



# COUNTY OF HUMBOLDT

AGENDA ITEM NO.  
**L-2**

Hearing Date: September 6, 2016

To: Board of Supervisors

From: Robert S. Wall, Interim Director, Planning and Building Department *(SW)*

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

### RECOMMENDATIONS:

That the Board of Supervisors:

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

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

CAO Approval TLFR Cheryl Dill

REVIEW:  
Auditor \_\_\_\_\_ County Counsel BA Human Resources \_\_\_\_\_ Other \_\_\_\_\_

TYPE OF ITEM:  
 Consent  
 Departmental  
 Public Hearing  
 Other \_\_\_\_\_

PREVIOUS ACTION/REFERRAL:  
 Board Order No. \_\_\_\_\_  
 Meeting of: \_\_\_\_\_

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT**  
 Upon motion of Supervisor  
 Seconded by Supervisor  
 Ayes  
 Nays  
 Abstain  
 Absent

**SEE ACTION SUMMARY**

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

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

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

**DISCUSSION:**

***Project Description***

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

***Summary***

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

***Basis of Appeal***

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

***Planning Commission Decision***

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

***Staff Recommendation***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ATTACHMENTS:**

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

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

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

Attachment C: Planning Commission Staff Report

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

Attachment E: Resolution of the Board of Supervisors