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Humboldt County Board of Supervisors
825 5th St.
Eureka, CA 95501

Re: Appeal of the April 4th, 2024 Planning Commission Decision as to Application Number 18146 Condition of Approval 2.6(e) the Sidewalk Component Only

Dear Members of the Humboldt County Board of Supervisors,

The Humboldt County Planning Commission (PC) on April 4, 2024 approved the Sutter Minor Subdivision with acceptable conditions of approval with the single exception this appealed sidewalk requirement. The sidewalk requirement as approved makes this project infeasible. This appeal is addressing the sidewalk condition (2.6(e)) only.

During the PC hearing, the sidewalk condition was discussed with generic preference to sidewalks carrying the decision, site-specific conditions were given less weight in the decision process than the general preference for sidewalks, and the sidewalk condition as requested by Public Works was imposed on the project approval without significant site-specific deliberation related to the findings required to support the elimination of the sidewalk requirement as presented by Planner Yandell in his presentation. The PC's approval conditioned this valuable community infill development minor subdivision such that the project is infeasible at this time.

Authority to Require Sidewalk Not Established

There is no applicable code section, nor any community planning documentation referenced by Public Works in either the pre-approval provided materials nor the response to this appeal that mandates this sidewalk condition. The authority to impose this condition on this private property has not been established by any materials provided by Public Works. This condition of approval is at best discretionary and at worst amounts to a public taking without just compensation. There is no codified requirement that sidewalks be included with this minor subdivision.

The Land Use Division Interoffice Memorandum as provided by Public Work to Director Ford on or about 5/1/2024 cites Commercial Building Code (CBC 1.1.3 Scope) and (CBC 11B-250.1) as authority to require this condition. The Subdivision Map Act not the Commercial Building Code is the controlling regulation for this project.

The Circulation section of the General Plan §4230 (10) states, "In subdivisions creating new interior roads, bikeways, off-street pedestrian ways, or sidewalks separate from roadways shall be incorporated **when warranted** into the design of the subdivision." (emphasis added)

This site-specific discretionary language was included in the General Plan because some conditions do warrant and some conditions do not warrant the need for such a facility.

Though Public Works characterizes this condition of approval as a mandate, it is not. It is encouraged in the General Plan when warranted and consideration of site-specific conditions should be controlling.

This project represents desirable community infill development. Under California Government Code Title 7 §65913.2(a) city and/or county decision making bodies are not to use conditions of approval to make a project infeasible. The response to this appeal by Public Works has not only been inflexible in considering a very reasonable alternative suggestion brought to the table by Supervisor Madrone (the crushed granite proposal), but in fact requests the adding of additional conditions that further infringe on the private property rights involved and would cost more to implement than the existing approved conditions. The inflexibility in the demand and the response to the appeal to require more not less in the way of conditions indicates a potential desire to condition this project to death.

Lack of a Developed Discussion Considering the Exception Findings

Though county staff opened the door for a discussion about the required findings to except this approval from the condition of the sidewalk, (see 4/4/2024 PC hearing recording time stamp 1-hour 14-minutes) no discussion of those specific considerations followed. I say with great appreciation for Planning Commissioners dedication to our community, that a more substantial discussion of site-specific conditions and project related details should have been developed around this sidewalk issue, especially as relates to the required findings to meet the standards presented by staff in the project presentation. The sidewalk topic in general did garner a great deal of discussion, but no discussion of the required exception findings was developed to determine if such an exception was applicable.

The applicant's agent did point out during the PC hearing that under California Code §6411.1 no such sidewalk requirement exists on private roads.

There is no code requiring the development of sidewalks within private property in a minor subdivision, therefore the required findings to support an exemption are not required to eliminate the sidewalk condition from the PC approval. The findings required to make an exemption determination, as presented by county staff in the PC decision hearing, though not needed in this situation, do exist at the project location (see Humboldt County Code §325-9). Those findings as presented in the PC hearing include the following.

1. There are special circumstance or conditions affecting the property.
2. The exception is necessary for the preservation and enjoyment of a substantial property right.
3. Granting of the exception will not be detrimental to the public or injurious to other property in the area where the project is situated.

There are Special Circumstance or Conditions Affecting the Property

The topography in this area includes a relatively steep incline in the area conditioned for the sidewalk. If developed, this sidewalk would either require significant additional grading or a significant engineered retaining wall. If required, this sidewalk will result in significant additional environmental impacts when you consider how much additional grading/land disturbance will be required to develop this sidewalk into the naturally vegetated hillside. To comply with grading slope requirements, significant additional earthwork will be required, or a costly retaining wall would need to be designed and developed. The additional environmental impacts associated with the sidewalk was not adequately addressed in the decision-making process.

The property in question remains private. As referenced in the appeal submission materials Section 66411.1 does not apply in this specific circumstance as this area remains private property. There is no dedicated public easement nor is one required for this minor subdivision.

This requirement is not a cost-effective restriction on the proposed project. If the sidewalk condition is not removed or revised we will lose this desirable community infill development.

There is special circumstance (private property with no dedicated public easement) and conditions (geographic, economic, and biologic) affecting this property.

Exception is Necessary for the Preservation and Enjoyment of a Substantial Property Right

The proposed sidewalk amounts to an invitation to the public to enter private property. There is no public dedication and as a result this sidewalk will encourage a trespass on the current and future owners of the private property in question. Further, the sidewalk in question will impact the neighboring property to the northwest of the minor subdivision encouraging an infringement on the quiet enjoyment of their private property. To preserve the quiet enjoyment of the parcels included in this minor subdivision as well as to support the quiet enjoyment of the neighboring parcel, this exception would be required to protect those property rights.

The exception is necessary for the preservation and enjoyment of a substantial property right.

Granting of the Exception will not be Detrimental to the Public or Injurious to Other Property in the Area where the Project is Situated

The public has no right of entry to this private property therefore there is no public interest at stake in this particular circumstance, a private easement within a minor subdivision. If the exception were not granted, then the right to exclude the public from this private property would amount to an injury to this private property interest where the project is situated.

This exception is necessary to preserve the interests of other property in the area where the project is situated. There is no dedicated easement over APN: 509-240-021 to Blackbird lane, the neighboring property owner is not willing to open their property to through travel. Through travel is not needed as there is existing ample connectivity in the immediate area around the proposed minor subdivision. This infill development will serve the current housing demand, represents desirable infill community development, and will not benefit from a "sidewalk to

nowhere” which would ultimately amount to an injury to this projects and the neighboring private property right infringing on the quiet enjoyment of their private property.

The granting of this exception to the sidewalk condition would not be detrimental to the public nor any nearby property interest and in fact is necessary to protect the private property interests associated with this project and neighboring property interest holders.

The three required findings that would support granting an exception to the sidewalk requirement are met under these circumstances. The Planning Commission, in the decision hearing on 4/4/2024 did not give a full vetting or weight to these factors in it’s decision-making process around the sidewalk condition of approval.

The granting of an exception to the sidewalk condition would be appropriate with consideration of these site-specific conditions.

Appropriate Alternative Condition of Approval Addressing the Sidewalk Condition

Given Public Works has provided no code supported mandate justifying this sidewalk condition of approval and if such a justification could be established the findings needed to support an exception to that condition do apply in these circumstances, an alternative condition of approval to address this sidewalk issue could include requiring the Road Maintenance Association (RMA formation a condition of approval that is not being appealed) to consider a sidewalk in an RMA meeting within some reasonable timeframe (for example within 3 years of RMA formation). Nothing would preclude the RMA of addressing this issue sooner or at any time regardless of any condition of approval.

Alternatively, the Board could consider a reasonable alternative condition as proposed by Supervisor Madron to have a crushed granite walkway from Sutter Road to the first gavel drive. That compromise would help address the infringing on the neighbor’s property issue by terminating the walkway sooner and ameliorate the cost feasibility issue.

An alternative condition of approval would be superior to the existing condition and could help bridge the gap between the existing approval and project feasibility.

ADA Compliance Not Required

This site, including the location of the conditioned sidewalk is and remains private property. There is no public dedication included in this project as approved by the Planning Commission.

This site will not be held open to the public for any purpose and right to use the various access facilities will be by private easement.

Residential use associated with this private property is not required to comply with ADA standards.

As Sutter Road is a public dedication, ADA standards do apply to that area. The conditions of approval do include ADA improvements to this area and those sidewalk improvements are not being appealed and will be included in project development if this appeal prevails and this project remains feasible. Mr. Sutter is not opposed to sidewalks in any way. The issue here is feasibility due to an erroneous and unnecessary condition under the circumstance.

Requiring the development of a sidewalk that serves no beneficial purpose (“a sidewalk to nowhere”) and contradicts the foundational principles of sustainable and responsible urban planning (“a sidewalk to a private backyard”) is unreasonable under the circumstance. We seek your support in removing or alternatively revising this condition from the project approval.

Beyond the practical and safety concerns, this requirement severely impacts the project's economic viability. The added expense of constructing a sidewalk that leads to nowhere lacks a functional benefit to the community and is not justified under the specific circumstance of this location, especially when considering the broader economic context and the specific financial dynamics of this project. Such a condition undermines the feasibility of the development, threatening its continuation and, consequently, the potential benefits it could bring to Humboldt County.

I encourage you to view the Planning Commission decision hearing if you have not already done so. This particular project discussion begins at hour marker 1-hour and 6-minutes and ends at hour marker 1-hour and 50-minutes. The salient point I'd like you to consider in viewing this hearing is the degree of site-specific considerations specifically related to the required findings for the exception discussed during the hearing. The “general pro sidewalk stance” taken during the hearing carried the day and was the main reason for including this condition of approval. The site-specific considerations that should answer the “when conditions warrant” component of the General Plan were considered but not given adequate weight as compared to the “general” sense that sidewalks are appealing.

One could consider this decision in a simple cost benefit analysis. The cost of this sidewalk is high given the particulars of this location. The benefit is low if not negative given the terminus of the proposed sidewalk. With a high cost and low benefit sidewalk and a high benefit community infill development project hanging in the balance, we kindly request that the Humboldt County Board of Supervisors reconsider and remove the sidewalk requirement from the project's conditions of approval.

As a compromise that recognizes the importance of pedestrian pathways while addressing the concerns mentioned above, we propose developing Supervisor Madron's suggestion to replace the planned sidewalk with a crushed granite path from Sutter Road up to the first gravel driveway. We believe this adjustment respects the dual imperatives of pedestrian access and project viability, without resulting in an unutilized pathway that creates legal and safety concerns while at the same time making this project financially infeasible.

It is crucial to emphasize that our team is committed to responsible development that enhances the community and aligns with Humboldt County's vision for sustainable growth. However, the imposition of conditions that lack practical foresight and economic justification represents a barrier to achieving these mutual goals. Therefore, we respectfully urge the Board to consider our appeal and eliminate condition of approval 2.6(e) or in the alternative modify the condition to include the proposed crushed granite walkway alternative, allowing the applicant to move forward with a project that contributes positively to the community without the encumbrance of unnecessary and counterproductive requirements.

Thank you for your attention to this matter and your consideration of our appeal. We are more than willing to provide any additional information or engage in further discussions as needed to reach a resolution that serves the best interests of Humboldt County and its residents.

Sincerely,

Nate Madsen

Turner, Nicole

From: Planning Clerk
Sent: Friday, May 10, 2024 5:17 PM
To: COB
Cc: Turner, Nicole; Eberhardt, Brooke; Turner, Nicole; Yandell, Rodney
Subject: FW: Agenda #24-868 Sutter Appeal

Please find the public comment below regarding the Sutter Appeal, File ID 24-868, scheduled to be heard on 5/21/2024.

Thanks,



Laura McClenagan
Executive Secretary
Planning and Building Department
3015 H Street | Eureka, CA 95501
Phone: 707-268-3702
Email: lmcclenagan2@co.humboldt.ca.us

From: Madison Acres <madisonacres@gmail.com>
Sent: Friday, May 10, 2024 5:00 PM
To: Planning Clerk <planningclerk@co.humboldt.ca.us>
Subject: Re: Agenda #24-868

Caution: This email was sent from an EXTERNAL source. Please take care when clicking links or opening attachments.

Oh, and my address is 2371 Sutter Rd. McKinleyville, CA 95519 and my number (707) 845-7466 if you need to contact me. Thanks!

On Fri, May 10, 2024 at 4:58 PM Madison Acres <madisonacres@gmail.com> wrote:

Hi Laura!

Thanks for speaking with me yesterday regarding Agenda #24-868. I request that the county denies this appeal. I am already dealing with debris from this northerly extension of Azalea Avenue.

Let me know if you need anything else from me!

Sincerely,

Turner, Nicole

From: Lynn DeMello <4demello@gmail.com>
Sent: Wednesday, May 15, 2024 10:51 AM
To: COB
Subject: Robert Sutter Planning Appeal of Record Number OLN-2023-18146-Appeal Concerns

Caution: This email was sent from an EXTERNAL source. Please take care when clicking links or opening attachments.

To: Humboldt County Board of Supervisors

We just received a Public Notice regarding Robert Sutter's hearing on what Humboldt County Planning Dept. has plans to do with Record Number PLN-2023-18146.

We have some concerns on that plan and will be at the board meeting to learn more additional information.

Sincerely,
Lynn & Dennis DeMello
1671 Blackbird Avenue
McKinleyville, CA 95519
Ph.#707-839-8884

Mr. and Ms. Dennis DeMello
1671 Blackbird Avenue
McKinleyville, CA 95519
4demello@gmail.com
707-599-7180

Date: May 16, 2024

Humboldt County Board of Supervisors
825 5th St.
Eureka, CA 95501

Dear Esteemed Members of the Humboldt County Board of Supervisors,

Subject: Comment in Support of Appeal Application Number 18146 Regarding Sidewalk Requirement Condition Imposed by the Humboldt County Planning Commission

I am writing to you today as a concerned adjacent neighboring Property Owner (owner of APN: 509-240-021) in relation to the proposed development project at APN: 509-321-018, which was reviewed by the Humboldt County Planning Commission on April 4, 2024. During the Planning Commission hearing, despite the applicants agents opposition, a condition was imposed on the project, mandating the development of a sidewalk that, both practically and economically, serves no beneficial purpose and contradicts the foundational principles of sustainable and responsible urban planning. I am writing to support this formal appeal of this decision and to seek your support in removing this condition from the project's approval.

To encapsulate the primary concern, the mandated sidewalk has been described as "leading to nowhere," failing to connect with any existing sidewalks or streets beyond the project bounds to the north. However, in reality it is not a "sidewalk to nowhere". It is a sidewalk to our backyard. If developed this sidewalk would direct pedestrian traffic towards our property's backyard, which not only is illogical but also raises significant safety and legal concerns. We believe this requirement transforms the planned sidewalk into an 'attractive nuisance,' inadvertently encouraging trespassing and potentially endangering both pedestrians and the residents of our neighboring property.

We have previously had issues with through traffic trespass on our property. We have significantly resolved this issue by storing our RV and utility trailer in the area where this proposed sidewalk would lead traffic and terminate. We are very concerned that the required sidewalk would revive and exacerbate this issue of infringement on the quiet enjoyment of our private property.

In light of these considerations, we kindly request that the Humboldt County Board of Supervisors seriously reconsider and remove the sidewalk requirement from this project's conditions of approval.

We want to emphasize that we believe in responsible development that enhances the community and aligns with Humboldt County's vision for sustainable growth. However, the imposition of conditions that lack practical foresight and economic justification represents a barrier to achieving these mutual goals. Therefore, we respectfully urge the Board to approve this appeal allowing the Sutter minor subdivision to move forward with a

project that contributes positively to the community without the encumbrance of unnecessary and counterproductive requirements.

Thank you for your time and attention to this issue and for your consideration of our concerns about the impacts this sidewalk requirement will have on us, a concerned adjacent neighbor to this project site.

Sincerely,

Mr. and Ms. Dennis DeMello

Adjacent property neighbor

1671 Blackbird Avenue

McKinleyville, CA 95519

4demello@gmail.com

707-599-7180

Cc: Sutter response to Humboldt County Board of Supervisors 5-16-24

2404 Blackbird Ave.
McKinleyville, 95519
May 11, 2024

To: Humboldt County Board of Supervisors
RE: Planning Commission Record No. PLN-2023-18146-APPEAL/ Oppose Appeal/
Support Planning Staff Recommendation

Regarding: Robert Sutter Planning Appeal of Commission's Approval of a Parcel Map Subdivision and Special Permits McKinleyville area: record no. PLN-2023-18146-APPEAL (filed 4/12/24) We are opposing the appeal and supporting the Planning Commission determination regarding the installation of sidewalks, curbs and gutters for the full extension of Azaelea Road.

Our back fence at 2404 Blackbird Ave. abuts the area where the 4 new houses are to be built. As neighbors in this immediate area for the past 8 years and 9 months we have valued the high quality of the Sutter Ranch neighborhood. As such, we believe that it is in the best interest of keeping our neighborhood an upscale one, to have any newly developed area include sidewalks, curbs and gutters.

To illustrate the value of our area's properties, we will point out that a two-story house in Sutter Ranch just sold for \$844,500 and the one-story house next door to us whose fence also abuts the area where the new houses are to be built is currently listed at \$762,500. The rest of the Sutter Ranch area has sidewalks, curbs and gutters. So-while we do not object in any way to Mr. Sutter's plans to build new houses on his property, we think it should be in keeping with the standards of the rest of the Sutter Ranch neighborhood and include sidewalks, curbs and gutters as the Planning Commission originally determined.

Thank you for your kind consideration of this matter and the opportunity to provide this feedback.

Sincerely,

Eugene(Gene) W. Baker and (Marguerite) Ann Story-Baker