *supra*, for an explanation on the high level of deference the City (both staff and Council) is afforded when interpreting its own General Plan policies. Refer also to the table in Section VI.B, *supra*, for an explanation of how the plain language of applicable policies warrant the consistency determination given by the City *and/or* why the City's interpretation of its General Plan policies is absolutely reasonable and thereby warrants deference.

VII. NOISE

A. Comment 104 : DEIR, p. 3.6-14. "The construction noise modeling includes an 8-foot-tall temporary sound barrier around the construction area."
*** Why? This analysis is improperly consolidated from the necessary two steps into one by including the mitigation measure in the initial impact analysis rather than the appropriate second and distinct stepof [sic] evaluating the effectiveness of the proposed mitigation measure at reducing the otherwise significant impact. ***
(See also Comment 106 [DEIR, p. 3.6-16])

Response: Sound walls are part of standard noise abatement during construction in areas with surrounding land uses that may contain sensitive receptors, as occurs here. (See DEIR, pp. 3.6-5 – 3.6-6 [sensitive receptors neared to the Project site].) Therefore, it was reasonable for the City to assume, for the purposes of noise modeling, that a temporary sound wall will be used during construction.

Mitigation Measure 3.6-1 requires this sound wall:

> An 8-foot-tall temporary construction sound wall shall be constructed along the east and south sides of the project site, as shown on Figures 3.6-6 and 3.6-7. The sound barrier fencing should consist of ½" plywood or minimum STC 27 sound curtains placed to shield nearby sensitive receptors. The plywood barrier should be free from gaps, openings, or penetrations to ensure maximum performance.

(DEIR, p. 3.6-16.)

The Applicant consents to this measure and intends to implement it without any attempt to argue before the City Council that the measure should be rejected as infeasible. (See Pub. Resources Code, § 21081, subd. (c).) The DEIR may therefore assume that the sound wall will be used, and need not conduct a "before" and "after" analysis. The only reason to perform two separate analyses would be to account for the possibility that the City Council may not impose the measure. Given the Applicant's willingness to use the temporary sound wall, such an outcome is highly unlikely.

The City's approach is not precluded by *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-658 (*Lotus*), which encourages agencies to differentiate between mitigating project features and externally imposed mitigation measures and to analyze the effectiveness of the former. In *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 185, the same appellate panel that had decided *Lotus* interpreted its earlier decision to hold that "any mischaracterization of a mitigation measure for a Project component" is error under CEQA "only if it precludes or obfuscates required disclosure of the project's environmental impacts and analysis of potential mitigation measures." Here, no such obfuscation or confusion exists. It is clear from the DEIR (and from this letter) that the noise mitigation for the Project *will* include a temporary sound wall. Thus, the City did not err in describing noise levels that assume that the sound wall will be used. Readers have not been misled or confused in any way. The Final EIR can clarify that the Applicant is agreeable to Mitigation Measure 3.6-1. This commitment essentially makes the use of the sound wall a part of the proposed Project.

VIII. TRANSPORTATION/TRAFFIC

Comment 002: DEIR, p. ES-2 – "…[circulation and access] improvements…" *** "Improvements" should be changed to "alterations" ***

Response: "Improvements" is the industry standard term to use when describing project modifications intended to enhance a transportation element. (See, e.g., DEIR, Appendix F [Traffic Impact Analysis by KD Anderson & Associates, Inc.], p. 1 [traffic specialist using the term].) It is used accurately here. Merriam-Webster-Webster defines "improvement," as relevant here, as "something that enhances value." (Meriam Webster,

Dictionary, https://www.merriam-webster.com/ [accessed Nov. 4, 2022].) The Project will enhance the value of the site by improving access to it, by: (1) replacing a dirt driveway on the southern parcel with a "a new, 30-foot-wide entrance on N. Harbor Drive"; and (2) installing a new "35-foot entrance on S. Franklin Street" to replace the existing narrower entrances that currently contain cracked asphalt. (DEIR, p. 2.0-4.) These access improvements are also "alterations," as indicated by the commenter, but will nevertheless improve access to the site.[9]

A. Comment 112: DEIR, p. 3.7-5 – "... These movements were excluded from the LOS calculations. ..."
*** The LOS analysis should not exclude this relevant data and must be amended to include left turn delays *** (See also Comments 117, 121 [DEIR, pp. 3.7-14, 3.7-21])

Response: The commenter's demands regarding level of service (LOS) are irrelevant to the legal adequacy of the DEIR because, as explained below, since late 2018, changes in LOS can no longer be considered a significant impact under CEQA.

In 2013, the Legislature passed legislation with the intention of ultimately doing away with LOS in most instances as a basis for environmental analysis under CEQA. Enacted as part of Senate Bill 743 (Stats. 2013, ch. 386), Public Resources Code section 21099, subdivision (b)(1), directed the Governor's Office of Planning and Research to prepare, develop, and transmit to the Secretary of the Natural Resources Agency for certification and adoption proposed CEQA Guidelines addressing "criteria for determining the significance of transportation impacts of projects within transit priority areas…." Subdivision (b)(2) of section 21099 states that, upon certification of those guidelines, "automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion *shall not be considered a significant impact on*

[9] The commenter takes issue with the use of the term "improvements" for installing improved site access, but subsequently uses it when discussing other transportation-related Project components, such as the installation of a new stop sign (Comment 111 [DEIR, p. 3.7-5]) and redirecting traffic to a specific intersection (Comment 119 [DEIR, p. 3.7-17]). It would appear, thus, that the commenter is aware that this commonplace term is applied to transportation-related enhancements. The commenter also does not take umbrage with the many other instances in the DEIR where this term is used to describe transportation-related Project components. (See, e.g., DEIR, pp. 3.7-42 ["frontage improvements"], 3.7-46 ["proposed design improvements shown on the site plan"].)

the environment pursuant to [CEQA], except in locations specifically identified in the [CEQA] guidelines, if any." (Pub. Resources Code, § 21009, subd. (b)(2), emphasis added; see also DEIR, pp. 3.7-1 – 3.7-2, 3.7-25.)

In late 2018, the Natural Resources Agency promulgated CEQA Guidelines section 15064.3, pursuant to Senate Bill 743. Subdivision (c) states in relevant part that "[t]he provisions of this section shall apply prospectively as described in [CEQA Guidelines] section 15007." Section 15007, subdivision (b), states that "[a]mendments to the guidelines apply prospectively only. New requirements in amendments will apply to steps in the CEQA process not yet undertaken by the date when agencies must comply with the amendments."

In *Citizens for Positive Growth & Preservation v. City of Sacramento* (2019) 43 Cal.App.5th 609, 625–626, the Court of Appeal refused to address the merits of a pending CEQA appeal involving the sufficiency of an EIR's LOS-based analysis of transportation-related impacts. The court found that the legal challenge was moot in that, if the court were to find problems with the analysis and remand the matter back to the respondent city, the city would be under no obligation to undertake additional LOS-based analysis. Accordingly, issues and comments related to LOS need not be addressed in an EIR and cannot be litigated. In its analysis of transportation and traffic impacts, the City included discussions of LOS-related issues on a voluntary basis and not in order to satisfy any CEQA requirement.

B. <u>Comment 134</u>: DEIR, p. 3.7-5 – "Table 3.7-18 shows the adjusted VMT results accounting for a trip redistribution from the Willits Grocery Outlet to the Fort Bragg Grocery Outlet of 1% and 9%."
*** Table 3.7-18 is referenced but omitted. These conclusions lack any evidentiary support as a result. The only analysis suggests a significant impact.*** (See also Comments 135 and 136 [DEIR, p. 3.7-45])

<u>Response</u>: The commenter is correct—Table 3.7-18 was inadvertently omitted from this section. This table, prepared by traffic consultant Fehr & Peers, however, appears in Appendix H of the DEIR (p. 6), as follows:

Table 2: Project Effect on VMT Accounting for Trip Redistribution from Willits Grocery Outlet to Fort Bragg Grocery Outlet

Analysis Horizon Year	Scenario	Scenario VMT (1% redistribution)	Scenario VMT (9% redistribution)
Model Base Year 2009	No Project	659,672	659,672
	Plus Project	657,565	648,045
	Year 2009 Delta	-2,107	-11,627
Model Future Year 2030	No Project	763,620	763,620
	Plus Project	763,420	753,900
	Year 2030 Delta	-200	-9,720
Interpolated Baseline Year 2022 Delta		-927	-10,447

Source: Fehr & Peers, June 2022.

Based on this data showing a net *reduction* in vehicle miles traveled (VMT), Fehr & Peers concludes: "Thus, per the significance criteria, the modeled VMT results, and the adjustments based on market information presented previously, the Project results in a less-than-significant impact." (DEIR, Appendix H [p.6].)

This quantitative analysis is confirmed by traffic consultant KD Anderson's qualitative analysis:

> Based on the location of competing stores, the most likely effect on regional travel associated with the development of the project is to slightly reduce the length of trips from areas south of the river off of SR 20 or SR 1 that are today made northbound, and to offer another option for shopping trips made by residents of areas to the north. As the proposed project is relatively close to other stores, the regional effect on VMT is likely to be small, but generally will be reduced by offering a closer option for northbound traffic.
>
> (DEIR, Appendix F [p. 35].)

Also on this subject, KD Anderson states:

> The regional effect on VMT is likely to be small, but generally will be reduced by offering a closer option for northbound traffic. This conclusion is consistent with the OPR presumption that the VMT effects of locally serving retail uses of 50,000 sf or less may be considered to be less than significant.
>
> Testimony offered at the Planning Commission supported the conclusion that the Fort Bragg Grocery Outlet Store would reduce regional VMT. Many speakers described driving to the existing Grocery Outlet Store in Willets and stated that they would patronize the new store in Fort Bragg. This redistribution of current traffic to a closer Grocery Outlet Store is consistent with OPR guidance.
>
> Similarly, the Grocery Outlet Store representative also provided supporting testimony. Based on their experience, the entry of Grocery Outlet Store into any community...redistribute[s] the current shopping pattern, but based on Bureau of Labor Statistics analytics, community grocery consumption remains the

> same regardless of the number of grocers servicing the area. That dynamic supports the notion that the entry of Grocery Outlet actually lowers VMT and traffic congestion as consumers travel choices tend to favor convenience. Thus. the entry of any new grocer will tend to reduce travel as consumers located near the new location will gravitate to that new location making shorter trips. While traffic studies may conservatively describe trips to the Grocery Outlet Store as "new", there is an offsetting reduction in trips to the pre-existing grocery providers.
>
> (DEIR, Appendix G [pp. 8–9].)

Thus, the DEIR's conclusion that "the re-routing of less of 1% of these trips would result in a net decrease in VMT for both baseline (2022) and future year (2030) conditions" is supported by the analysis of two different traffic experts, constituting ample substantial evidence. (See Pub. Resources Code, § 21082.2; Guidelines, § 15384.) The City should add Table 3.7-18 to the FEIR; however, its inclusion will not be new information because it already existed in the DEIR. The above-referenced appendices were: (1) included as part of the publicly circulated DEIR; (2) expressly identified in the Table of Contents (p. TOC-5); (3) specifically cited at the beginning of Section 3.7 (p. 3.7-1); and (4) readily and easily accessible to readers. (See *Ocean Street Extension Neighborhood Assn. v. City of Santa Cruz* (2021) 73 Cal.App.5th 985, 1006–1008 (*Ocean Street*) [in upholding EIR, court relies in part on appendix, which the court considered to be part of the EIR: "[t]he FEIR explains that there are possible significant effects that were determined not to be significant with mitigation measures in place and directs readers to the appendix for more detail"].)

Moreover, "CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good-faith effort at full disclosure." (Guidelines, § 15003, subd. (f).) Omissions of the kind at issue here are common in any human undertaking (such as preparation of an EIR), and the problem can be easily cured in the Final EIR.

IX. UTILITIES AND SERVICE SYSTEMS

A. Comment 149: DEIR, p. 3.8-16 – "Impact 3.8-4: The proposed Project will require or result in the construction of new water treatment or collection facilities, but the construction of them will not cause significant environmental effects. (Less than Significant)."
*** There is no evident [sic] supporting analysis for this assertion. *** (See also

Comments 150–153 [DEIR, pp. 3.8-16 – 3.8-17])

<u>Response</u>: The commenter is incorrect that the DEIR has "no evident [sic] supporting analysis" for its conclusion that the construction of new water treatment and collection facilities will not cause significant environmental impacts. (DEIR, p. 3.8-16.) The Project will include the construction of "a new 6-inch fire connection…to the east of the existing connection" and "three (3) fire hydrants with valve lines are proposed for fire suppression on the Project site." (*Ibid.*; *id.*, p. 2.0-5.) These are the only water-supply related facilities that will be constructed as part of the Project. Although the construction of these facilities will obviously involve some level of environmental impact, the extent will not be significant. The construction of these improvements will be subject to all applicable mitigation measures approved and adopted along with the Project to ensure less-than-significant impacts to potentially affected resources, such as air quality and noise receptors, during construction.

Furthermore, the City has sufficient water supply to meet the Project's needs. (See Comments 152 and 153 [DEIR, p. 3.8-17].) Currently, the City has enough water supply, storage, and treatment capacity to accommodate a 20 percent increase in water demand above existing conditions. (DEIR, pp. 3.8-11, 3.8-16 – 3.8-17.) Per available data, the City has an approximate 17.93 million-gallon storage capacity, an "operational treated water storage…of 3.3 million gallons," and "water appropriations of 741 million gallons." (*Id.*, p. 3.8-16.)

The Project "is estimated to demand 1,288 gallons per day" of water according to the City's data that commercial space utilizes approximately "78 gallons [of water]/1,000 square-feet (SF) of commercial space." (*Id.*, p. 3.8-17.) The Project's estimated water demand increases to 2,699 gallons per day when using the "the 1986 Water System Study and Master Plan… showing a rate of 1,656 gallons per day/gross acre of commercial." (*Ibid.*) Both of these numbers, however, represent a very conservative estimate because, based on current and reliable data from comparable Grocery Outlet stores in Northern California, the Project will use between 300 to 450 gallons of water per day. (*Ibid.*) Obviously, even an absolute maximum use of 2,699 gallons per day represents merely a tiny fraction of the City's existing operational supply of 3.3 million gallons and its current overall appropriation of 741 million gallons. (See *Ocean Street*,

supra, 73 Cal.App.5th at pp. 1019–1021 [court upholds conclusion that the water supply impacts of multifamily housing project were less than significant; project would consume "less than one hundredth of one percent of the total estimated future water demand within the City's service area"].)

The water supply/demand data presented in the EIR constitute "facts" and "reasonable assumptions predicated upon [these] facts" supporting the conclusion that the Project's water supply impacts will be less than significant. (Pub. Resources Code, § 21082.2; Guidelines, § 15384.) Moreover, the Project's water demand (or the demands of another allowable by-right commercial land use that would consume as much or more water) are accounted for in current planning documents (e.g., the Coastal General Plan), upon which the City would have predicated its water growth analysis and projections. Thus, the Project's "contribution [to water demand] is "already accounted for in the [City's] estimates." (*Ocean Street*, *supra*, 73 Cal.App.5th at p. 1020.) "Accordingly, the EIR provides adequate information to allow for informed decisionmaking, and there is substantial evidence in the record...to support the City's conclusions." (*Id.*, at p. 1021.)

The commenter may wish for more or different water supply analysis in the DEIR, but "[u]nder CEQA, an agency is not required to conduct all possible tests or exhaust all research methodologies to evaluate impacts. Simply because an additional test *may* be helpful does not mean an agency must complete the test to comply with of CEQA. … An agency may exercise its discretion and decline to undertake additional tests." (*Save Panoche*, *supra*, 217 Cal.App.4th at p. 524, italics added, citing *Association of Irritated Residents*, *supra*, 107 Cal.App.4th at p. 1396.)

Moreover, the commenter's assertion that the DEIR's conclusion on water supply and storage "is not justified when projected sea level rise is factored into the City's working water model" is inaccurate and misplaced. (Comment 150 [DEIR, p. 3.8-16].) As explained in Section V.B, *supra*, the Project would not be impacted by, nor would it impact, sea-level rise because of its positioning relevant to the ocean. And, as explained in Section V.A, *supra*, the proposed Project does not include updating the "City's working water model." Therefore, any comments on that theoretical future project, which would occur separate and apart from the instant proposed Project, do not apply here.

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B. Comment 154: DEIR, p. 3.8-25 – "The following mitigation measure requires the Project applicant to install storm drainage infrastructure that meets standards and specifications of the City of Fort Bragg. Prior to the issuance of a building or grading permit, the Project applicant would be required to submit a drainage plan to the City of Fort Bragg for review and approval. The plan would be an engineered storm drainage plan that calculates the runoff volume and describes the volume reduction measures, if needed, and treatment controls used to reach attainment consistent with the Fort Bragg Storm Drain Master Plan and City of Fort Bragg Design Specifications and Standards. Overall, drainage impacts would be reduced to less than significant."
*** This is not accurate. First of all, it references mitigation measures that don't exist, including not actually explicitly requiring rhe [sic] installation of storm drain infrastructure that meets the City's standards and specifications as a formal mitigation measure. The DEIR should be revised to either actually include that as a mitigation measure or to remove the apparently erroneous reference to a non-existant [sic] mitigation measure. Moreover, the project's drainage impacts cannot be determined to be less-than-significant without actually evaluating the effectiveness of the proposed storm drain infrastructure at reducing the strom [sic] water impacts to less than whatever the threshold of significance is once it is actually adopted as part of this environmental review process. Currently, no such threshold of significance exists or is referenced in this DEIR. How would the drainage impacts be reduced to lessthan [sic]- significant? That needs to be explicit.***

Response: The commenter is correct that the DEIR here incorrectly references a mitigation measure—likely an inadvertent editorial error—that neither exists nor is required. (DEIR, p. 3.8-25.) The threshold of significance for impacts to stormwater drainage facilities requires that a Project both: (1) "result in the construction of new storm water drainage facilities or expansion of existing facilities;" and that (2) "the construction of which … cause significant environmental effects." (*Id.*, p. 3.8-24.)

Here, the Project will result in the construction of new stormwater drainage components and facilities. The Project includes onsite "post-construction BMPs [best management practices], which include bioretention facilities sized to capture and treat runoff from the proposed impervious surfaces produced by the 24-hour 85th percentile rain event and landscaped areas throughout the Project site to encourage natural stormwater infiltration." (DEIR, p. 3.8-24; see also *id.*, p. 2.0-5.) The Project also includes "the construction of [offsite] pedestrian facilities, including curbs, gutters, and sidewalks along the north, south, and east side of the Project site." (*Id.* at p. 3.8-24.) These offsite facilities, included as part of the Project (*id.*, p. 2.0-5), would "convey flows

from the post-construction BMPs at the Project site to the existing Caltrans stormwater drainage system located west of the Project site on State Highway 1." (*Id.*, p. 3.8-24.)

The construction of these facilities, however, will not cause "significant environmental effects." Construction of all onsite and offsite stormwater drainage components required for the Project would be subject to all applicable mitigation measures approved and adopted along with the Project to ensure their construction would have less-than-significant impacts to potentially affected resources during construction, such as air quality and noise receptors.

Furthermore, the Project "is subject to water quality regulations and general permits put in place by state and federal agencies." (DEIR, p. 2.0-7.) As well, "[c]onstruction activities for the proposed Project will be subject to the requirements of General Construction Activity Stormwater Permit...issued by the State Water Resources Control Board," which requires "a Stormwater Pollution Prevention Plan (SWPPP) identifying specific best management practices (BMPs) to be [developed and approved by the North Coastal Regional Water Quality Control Board and then] implemented to minimize the amount of sediment and other pollutants associated with construction sites from being discharged in stormwater runoff." (*Ibid.*) The purpose of these requirements is to ensure that construction will have a less-than-significant impact on water quality.

Also notable is the fact that the "[i]nstallation of the proposed Project's storm drainage system will be subject to current City of Fort Bragg Design Specifications and Standards. The proposed storm drainage collection and detention system will be subject to the [State Water Resource Control Board] and City of Fort Bragg regulations, including: Fort Bragg Storm Drain Master Plan, 2004; Phase II, NPDES Permit Requirements; NPDES-MS4 Permit Requirements; and LID Guidelines." (DEIR, p. 3.8-24.) Again, as stated just above, the purpose of these specifications, standards, and requirements is to ensure that construction will have a less-than-significant impact on water quality.

The Project's adherence to all of these mandated specifications, standards, and requirements ensures that the construction of any stormwater drainages facilities included as part of the Project would have a less-than-significant impact.

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The City should correct this editorial error in the FEIR and remove this reference to a nonexistent mitigation measure on page 3.8-25 of the DEIR and consider, at its discretion, inserting additional information in the discussion of Impact 3.8-6 regarding the above-mentioned SWPPP and its role in ensuring that construction of offsite stormwater drainage facilities would have a less-than-significant impact to water quality.

C. Comment 155: DEIR, p. 3.8-27 – "Policy OS-8.1. Comply with State requirements to reduce the volume of solid waste through recycling and reduction of solid waste."
*** But the project involves avoidable generation of solid waste because of the demolition. That doesn't reduce solid waste, it increases it.*** (See also Comment 156 [DEIR, p. 3.8-29])

Response: Demotion is a one-time event that will produce a finite amount of solid waste within a month's period of time. (See DEIR, p. 3.2-17 [estimated construction schedule].) Furthermore, this waste will be reduced by at least half pursuant to the "California Green Building Standards Code (California Code of Regulations Title 24, Part 11)," which require that "50 percent construction/demolition waste must be diverted from landfills." (*Id.*, p. 3.4-16.) In addition, the City has its own waste diversion requirements for demolition material, which require "[s]eventy-five percent of waste tonnage of concrete and asphalt" to be recycled, reused, or otherwise diverted from being landfilled. (Fort Bragg Municipal Code, § 15.34.020.) Prior to issuance of a demolition or building permit, the City requires applicants to submit a "waste management checklist" showing "how the applicant will satisfy the diversion requirement…." (*Id.*, § 15.34.060.)

The Potrero Hills Landfill is permitted to accept 4,300 tons of solid waste per day, or up to 1,569,5000 tons per year. (*Id.*, p. 3.8-28.) The landfill will surely have enough space to accept this one-time finite amount of solid waste, which will have been significantly reduced by state and local requirements, that will be generated by Project demolition, and the commenter has presented no evidence to the contrary.

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X. CUMULATIVE IMPACTS

A. Comment 157 : DEIR, p. 4.0-4 – "For these reasons, cumulative impacts on aesthetics are less than significant, and the proposed Project's impact is less than cumulatively considerable. No mitigation is required."
*** None of this analysis includes the projection method listed on the previous page as being applied to this DEIR. How is this conclusion justified without any projections based on the relevant analysis in the Coastal General Plan or other adopted planning documents? *** (See also Comments 158, 160-162, 165, 167, 171, 175-177, 179 [DEIR, pp. 4.0-5, 4.0-7 – 4.0-9, 4.0-14, 4.0-17, 4.0-22 – 4.0-25])

Response: As explained in the DEIR: "There are two approaches to identifying cumulative projects and the associated impacts. The list approach [and] [t]he projection approach." (DEIR, p. 4.0-3.) The projection approach is employed here. This approach "uses a summary of projections in adopted General Plans or related planning documents to identify potential cumulative impacts." (*Ibid.*) This projection approach is often encompassed in project-level analysis where an assessment of project impacts requires a detailed evaluation of how a project comports with adopted planning documents, which inherently account for local and regional development as a whole (i.e., cumulative development). For example, for impacts to aesthetics and visual resources, the DEIR looks to the applicable adopted planning documents to determine what is allowable in the area for *all* development and land uses and how the Project fits within that cumulative context in terms of visual resources. (See DEIR, Chapter 3.1.) Put another way, these planning documents contain development and land use projections for, and limitations to, the cumulative area of development for the Project. By determining how the Project fits within these cumulative planning parameters, the DEIR de facto analyzes a cumulative effect.

To demonstrate, the DEIR looks at the applicable policy of the Coastal General Plan to determine the Project's impacts on visual resources. (See DEIR, pp. 3.1-6 – 3.1-9.) The Coastal General Plan is the primary planning document that dictates development for the entire Project area, not just the Project site. Thus, when the DEIR determines that the Project is consistent with the applicable policy (such as a City-wide guideline or standard or code) related to visual resources, and therefore has no significant impact on visual resources, the City also is determining that the Project has no significant

impact on the totality of the entire area's visual resources, cumulatively, because these policies and standards and codes account for, and dictate development for, the totality of the area. To wit, as concluded in Chapter 3.1:

> The proposed Project would be subject to the policies and goals of the Fort Bragg General Plan, Citywide Design Guidelines, as well as the City's Standards for *all Development and Land Uses* outlined in Chapter 17.30 of the Municipal Code. The Citywide Design Guidelines complement the standards contained in the City of Fort Bragg Inland Land Use and Development Code, and the Coastal Land Use and Development Code by providing good examples of appropriate design solutions, and by providing design interpretations of the various regulations. Chapter 17.30, Standards for *all Development and Land Uses*, of the City's Coastal Land Use and Development Code expands upon the zoning district development standards of Article 2 by addressing additional details of site planning, project design, and the operation of land uses. *The intent of these standards is to ensure that proposed development is compatible with existing and future development on neighboring properties*, and produces an environment of stable and desirable character, consistent with the General Plan, Local Coastal Program, and any applicable specific plan.
>
> (DEIR, p. 3.1-9, italics added.)

This reasoning could apply to any analysis that looks to adopted area, regional, or state planning documents for its impact determinations. (See, e.g., the cumulative assessments of the following: biological resources, wherein "[t]he General Plan(s) incudes policies that are designed to minimize impacts to the extent feasible" [DEIR, p. 4.0-8]; hydrology and water quality, wherein the Project, like all others in the area, "would be required to obtain a Coastal Development Permit (CDP), which requires conformance with all relevant regulations of the City of Fort Bragg, including Chapter 17.64 Stormwater Runoff Pollutions Control and Chapter 12.14 Drainage Facility Improvements of the CLUDC" [*id.*, p. 4.0-13]; land use, wherein impact significance is determined in large part by "consistency with adopted plans and regulations" that apply uniformly to all area development [*id.*, p. 4.0-14]; mineral resources, wherein "[a]ccording to the City's General Plan Draft EIR, there are no mapped or known mineral resources in the Fort Bragg SOI" [*id.*, p. 4.0-15]; and population and housing, wherein "all lands within the General Plan jurisdiction have been planned to accommodate growth within the City have been evaluated in the General Plan FEIR"

[*id.*, p. 4.0-17].)

If the City concludes that DEIR could have been more explicit in connecting these dots in its analyses of certain cumulative impacts, the City could so choose, at its discretion, to include additional explanation and clarification in Section 4.1 of the FEIR. The City may also choose to clarify its cumulative analysis for other resource areas to better explain how its chosen methodology was utilized.

B. <u>Comment 164</u>: DEIR, p. 4.0-12 – "Therefore, implementation of the proposed Project would have a significant and unavoidable and cumulatively considerable contribution [Greenhouse Gases, Climate Change and Energy, Impact 4.7, Cumulative Impact on Climate Change from Increased Project-Related Greenhouse Gas Emissions (Less than Significant and Less than Cumulatively Considerable)]."
*** What? This states that there is a significant and cumulatively considerable impact but that is not explained nor are possible mitigation measures evaluated in the DEIR. *** (See also Comment 163 [DEIR, p. 4.0-11])

<u>Response</u>: The commenter is correct that the DEIR states that the Project would have a "cumulatively considerable contribution" on climate change from increased project-related greenhouse gas emissions. (DEIR, p. 4.0-12.) That conclusion is inaccurate, however, and likely an editorial oversight on the part of the consultant who prepared the DEIR. The Executive Summary characterizes cumulative GHG-related impacts to be less than cumulatively considerable. (*Id.* at p. ES-16.) And Section 4.3 confirms that the Project will not cause "[n]o significant and unavoidable impacts." (*Id.* at p. 4.0-26.)

The section of the DEIR (3.4) dealing with greenhouse gas emissions generated by the Project concludes that they do not result in a significant impact. (*Id.* at pp. 3.4-26 – 3.4-36.) In addition, the DEIR's cumulative impacts analysis explains how the Project does not result in a cumulatively considerable impact because it "would not conflict with any of the GHG reduction measures contained with the CARB's 2017 Scoping Plan Update and the MCOG's RPT." (DEIR, p. 4.0-11.) The DEIR reaches this latter conclusion by applying an appropriate threshold (evaluating the Project for consistency with "the GHG reduction measures containing in the CARB's 2017 Scoping Plan Update and the MCOG's 2017 RTP." (*Ibid.*) All of these conclusions are foreshadowed

in the Executive Summary chapter of the DEIR. (*Id.* at p. ES-11.)

The commenter asserts that this threshold is "not relevant" for a cumulative impact assessment, but he is mistaken. (Comment 163 [DEIR, p. 4.0-11].) A principal way to cumulatively assess a project's GHG emissions and contribution to climate change in an EIR is to look at applicable state reduction measures because climate change is not a local issue and state measures account for the cumulative effects of climate change. And, that is exactly what the DEIR did.

In *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 219, the California Supreme Court explained that the analysis of a single project's contribution to climate change inherently involves the question of whether the project's impacts are "cumulatively considerable." "[B]ecause of the global scale of climate change, any one project's contribution is unlikely to be significant by itself. The challenge for CEQA purposes is to determine whether the impact of the project's emissions of greenhouse gases is cumulatively considerable[.]" One viable method for addressing this question is by considering a project's consistency with "statewide goals" to reduce GHG emissions, as reflected in the Scoping Plan. (*Id.* at p. 220.)

In addition, Guidelines section 15064.4, subdivision (b), provides that "[a] lead agency should consider the following factors, among others, when determining the significance of impacts from greenhouse gas emissions on the environment: *** (3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions." Echoing this language, the sample Initial Study checklist found in Appendix G to the Guidelines asks whether a proposed project "[c]onflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases[.]" (Guidelines, appen. G, Evaluation of Environmental Impacts, § VIII (Greenhouse Gas Emissions).)

In short, the City's analytical approach to assessing the significance of GHG-related impacts is solid, and there is ample support for the conclusions that those impacts are less than significant and less than cumulatively considerable. The commenter has noted a clerical or editorial error, however, that the City should correct in the FEIR.

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C. Comment 172: DEIR, p. 4.0-20 – "Overall, implementation of the proposed Project would have a less than significant and less than cumulatively considerable impact relative to this topic [Transportation and Circulation, Impact 4.1-5, Under Cumulative conditions, the proposed Project would conflict with or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b) (Less than Significant and Less than Cumulatively Considerable)]."
*** How? The performance method was not done. ***

Response: Please see our response in Section X.A, *supra*, wherein we explain that the DEIR relies on the projection approach for the analysis of cumulative impacts, as allowed by CEQA.

***

We would also like to address an issue related to cumulative impacts raised by Councilmember Tess Albin-Smith in an October 28, 2022, letter to City of Fort Bragg Associate Planner Heather Gurewitz. In that letter, Councilmember Albin-Smith indicated that the City Council should consider requiring that, as a condition of Project approval, the Applicant install an entirely new access road from Cypress Street into the harbor.

We respectfully respond by noting that requiring such a road as a condition of Project approval would not be proportional mitigation to the impacts from the Project, and would therefore be unconstitutional.

The CEQA Guidelines describe the constitutional limitations on mitigation measures and the United States and California Supreme Court cases that explain them:

> (A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 438 U.S. 825 (1987) [(*Nollan*)]; and
>
> (B) The mitigation measure must be "roughly proportional" to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994) [(*Dolan*)]. Where the mitigation measure is an ad hoc exaction, it must be "roughly proportional" to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.

(Guidelines, § 15126.4, subd. (a)(4).)

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In *Nollan*, the United States Supreme Court explained that, in order for a condition of project approval to be valid, a "nexus" must exist between the condition and a negative consequence or impact of the project that would justify denial of the project. (438 U.S. at pp. 834–837.) In *Dolan*, the high Court considered the next step in the analysis and addressed, once there is a nexus between a project's impacts and an exaction: just how extensive the burdens of the exaction may be. The Court explained that there must be a "rough proportionality" between the extent of the impacts caused by a project approval and the extent to which the exactions actually mitigate such impacts. "No precise mathematical calculation is required, but the [agency] must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." (512 U.S. at p. 391.)

In *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854 (*Ehrlich*), the California Supreme Court applied the rigorous *Nollan* and *Dolan* standards to an ad-hoc exaction (i.e., an exaction imposed on an individualized basis as part of the environmental review process for a particular project, and not as the result of any generally applicable ordinance). There, the court held that a city acted improperly in assessing a $280,000 "recreation fee" against a property owner as a condition of approving a residential project requiring a general plan amendment, specific plan amendment, and rezone. The court determined that the fee was unconstitutional because $280,000 was the amount needed to build new *public* recreational facilities in order to replace the *private* facilities that would be "lost" because of the project. The city's approach wrongly assumed that the fee should fund the construction of new facilities that would be open, without further cost, to the public at large. The "lost" facilities, though, were private facilities funded through the marketplace by membership dues. The court explained that the plaintiff was "being asked to pay for something that should be paid for either by the public as a whole, or by a private entrepreneur in business for profit." (*Id.*, p. 883.)

Here, similarly, requiring construction of a new access road into the harbor as proposed by Councilmember Albin-Smith would be an unconstitutional ad-hoc exaction. The impacts of the Project do not justify requiring the Applicant to bear the very large costs that would be involved. As described in the DEIR, the Project will contribute the following percentages to 2040 cumulative weekday PM peak hour traffic: 10.8% at SR

1/Cypress Street; 16.1% at SR 1/South Street; and 14.4% at SR 1/North Harbor Drive. (DEIR, p. 3.7-22 [Table 3.7-16].) These percentages are comparatively modest, and certainly cannot justify burdening this Project with the entire cost of constructing a new access road from Cypress Street into the harbor. Such a requirement would not meet the "roughly proportional" requirement under *Dolan* and *Erhlich*, and would therefore be unconstitutional.

Moreover, comparable development is already permitted by-right, under existing land use designation and zoning. The Applicant could pursue the by-right uses without any opportunity for the City to compel funding such a huge improvement as a new road. This possible scenario further highlights the unreasonableness of the exaction proposed by Councilmember Albin-Smith. Regardless, the Applicant has no complaints about paying its true fair share of the costs of needed improvements, as discussed earlier.

* * *

We hope that this letter will be helpful to the City staff and De Novo Planning as you work together to complete the Final EIR for the Project. As noted earlier, we fully recognize that CEQA and the Guidelines require the City to exercise its independent judgment in determining what portions, if any, of the materials and information included herein should be used in the preparation of the Final EIR. Our goal, like yours, is for the City to prepare a legally defensible document.

Very truly yours,

James G. Moose
Casey A. Shorrock

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Attachment: Feasibility study for reuse of an existing building Franklin Blvd Alternative (dated August 5, 2022)

Feasibility study for reuse of an existing building Franklin Blvd in Fort Bragg

Property address: 825 S. Franklin Blvd., Fort Bragg California

My name is Thomas Jones, former Vice President of Hilbers Inc. I have 34 years of construction experience and have built over twenty Grocery Outlets and many other grocery stores.

My findings for the above mentioned building are as follows:

I recently evaluated the above named property and have determined that the existing building is extremely energy inefficient and practically inaccessible for those with disabilities. These inadequacies are especially significant in comparison to what a new building at the site could provide.

The existing roof structure will not allow any additional mechanical loads or modifications. This includes efficient heating and cooling systems and proper ventilation. The roof is at its maximum loading therefore no additional heating and/or air conditioning could be added which is necessary for energy efficiency and current environmental needs. New equipment on a new supportive building would allow highly efficient heating and cooling systems and expend substantially less greenhouse gases.

The existing roof structure bottom of the roof truss is at 12 foot, which will not allow efficient product racking and display or proper product layout. The existing roof structure cannot be modified to accommodate a minimum height of 18 foot which is required by Grocery Outlet.

The existing structural columns are unreinforced. There are no attachments from foundation through roof structure. A major seismic upgrade would be needed due to the fact that the existing structure does not meet current codes nor would it allow the loads that are demanded by a Grocery Outlet structure. For example, existing walls would have to be removed and replaced with structural seismic shear panels from below the foundation through the roof structure. Also, the column layouts do not work for the store floor plan.

The back of house storage is only 10 foot which will not allow product storage which is needed for back stocking of products. This is due to the fact that this is a remote location and more items will need to be stored for a longer period of time.The existing building will not allow for the proper backstock that would be needed for this location since it is so remote from a distribution center. A new building would be able to accommodate this need.

The electrical services to this building are too small and phased incorrectly. The entire electrical system is outdated and is not compatible for the needs of a Grocery Outlet. A new building would use much less electricity and would be much more energy efficient.

The existing concrete floor is only 4 inches thick and unreinforced which will not allow a heavy loaded forklift to drive on the slab as needed for stocking the store. As mentioned previously, with the remote location, heavy forklift use will be needed more than any other normal location.

The layout of the existing building does not work as an L-shaped. A large amount of the storage is needed which this building does not allow.
There is no way to modify this existing building to accommodate a Grocery Outlet floor plan.

The way the existing building sits on the property will not allow proper parking or proper flow into the building that is required by code and the Americans with Disabilities Act. The way the existing building sits creates significant access issues for those with disabilities. A new building that is built with access issues in mind would be in compliance with the ADA and better serve the entire community.

There is no way to add a loading dock to the existing building which is a must for this remote location do the proximity of the building location. There is no way to modify. Grocery Outlet requires a loading dock for all locations.

The building has asbestos characteristics, including, but not limited to, asbestos in the roofing materials, insulation, drywall, acoustical ceiling, flooring materials and exterior finishes. This limits the ability to modify it. The environmental impact of trying to remedy the asbestos would be costly to the community. The demolition of the existing building and the construction of a new building, however, would result in encapsulating the asbestos and it could be hauled off without any environmental impact.

The current building does not meet current codes (for instance, enlarging window openings for natural light, relocation of ingress and egress from the building, and life safety exits, etc), nor could you make modifications to meet codes that are required for the Grocery Outlet standard building needs.

All existing utilities servicing the building are undersized, outdated, and incomplete therefore existing utilities make the building unfeasible.

In conclusion, in my opinion, this building has no reuse value for a Grocery Outlet due to the findings discussed herein. Not only would it create an environmental hazard to remodel it, but it would likely come at a price to the disabled population and create pollution that would not occur with the construction of a new building in its place. Therefore, my recommendation would be to remove the existing building and site work and construct a new building at the location. This would facilitate access for all in an environmentally friendly manner.