

ATTACHMENT D

**Planning Commission Supplemental Information Items #1 (January 8, 2015)
Supplemental Information Items #1 and #2 (July 7, 2016)**

SUPPLEMENTAL INFORMATION

No. 1

For Planning Commission Agenda of:
January 8, 2015

- | | | | |
|-------------------------------------|----------------------------|---|-------|
| <input type="checkbox"/> | Administrative Agenda Item | } | |
| <input checked="" type="checkbox"/> | Continued Hearing Item | } | No. 2 |
| <input type="checkbox"/> | New Hearing Item | } | |
| <input type="checkbox"/> | Old Business Item | } | |
| <input type="checkbox"/> | New Business Item | } | |

Re: Applicant: Dollar General
Case Nos.: CDP-14-033, SP-14-049
File No.: APN: 305-101-054

Attached for the Planning Commission's record and review are the following supplementary information items:

1. Revised Plot Plan. Based on public testimony at the Planning Commission hearing on December 4, 2014 the applicant revised the plot plan to remove the curb between the project site and the property to the south and install a short retaining wall or curb between the project site and the property to the north.

2. Quitclaim Deed, Instrument No. 2007-16498-4 of Humboldt County Official Records. This document relinquishes the easements referred to as Parcels Five and Six of Grant Deed to Dan Noga recorded March 2, 1998 as Instrument No. 1998-5032-3, Humboldt County Official Records. Public testimony at the December 4, 2014 public hearing indicated the easements remain valid and this document provides evidence the easements were quitclaimed to Humboldt Hill Property Partnership as of the recorded date May 30, 2007. Humboldt Hill Property Partnership sold the subject parcel to Cookman-Meyer Partnership, the current owners, on January 14, 2011.

3. Updated Title Report. This document provides further evidence the subject parcel is not encumbered by the easements suggested during public testimony on December 4, 2014.

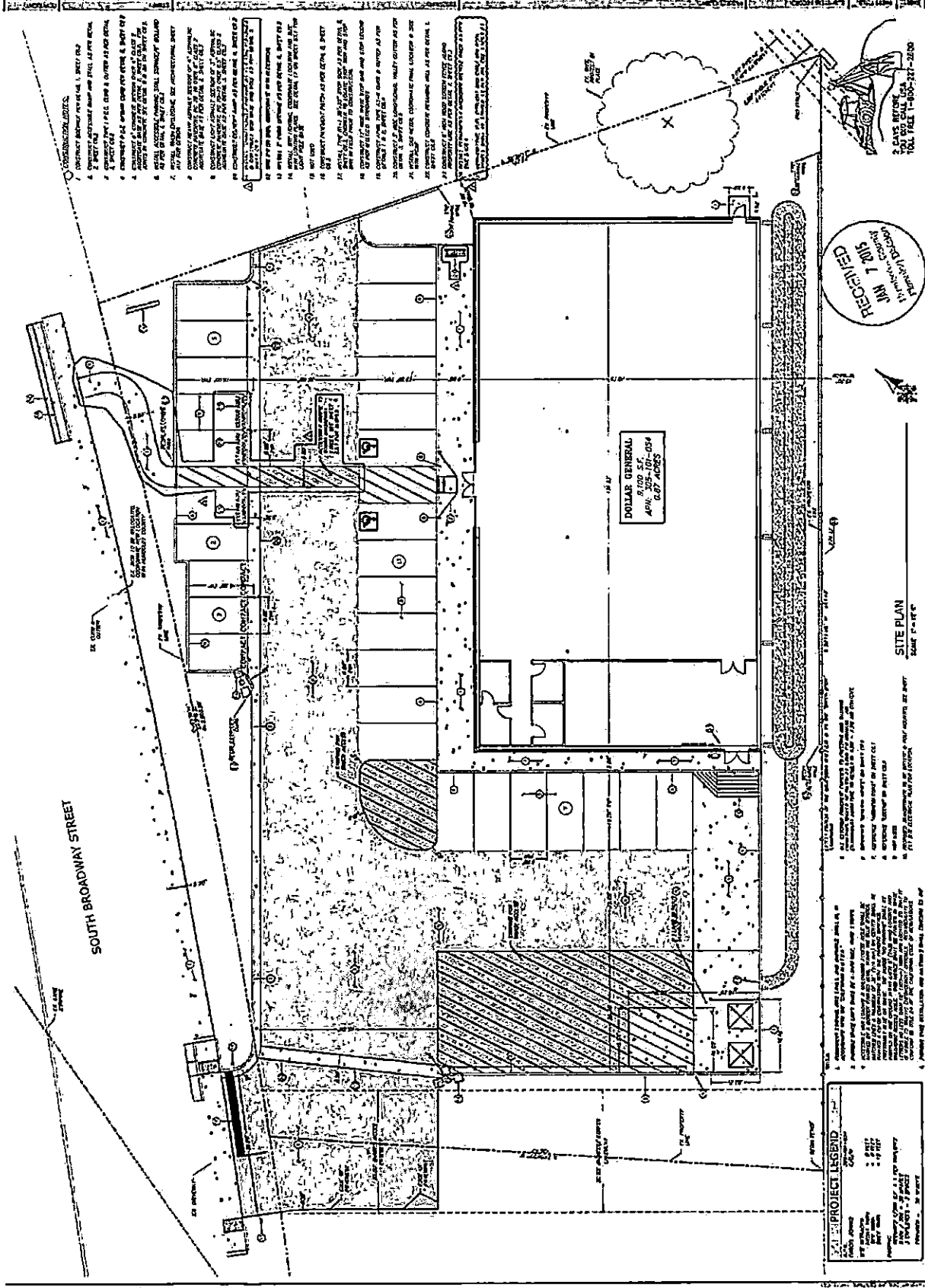
DATE: 08/28/14
 PROJECT: 14-033AA
 SHEET: C2.1



TECTONICS
 DESIGN GROUP
 4328 MARSH RIDGE ROAD, CARROLLTON, TEXAS
 75006-3822 | TEL: 972-464-9400
 FAX: 972-464-9401

Dollar General
CROSS DEVELOPMENT, LLC
 5707 South Broadway Street, Lufkin, California
 95604

C2.1
 SITE PLAN
 2 DAYS RETIRE
 1001 WALL 1-800-321-2500



RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL TO:

DAN NOGA
2610 Hillcrest Drive
Eureka CA 95503

2007-16498-4
Recorded — Official Records
Humboldt County, California
Carolyn Crnich, Recorder

Recorded by Dan Noga

Rec Fee 16.00

Clerk: MM Total: 16.00

May 30, 2007 at 10:39

Space Above This Line

A.P.N.: 305-101-001

File No.: 1201-1217634 (SH)

The Undersigned Grantor(s) Declare(s):

CITY TRANSFER TAX \$

DOCUMENTARY TRANSFER TAX \$

SURVEY MONUMENT FEE \$

[] computed on the consideration or full value of property conveyed, OR

[] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,

[] unincorporated area; [] City of, and

SURVEY MONUMENT FEE \$

QUITCLAIM DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Dan L. Noga and Kelly A. Noga, husband and wife

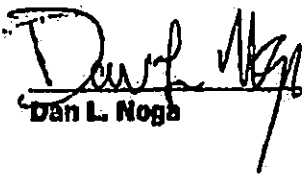
hereby remise, release and forever quitclaim to Humboldt Hill Property Partnership

the following described property in the unincorporated area of the County of Humboldt, State of California:

Grantors hereby relinquish the easements referred to as Parcels Five and Six of Grant Deed to Dan L. Noga and Kelly A. Noga, husband and wife, as joint tenants, recorded March 2, 1998 as Instrument No. 1998-5032-3, Humboldt County Official Records.

Dated: May 4, 2007

See legal attached



Dan L. Noga



Kelly A. Noga



Mail Tax Statements To: SAME AS ABOVE or Address Shown Below



A.P.N.: 305-101-001

File No.: 1201-1217634 (SH)

STATE OF California)SS
COUNTY OF Humboldt)

On May 23 2007, before me, Aaron Roslosnik,
Notary Public, personally appeared Dan L. Noga and Kelly A. Noga, personally known to me (or proved to me
on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within
Instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies)
and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Aaron Roslosnik



My Commission Expires: May 13 2011

This area for official notarial seal

Notary Name: Aaron Roslosnik

Notary Phone: (707) 946-3820

Notary Registration Number: 1744871

County of Principal Place of Business: Humboldt



DESCRIPTION

That real property sitsuate in the County of Humboldt, State of California, described as follows:

Those portions of the Southeast quarter of Section 8, Township 4 North, Range 1 West of Humboldt Meridian, described as follows:

PARCEL ONE:

COMMENCING on the East line of the California State Highway right of way described at Parcel One in Deed from Sophia C. Newett, et al, to the State of California, recorded in Book 228, Page 196 of Deeds, at a point located South 30 degrees 21 1/2 minutes West 1181.6 feet from the quarter section corner on the East line of said Section 8;

thence South 63 degrees 58 minutes East 93 feet;

to the West line of the County Road leading to Humboldt Hill, as it existed prior to 1954;

thence along said road South 8 degrees 2 minutes West 100 feet to an iron pipe set by A.B. Bones in connection with Survey made November 23, 1948;

thence North 65 degrees 47 minutes West 135.1 feet;

to the East line of said State Highway;

thence Northerly along the East line of said highway 100 feet, more or less, to the point of beginning.

PARCEL TWO:

COMMENCING at a point located North 15 degrees 50 minutes West 51.4 feet from the most Southerly corner of the land conveyed to Avery E. Graham and wife, recorded in Book 284, Page 158 of Deeds, hereinbefore referred to;

thence North 75 degrees 50 minutes East 4 feet;

thence North 15 degrees 50 minutes West 8 feet;

thence South 75 degrees 50 minutes West 8 feet;

thence South 15 degrees 50 minutes East 8 feet;

thence North 75 degrees 50 minutes East 4 feet to the point of beginning.

PARCEL THREE:

A right of way for ingress and egress from the County Road to the State Highway referred to in Parcel One, to be jointly used by Avery E. Graham and Ethel Miller Graham and by Walter W. Eich, their heirs, successors and assigns, over the following described parcel:

COMMENCING at the Southeast corner of said Parcel One on the West line of said County Road;

thence along said West line South 8 degrees 02 minutes West 25 feet;

thence North 65 degrees 47 minutes West 145 feet, more or less, to the East line of said State Highway;

thence Northeasterly along the East line of said State Highway 25 feet, more or less, to the Southwest corner of the land hereinbefore described in Parcel One;

thence South 65 degrees 47 minutes East 135.1 feet to the point of beginning.

continued ...

~~1998-5032-3~~

2007-16498-4

3

DESCRIPTION CONTINUED

Page 2

PARCEL FOUR:

An easement 3 feet in width for pipe line, for the conveyance of water, the center line of which is described as follows:

COMMENCING at a point on the Southwesterly line of said Parcel Three distant North 65 degrees 47 minutes West 7 feet from the Southeasterly corner thereof;

thence Southerly along a line that is distant West 7 feet (measured at right angles) and parallel to the East line of the land described in Deed to Avery E. Graham and wife hereinbefore referred to, to a point that bears North 75 degrees 50 minutes East from the center point of the well site hereinbefore described as Parcel Two;

thence South 75 degrees 50 minutes West to the Northeastery line of said Parcel Two.

PARCEL FIVE:

An easement for the installation of a sewer drainage line of pipe, together with the right to repair, replace and maintain the same in such manner as shall not disturb or interrupt the right of ingress and egress over Parcel Three hereinbefore referred to, over, under and across the following described land:

BEGINNING at the Southwest corner of Parcel One hereinbefore described and running Southerly along the Easterly line of the present State Highway 101, 200 feet;

thence Southeasterly at right angles to said State Highway line a distance of 18 feet;

thence Northeastery and parallel with the East line of said State Highway 140 feet;

thence Northeastery in a direct line to a point on the South line of said Parcel One that bears South 65 degrees 47 minutes West 70 feet from the point of beginning;

thence North 65 degrees 47 minutes West 70 feet to the point of beginning.

PARCEL SIX:

That portion of the Southeast Quarter of Section 8, Township 4 North, Range 1 West, Section 8, Township 4 North, Range 1 West, Humboldt Base and Meridian, described as follows:

EASEMENT for sewer purposes over a strip of land 5 feet wide, the center line of which is described as follows:

BEGINNING at a point on the Westerly line of the County Road which is South 8 degrees 2 minutes West 137 feet from the Southeast corner of land heretofore conveyed to Walter Eich by Deed recorded January 28, 1949, under Recorder's Serial No. 648, in the Office of the County Recorder of said County;

thence South 70 degrees West 165 feet.

~~1998-3032-3~~

2007-16498-4

(4) (A)



Fidelity National Title Company OF CALIFORNIA



PRELIMINARY REPORT

In response to the application for a policy of title insurance referenced herein, Fidelity National Title Company of California hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The policy(s) of title insurance to be issued hereunder will be policy(s) of Fidelity National Title Insurance Company, a California corporation.

Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.

Cointersigned

FIDELITY NATIONAL TITLE COMPANY OF CALIFORNIA
BY
ATTEST
SEAL
President
Secretary

Visit Us on our Website: www.fnctic.com



Fidelity National Title Company OF CALIFORNIA

ISSUING OFFICE: 515 J Street, Suite A • Eureka, CA 95501
707 442-5785 • FAX 707 445-2656

PRELIMINARY REPORT

Amended

Title Officer: Pat Grace

Title No.: 14-503868-A-PG

Locate No.: CAFNT0912-0912-0051-0000503868

TO: Placer Title Company
301 University Avenue, Suite 120
Sacramento, CA 95825

ATTN: Jenny M. Vega
YOUR REFERENCE: 404-10993

PROPERTY ADDRESS: 5707 S. Broadway, Eureka, California

EFFECTIVE DATE: December 19, 2014, 07:30 A.M.

The form of policy or policies of title Insurance contemplated by this report is:

CLTA Standard Coverage Policy - 1990
CLTA Standard Coverage Policy - 1990

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

A Fee as to Parcel(s) One
Easement(s) more fully described below as to Parcel(s) Two

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

Cookman-Meyer Partnership, a California general partnership

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

PG\PG 03/17/2014

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED UNINCORPORATED, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE

Parcel 2 as shown on Parcel Map No. 3439 filed in the office of the County Recorder of said Humboldt County in Book 33 of Parcel Maps, pages 73 and 74.

PARCEL TWO

A non-exclusive easement for ingress and egress over and across that portion of Parcel 1 of said Parcel Map No. 3439 lying within Parcel "A" as shown thereon.

APN: 305-101-054-000

AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:

1. Property taxes, including any personal property taxes and any assessments collected with taxes are as follows:

Code Area: 077-024
Tax Identification No.: 305-101-054-000
Fiscal Year: 2014-2015
1st Installment: \$672.91, paid
2nd Installment: \$672.91, paid
Exemption: \$0.00
Land: \$125,888.00
Improvements: \$0.00
Personal Property: \$0.00

2. **The lien of supplemental taxes**, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation code of the State of California.

3. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document;

Granted to: Walter E. Eich
Purpose: Right of way, pipeline and sewer drainage line
Recorded: in Book 80, Page 315, of Official Records
Affects: a portion of said land

4. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: County of Humboldt
Purpose: Public road
Recorded: September 30, 1954, Instrument No. 12684, Book 308, Page 23, of Official Records
Affects: Easterly portion within Humboldt Hill Road.

5. Waiver of any claims for damages to said property by reason of the location, construction, landscaping or maintenance of the highway adjoining said property, as contained in the deed to the County of Humboldt, recorded September 20, 1954, Instrument No. 12684, of Official Records

6. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: County of Humboldt
Purpose: Public highway
Recorded: July 29, 1975, Instrument No. 12356, Book 1299, Page 225, of Official Records
Affects: a portion of said land

ITEMS: (continued)

Title No. 14-503868-A-PG
Locate No. CAFNT0912-0912-0051-0000503868

- 7.** Any facts, rights, interests, or claims which may exist or arise by reason of the following surveys on file in the Office of the County Recorder of said County, which purports to show the herein described and other property. Said surveys by book and page are as follows:

Book 29 of Surveys, page 139-153;
Book 61 of Surveys, page 16

- 8.** Easement(s) for the purpose(s) shown below and rights incidental thereto as delineated or as offered for dedication, on the map of said tract/plat;

Purpose: ingress and egress
Affects: the Southwesterly portion, shown and designated as Parcel "A"
Recording No.: Book 33, Pages 73 & 74 of Maps

- 9.** A Notice

Entitled: Notice of Development Plan
For: as stated therein
Executed by: Humboldt Hill Property Partnership
Recording Date: September 25, 2007
Recording No.: 2007-28638-4 of Official Records

Reference is hereby made to said document for full particulars.

- 10.** Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document;

Reserved by: Humboldt Hill Property Partnership
Purpose: Ingress and egress
Recording Date: January 14, 2011
Recording No.: 2011-1161-2 of Official Records
Affects: the Southwesterly portion, shown and designated as Parcel "A"

- 11.** Matters contained in that certain document

Entitled: Easement and Maintenance Agreement
Dated: January 14, 2011
Executed by: Keith R. Forbes, et al
Recording Date: January 14, 2011
Recording No.: 2011-1164-7 of Official Records

Reference is hereby made to said document for full particulars.

- 12.** The requirement that a copy of the Cookman-Meyer Partnership, be recorded in the office of the Humboldt County Recorder

13. The Company will require the following documents for review prior to the issuance of any title assurance predicated upon a conveyance or encumbrance by the corporation named below:

Name of Corporation: Cross Development / CDDG Humboldt Hill

- a) A Copy of the corporation By-laws and Articles of Incorporation
- b) An original or certified copy of a resolution authorizing the transaction contemplated herein
- c) If the Articles and/or By-laws require approval by a 'parent' organization, a copy of the Articles and By-laws of the parent

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

END OF ITEMS

Note 1. There are NO conveyances affecting said Land recorded within 24 months of the date of this report.

Note 2. Note: The current owner does NOT qualify for the \$20.00 discount pursuant to the coordinated stipulated judgments entered in actions filed by both the Attorney General and private class action plaintiffs, for the herein described Land.

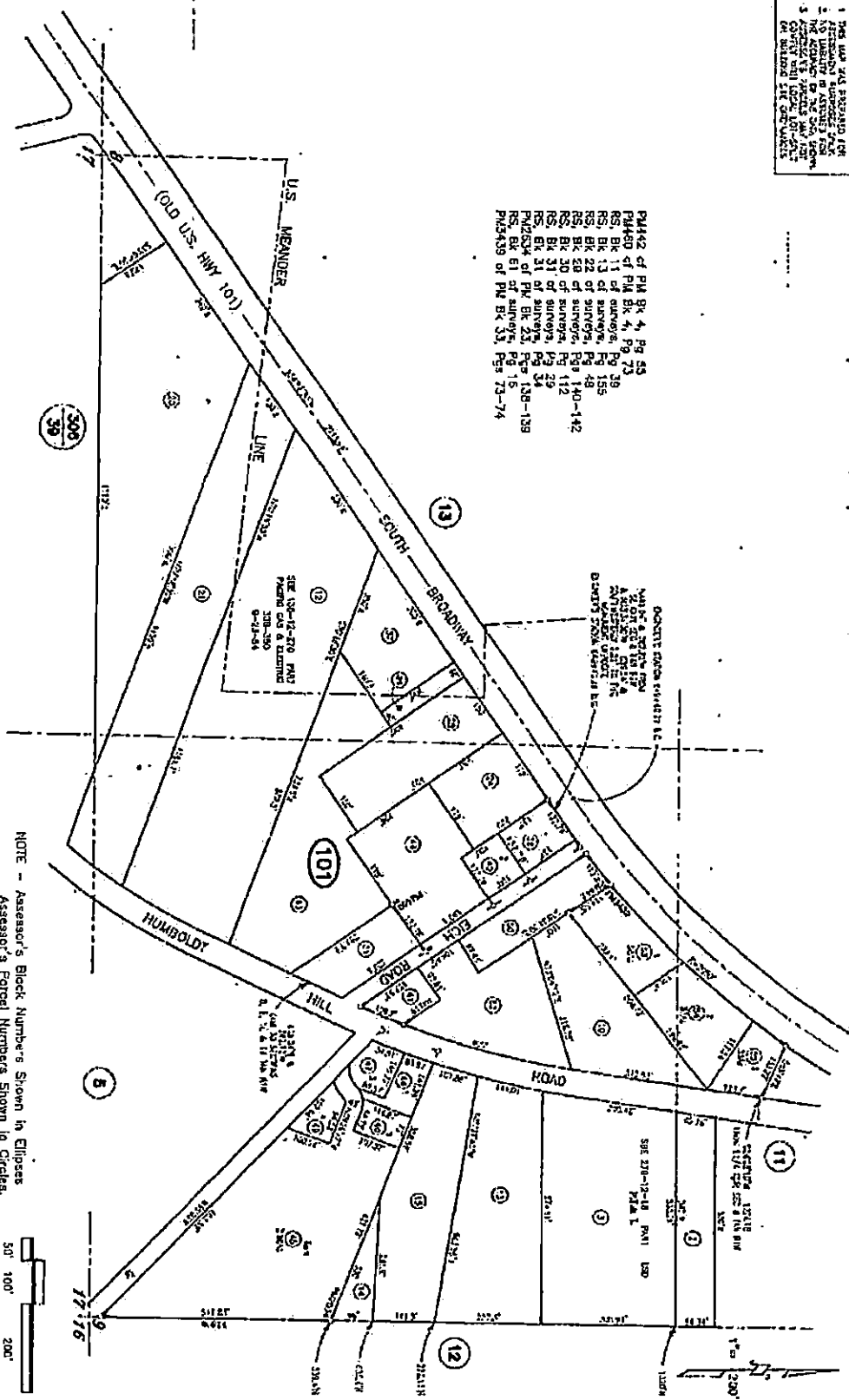
Note 3. Note: If a county recorder, title insurance company, escrow company, real estate broker, real estate agent or association provides a copy of a declaration, governing document or deed to any person, California law requires that the document provided shall include a statement regarding any unlawful restrictions. Said statement is to be in at least 14-point bold face type and may be stamped on the first page of any document provided or included as a cover page attached to the requested document. Should a party to this transaction request a copy of any document reported herein that fits this category, the statement is to be included in the manner described.

Note 4. Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirement cannot be met, please call the Company at the number provided in this report.

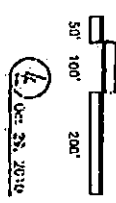
END OF NOTES

1. THIS MAP WAS PREPARED FOR THE ASSESSOR'S OFFICE BY THE ASSESSOR'S OFFICE.
2. THE ASSESSOR'S OFFICE HAS CONDUCTED A VISUAL INSPECTION OF THE PARCELS SHOWN ON THIS MAP AND HAS FOUND THEM TO BE CORRECTLY IDENTIFIED AND ACCURATELY LOCATED.
3. THE ASSESSOR'S OFFICE HAS CONDUCTED A VISUAL INSPECTION OF THE PARCELS SHOWN ON THIS MAP AND HAS FOUND THEM TO BE CORRECTLY IDENTIFIED AND ACCURATELY LOCATED.

PLATS of PM BK 4, Pg 43
 PLATS of PM BK 4, Pg 73
 RS BK 11 of survey, Pg 19
 RS BK 13 of survey, Pg 48
 RS BK 22 of survey, Pg 155
 RS BK 22 of survey, Pg 140-142
 RS BK 30 of survey, Pg 112
 RS BK 31 of survey, Pg 29
 RS BK 31 of survey, Pg 34
 PLATS of PM BK 23, Pgs 138-139
 RS BK 61 of survey, Pg 15
 PLATS of PM BK 33, Pgs 73-74



NOTE - Assessor's Block Numbers Shown in Ellipses
 Assessor's Parcel Numbers Shown in Circles
 Assessor's Map Bk. 305, Pg. 10
 County of Humboldt, CA



**SUPPLEMENTAL INFORMATION
No. 1**

For Planning Commission Agenda of:
July 7, 2016

	Administrative Agenda Item	}
	Continued Hearing Item	}
X	New Hearing Item	}
	Old Business Item	}
	New Business Item	}

Re: Applicant: Dollar General
Case Nos.: CDP-14-033, SP-14-049
File No.: APN: 305-101-054

Attached for the Planning Commission's record and review is the following supplementary information item:

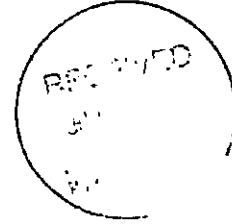
1. Correspondence from Floyd Law Firm, submitted June 24, 2016.

FLOYD LAW FIRM

819 Seventh Street
Eureka, California 95501
Telephone:(707) 445-9754
Facsimile:(707) 445-5915
E-mail: bcfloyd@floydlawfirm.net

Attorneys:

Bradford C Floyd
Carlton D. Floyd



June 24, 2016

Humboldt County Planning Commission
825 Fifth Street, Room
Eureka, CA 95501

**Re: Dollar General - Eich Road, Humboldt Hill area;
Coastal Development Permit, Special Permit
Application Number 9329, Case Number CDP-14-033/ SP-14-049**

Dear Commissioners:

I represent Dan and Kelly Noga, the owners of property adjacent to the proposed development of the Dollar General store, which is the subject of this agenda item. The Nogas are the owners of the Country Club Market located at 5667 S. Broadway and the vacant land which is situated between the Country Club Market and the site for the proposed Dollar General store. Copies of the Grant Deeds to Nogas' properties are attached as **Exhibits A and B**.

Mr. and Mrs. Noga oppose the application of Dollar General to construct its store at the proposed site for the following reasons:

1. There will be an increase in traffic on South Broadway and Humboldt Hill Road. The development of a Dollar General Store in this vicinity will create an increase in the volume of traffic in an already high traffic area due to the large number of residential properties in the area and the lack of access in and out of the area other than South Broadway and Humboldt Hill Road.
2. There is a school bus stop located right at the site of the proposed Dollar General store. If the development is approved, this should create a great concern to the community because of the increase in the volume of traffic that will be generated if the Dollar General store is approved which will have a direct impact on child safety.
3. The proposed building site is directly over a right-of-way for ingress and egress for the Nogas' properties. If the development of the Dollar General store is approved by the Commission, it will impede or prevent customer traffic to and from the Country Club Market, which is a legal right these customers have acquired. Furthermore, because the rights of ingress and egress for Country Club Market customers are not reciprocal (the proposed development site does not have ingress and egress rights over properties owned by the Nogas) Dollar General customers will trespass on the Nogas' property as they enter and exit the Dollar General's parking lot. This will create a negative impact and increased burden on the Nogas' adjacent properties.

Copies of a photograph of the site showing the right of way for ingress and egress to/from Nogas' property, the building design plan prepared by Green Design Landscape Architects for the Dollar General building, and the Workmap prepared by Kelly-O'Hern Associates showing the utility easements, a site map showing are attached hereto as **Exhibits C, D and E**, respectively.

4. The site where the building is to be constructed is directly over utility easements as depicted in the Workmap prepared by Kelly-O'Hern Associates (Exh. C). In fact, the attorneys for Dollar General raise the issue of the utility easements in a letter dated July 25, 2014, to Cookman-Meyer Partnership, the owners of the property of the proposed Dollar General store. In that letter, the attorneys objects to items of contained in the Preliminary Report issued by Placer Title Company as agent for Fidelity National Title Company of California ("Preliminary Report") as follows:
 - a. Item 4 of the Preliminary Report "lists an easement for right of way, pipeline and sewer drainage lines," and that they "object to this item. This item must be acceptable to Purchaser for Purchaser's intended use of the property."
 - b. Item 5 of the Preliminary Report "lists an easement for sewer lines," and they object to this item and request that it be removed from the Preliminary Report "or the item must be located on a current survey and be acceptable to Purchaser for Purchaser's intended use of the property."
 - c. Item 6 of the Preliminary Report "lists an easement for public road," and that they "object to this item. This item must be acceptable to Purchaser for Purchaser's intended use of the property."
 - d. Item 8 of the Preliminary Report "lists an easement for public highway," and they object to this item and request that it be removed from the Preliminary Report and must not adversely affect the Purchaser's intended use of the property.
 - e. Item 10 of the Preliminary Report "lists an easement," and that they "object to this item. This item must be acceptable to Purchaser for Purchaser's intended use of the property."
 - f. Item 12 of the Preliminary Report "lists an easement for ingress and egress," and that they "object to this item. This item must be acceptable to Purchaser for Purchaser's intended use of the property."

A copy of this letter is attached hereto as **Exhibit F**.

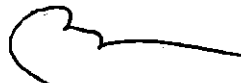
5. The Nogas and Cookman-Meyer Partnership had an agreement that neither of them would cause any development on their properties that would interfere or be detrimental to any other's business. Contrary to that agreement, Cookman-Meyer Properties are working with Dollar General to develop a store on their property which would be in direct competition with the Nogas' Country Club Market.
6. The subject property has substantial wetlands and wetland-related species over the majority of the property.

7. The subject property is not properly zoned for the operation of a retail store such as Dollar General.
8. The public claims a right-of-way over the subject property based upon common-law dedication.
9. Finally, as you know, Dollar General is not a local business and a store of this kind and the location will have a direct impact on local business.

The Nogas have filed a lawsuit for quiet title and promissory estoppel against the property owners, Thomas L. Cookman, Daryl Meyer and the Cookman-Meyer Partnership, of the site where the Dollar General store is to be developed in the Humboldt County Superior Court, case no. DR140658. A copy of the most recent Complaint is attached hereto as **Exhibit G**. The association, Friends of South Broadway, has joined in this lawsuit claiming common-law dedication of the strip of roadway that traverses over the subject property that has been used continuously by the public since the 1950s.

Based upon the foregoing, Mr. and Mrs. Noga respectfully request the Commission to oppose the proposed development of the Dollar General at the location adjacent to their property.

Respectfully submitted,



Bradford C Floyd

BCF/gme
Enclosures

RECORDING REQUESTED BY

Humboldt Land Title Co.

AND WHEN RECORDED MAIL THIS DEED AND UNLESS OTHERWISE SHOWN BELOW MAIL TAX STATEMENT TO

Name Dan L. Noga
Street Kelly A. Noga
Address 2610 Hillcrest Drive
City & State Eureka, Ca. 95503
Zip

Order No. 95112 SH

1998-5032-3
Recorded - Official Records
Humboldt County, California
Carolyn Crnich, Recorder

Recorded by Humboldt Land Title Company
Rec Fee 13.00
Doc Trf Tax 143.00
Survey Mon 10.00
Clerk: KJ Total: 166.00
Mar 2, 1998 at 10:00

SPACE ABOVE THIS.



Grant Deed

DOCUMENTARY TRANSFER TAX IS \$143.00 Parcel No. 305-111-7
 computed on full value less value of liens or encumbrances remaining at time of sale, or
 computed on full value of property conveyed. Dan Gaebel Humboldt Land Title Co.
SIGNATURE OF DECLARANT OR AGENT DETERMINING TAX. FIRM NAME

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

WALTER EICH, as Trustee of the Walter Eich 1991 Revocable Trust, as to Parcels One, Three, Four and Five
WALTER EICH, widower, as to Parcel Two
hereby GRANT(S) to

DAN L. NOGA and KELLY A. NOGA, husband and wife as joint tenants

the following described real property in the unincorporated area
County of Humboldt State of California:

SEE DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

Dated February 4, 1998

Walter Eich
Walter Eich

STATE OF CALIFORNIA
COUNTY OF Humboldt S.S.

On February 26, 1998 before me,

Sandra L. White
a Notary Public in and for said County and State, personally appeared

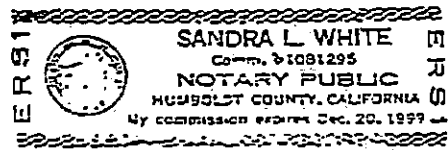
Walter Eich

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal
Signature Sandra L. White

My Commission Expires _____

Walter Eich, as trustee
Walter Eich on Trust



(This area for official notarial seal)

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE: IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE

G01

Name _____ City & State _____



DESCRIPTION

That real property situate in the County of Humboldt, State of California, described as follows:

Those portions of the Southeast quarter of Section 8, Township 4 North, Range 1 West of Humboldt Meridian, described as follows:

PARCEL ONE:

COMMENCING on the East line of the California State Highway right of way described at Parcel One in Deed from Sophia C. Newett, et al. to the State of California, recorded in Book 228, Page 196 of Deeds, at a point located South 30 degrees 21 1/2 minutes West 1181.6 feet from the quarter section corner on the East line of said Section 8;

thence South 63 degrees 58 minutes East 93 feet;

to the West line of the County Road leading to Humboldt Hill, as it existed prior to 1954;

thence along said road South 8 degrees 2 minutes West 100 feet to an iron pipe set by A.B. Bones in connection with Survey made November 23, 1948;

thence North 65 degrees 47 minutes West 135.1 feet;

to the East line of said State Highway;

thence Northerly along the East line of said highway 1.00 feet, more or less, to the point of beginning.

PARCEL TWO:

COMMENCING at a point located North 15 degrees 50 minutes West 51.4 feet from the most Southerly corner of the land conveyed to Avery E. Graham and wife, recorded in Book 284, Page 158 of Deeds, hereinbefore referred to;

thence North 75 degrees 50 minutes East 4 feet;

thence North 15 degrees 50 minutes West 8 feet;

thence South 75 degrees 50 minutes West 8 feet;

thence South 15 degrees 50 minutes East 8 feet;

thence North 75 degrees 50 minutes East 4 feet to the point of beginning.

PARCEL THREE:

A right of way for ingress and egress from the County Road to the State Highway referred to in Parcel One, to be jointly used by Avery E. Graham and Ethel Miller Graham and by Walter W. Eich, their heirs, successors and assigns, over the following described parcel:

COMMENCING at the Southeast corner of said Parcel One on the West line of said County Road;

thence along said West line South 8 degrees 02 minutes West 25 feet;

thence North 65 degrees 47 minutes West 145 feet, more or less, to the East line of said State Highway;

thence Northeasterly along the East line of said State Highway 25 feet, more or less, to the Southwest corner of the land hereinbefore described in Parcel One;

thence South 65 degrees 47 minutes East 135.1 feet to the point of beginning.

continued ...

1998-5032-3

3

PARCEL FOUR:

An easement 3 feet in width for pipe line, for the conveyance of water, the center line of which is described as follows:

COMMENCING at a point on the Southwesterly line of said Parcel Three distant North 65 degrees 47 minutes West 7 feet from the Southeasterly corner thereof;

thence Southerly along a line that is distant West 7 feet (measured at right angles) and parallel to the East line of the land described in Deed to Avery E. Graham and wife hereinbefore referred to, to a point that bears North 75 degrees 50 minutes East from the center point of the well site hereinbefore described as Parcel Two;

thence South 75 degrees 50 minutes West to the Northeasterly line of said Parcel Two.

PARCEL FIVE:

An easement for the installation of a sewer drainage line of pipe, together with the right to repair, replace and maintain the same in such manner as shall not disturb or interrupt the right of ingress and egress over Parcel Three hereinbefore referred to, over, under and across the following described land:

BEGINNING at the Southwest corner of Parcel One hereinbefore described and running Southerly along the Easterly line of the present State Highway 101, 200 feet;

thence Southeasterly at right angles to said State Highway line a distance of 15 feet;

thence Northeasterly and parallel with the East line of said State Highway 140 feet;

thence Northeasterly in a direct line to a point on the South line of said Parcel One that bears South 65 degrees 47 minutes West 70 feet from the point of beginning;

thence North 65 degrees 47 minutes West 70 feet to the point of beginning.

PARCEL SIX:

That portion of the Southeast Quarter of Section 8, Township 4 North, Range 1 West, Section 8, Township 4 North, Range 1 West, Humboldt Base and Meridian, described as follows:

EASEMENT for sewer purposes over a strip of land 5 feet wide, the center line of which is described as follows:

BEGINNING at a point on the Westerly line of the County Road which is South 8 degrees 2 minutes West 137 feet from the Southeast corner of land heretofore conveyed to Walter Eich by Deed recorded January 28, 1949, under Recorder's Serial No. 648, in the Office of the County Recorder of said County;

thence South 70 degrees West 165 feet.

1998-5032-3

(3)

2011-1163-2

Recorded — Official Records
Humboldt County, California
Carolyn Crnich, Recorder

Recorded by FORBES

Rec Fee	16.00
Doc Trf Tax	60.50
Survey Mon	10.00
Clerk: MM Total:	86.50
Jan 14, 2011 at 15:29	

When Recorded Mail To:

Dan and Kelly Noga
2610 Hillcrest Drive
Eureka, CA 95503

R

305
APN 301-101-055

DTT \$60.50

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged,

Humboldt Hill Property Partnership, a California General Partnership

hereby grants to

Daniel L. Noga and Kelly A. Noga, husband and wife as joint tenants

All that real property situated in the County of Humboldt, State of California, described as follows:

-See Legal Description attached hereto-

Dated: Feb 19 09

[Signature]
 Humboldt Hill Property Partnership
 By: Dan Noga
 Title: Authorized Partner

STATE OF CALIFORNIA)SS
COUNTY OF HUMBOLDT)

On February 19th, 2009 before me, Sarah Anne Cox, a notary public, personally appeared Dan Noga, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies) and that by his/~~her/their~~ signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

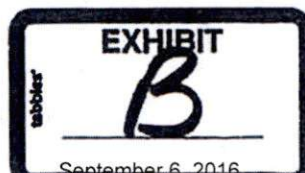
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature *Sarah Anne Cox*



Legal Description

All that real property situated in the County of Humboldt, State of California, described as follows:



①

Parcel 3 as shown on Parcel Map No. 3439 filed in the office of the County Recorder of said Humboldt County in Book 33 of Parcel Maps, pages 73 and 74.

305-101-055

2011-1163-2

②



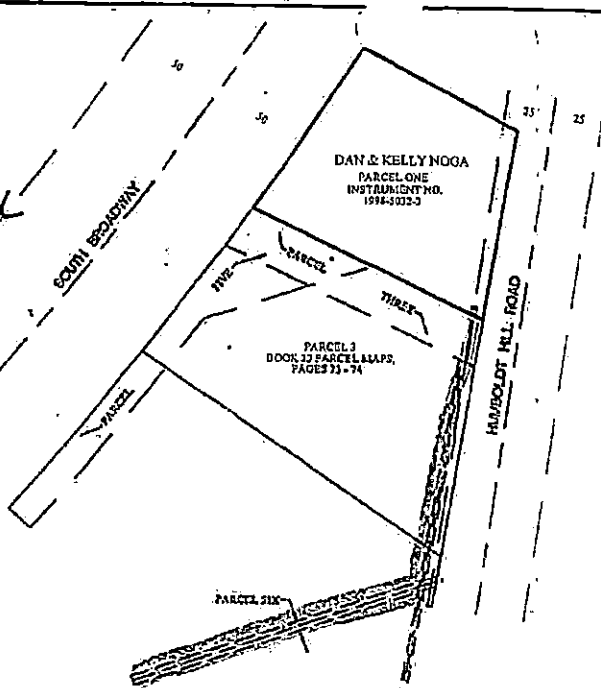
Microsoft © 2016, Google, 2016

Google earth

Humboldt Hill Rd

EXHIBIT
C

NOGA
DOLLAR GOWELL
EASEMENT



NOTES

1. THE PURPOSE OF THIS MAP IS TO ILLUSTRATE PARCELS IDENTIFIED IN INSTRUMENT NO. 1998-0022-3, HUMBOLDT COUNTY RECORDS.
2. THE LOCATION OF PARCEL ONE OF INSTRUMENT NO. 1998-0022-3 IS BASED ON BOOK 33 PARCEL MAPS, PAGES 71 AND 74. ALL PARCEL LOCATIONS SHOWN HEREON ARE BASED ON CALCULATIONS ONLY. A FIELD SURVEY HAS NOT BEEN CONDUCTED FOR THIS MAP.

WORKMAP
FOR
RICHARD SMITH
IN
SECTION 1 T1N, 11W, HUMBOLDT MERIDIAN
IN THE UNINCORPORATED AREA OF HUMBOLDT COUNTY
NOVEMBER 2014 SCALE 1" = 40'

HUMBOLDT COUNTY
STATE OF CALIFORNIA
KELLY O'HERN ASSOCIATES
EUREKA, CALIFORNIA





JAMES S. CAMPBELL
BOARD CERTIFIED IN REAL ESTATE

BEGGS & LANE RLLP
ATTORNEYS and COUNSELLORS at LAW
SINCE 1983

POST OFFICE BOX 12950
PENSACOLA, FLORIDA 32511-2950
TELEPHONE (850) 432-2451
FAX (850) 469-3331

EMAIL ADDRESS
JSC@BEGGSLANE.COM

E. DIXIE BEGGS
1906 - 2001

BERT H. LANE
1917 - 1981

July 25, 2014

VIA ELECTRONIC MAIL: tomc@mendessupply.com

Cookman-Meyer Partnership
Attn: Thomas J. Cookman
1920 Freshwater Road
Eureka, CA 95503

RE: Purchaser's Title/Survey Objection Notice; Real Estate Purchase Contract dated February 26, 2014 between Cookman-Meyer Partnership ("Seller"), and Cross Development, LLC, a Texas limited liability company ("Purchaser"), as amended (the "Agreement"), for the purchase of property located on Humboldt Hill Road, in Eureka, California

Dear Mr. Cookman:

This letter constitutes Purchaser's Title/Survey Objection Notice pursuant to Paragraph 9 of the above-referenced Agreement.

In regards to Preliminary Report under Title No. 14-503868-PG issued by Placer Title Company, as agent for Fidelity National Title Company of California ("Preliminary Report"), we have the following title objections:

1. The effective date of February 21, 2014 must be brought current immediately prior to closing. Purchaser reserves the right to object to any new or additional title matters that may be shown by the update.
2. All requirements of the Preliminary Report must be satisfied at or prior to closing.
3. The property must be conveyed to CD DG Humboldt, LLC, a Texas limited liability company and the deed recorded in the public records.
4. The legal description shown on Exhibit A to the Preliminary Report must be identical to the legal description shown in the vesting deed and on the survey.
5. Items 1, 2, and 3 of the Preliminary Report list outstanding property taxes which must be paid prior to closing.

8117 PRESTON ROAD, SUITE 300
DALLAS, TEXAS 75225

501 COMMENDENCIA STREET
PENSACOLA, FLORIDA 32502

215 S. MONROE STREET, SUITE 710
TALLAHASSEE, FLORIDA 32301



6. Item 4 of the Preliminary Report lists an easement for right of way, pipeline and sewer drainage lines.

We object to this item. This item must be acceptable to the Purchaser for Purchaser's intended use of the property.

7. Item 5 of the Preliminary Report lists an easement for sewer lines.

We object to this item. Please remove from the Preliminary Report or the item must be located on a current survey and be acceptable to the Purchaser for Purchaser's intended use of the property.

8. Item 6 of the Preliminary Report lists an easement for public road.

We object to this item. This item must be acceptable to the Purchaser for Purchaser's intended use of the property.

9. Item 7 of the Preliminary Report lists a waiver of any claims for damages by reason of the highway adjoining property.

We object to this item. Please remove it from the Preliminary Report. This item must not adversely affect the Purchaser's intended use of the property.

10. Item 8 of the Preliminary Report lists an easement for public highway.

We object to this item. This item must be acceptable to the Purchaser and not adversely affect the Purchaser's intended use of the property.

11. Item 9 of the Preliminary Report lists any rights, interests or claims by reason of recorded surveys.

We object to this item. Please remove from the Preliminary Report or the item must be located on a current survey.

12. Item 10 of the Preliminary Report lists an easement for ingress and egress.

We object to this item. This item must be acceptable to the Purchaser for the Purchaser's intended use of the property.

13. Item 11 of the Preliminary Report lists a notice of development plan.

We object to this item. Please provide copies of the development plan referred to therein for review and verification. Purchaser reserves the right to further review of any additional documents related to Item 11.

14. Item 12 of the Preliminary Report lists an easement for ingress and egress.

We object to this item. This item must be acceptable to the Purchaser for the Purchaser's intended use of the property.

15. Item 13 of the Preliminary Report lists an easement and maintenance agreement.

We object to this item. We will require an estoppel in connection with this item, as approved by lender's counsel, stating, at a minimum, that there are no defaults under the agreement and that all maintenance fees are paid. This item must be acceptable to the Purchaser for the Purchaser's intended use of the property.

16. Items 14 and 15 of the Preliminary Report are requirements which must be satisfied at or prior to closing.

When revising the Preliminary Report, please do not change the item numbers. Renumbering creates potential confusion when the survey is revised. Please mark any omitted exceptions as "intentionally deleted". Please identify any endorsements which may operate to minimize the impact of the above-described exceptions on the intended development of the property.

The following endorsements, as applicable, will be required upon issuance of the final policy:

1. T-17 (Planned Unit Development),
2. T-19.1 (Restrictions, Encroachments, Minerals),
3. T19.2 (Minerals and Surface Damage),
4. T19.3 (Minerals and Surface Damage),
5. T-23 (Access),
6. T-25 (Contiguity),
7. T-25.1 (Contiguity),
8. T-24 (Non-Imputation), and
9. T-26 Additional Insured.

Survey Objections:

An ALTA/ACSM Land Title Survey prepared by Butler Engineering Group, dated June 18, 2014, under Job No. 14.152, a copy of which is attached.

The legal description shown on the survey must be identical to the legal description on Exhibit A to the Preliminary Report.

The survey shows possible encroachments of the following items:

1. Telephone vault,
2. Concrete and asphalt paving, and
3. A wood and plaster fence.

The Surveyor's Certificate will need to be added with CD DG Humboldt, LLC, Amegy Bank, N.A., Placer Title Company, and Fidelity National Title Company of California.

The Surveyor must also include the remainder of the attached Schedule A as a separate page, in accordance with the terms as shown on the attached Schedule A.

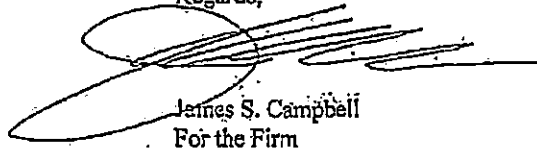
The survey must reference the current Preliminary Report. We may also require certain substantive changes to the survey itself.

Purchaser reserves the right to make additional objections upon review and/or receipt of an updated survey of the property.

I would appreciate it if you would contact me to discuss the items set forth in this Title/Survey Objection Notice so that we can work together to mutually agree on the proper solutions to the same and move towards a smooth and timely closing.

I look forward to hearing from you.

Regards,



James S. Campbell
For the Firm

JSC/alm

cc: Jason Read (via email: jason.read@cbre.com)
Lisa Arant (via email: larant@placentitle.com)
Kevin Butler (via email: kevin@butler-group.org)
Dan Doyer (via email: dan@crossdevelopment.net)
Brenda Ellis (via email: Brenda@crossdevelopment.net)
Steve Rumsey (via email: srumsev@crossdevelopment.net)
Brad Lacour (via email: blacour@irident-partners.com)

8117 PRESTON ROAD, SUITE 300
DALLAS, TEXAS 75225

501 COMMERCIAL STREET
PENSACOLA, FLORIDA 32502

2955 MONROE STREET, SUITE 710
TALLAHASSEE, FLORIDA 32301

FILED
NS

1007 0 1 2015

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

1 Bradford C. Floyd (State Bar #136459)
2 Carlton D. Floyd (State Bar #275958)
3 FLOYD LAW FIRM, a California partnership
4 819 Seventh Street
5 Eureka, California 95501
6 Telephone: (707) 445-9754
7 Facsimile: (707) 445-5915
8 E-mail: bcfloyd@floydlawfirm.net

Attorneys for Plaintiffs.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT

10 DAN L. NOGA,
11 KELLY A. NOGA, and
12 FRIENDS OF SOUTH BROADWAY, a
13 California Unincorporated Nonprofit
14 Association,

Plaintiffs,

v.

15 THOMAS J. COOKMAN,
16 DARROLL MEYER, COOKMAN-
17 MEYER PARTNERSHIP, a California
18 General Partnership, and
19 ALL PERSONS UNKNOWN,
20 CLAIMING ANY LEGAL OR
21 EQUITABLE RIGHT, TITLE, ESTATE,
22 LIEN, OR INTEREST IN THE
23 PROPERTY DESCRIBED IN THE
24 COMPLAINT ADVERSE TO
25 PLAINTIFF'S TITLE, OR ANY CLOUD
26 ON PLAINTIFF'S TITLE THERETO,
27 AND DOES 1 THROUGH 10,
28 INCLUSIVE,

Defendants.

Case No. DR140658

**SECOND AMENDED COMPLAINT
FOR PRESCRIPTIVE EASEMENT;
FOR PROMISSORY ESTOPPEL;
FOR QUIET TITLE; FOR
DECLARATORY RELIEF; AND FOR
MANDATORY AND PROHIBITORY
INJUNCTION**

Plaintiffs allege:

///

///

SECOND AMENDED COMPLAINT FOR PRESCRIPTIVE EASEMENT; FOR PROMISSORY ESTOPPEL;
FOR QUIET TITLE; FOR DECLARATORY RELIEF; AND FOR MANDATORY AND PROHIBITORY
INFUNCTION
DR140658



1 County, California APN 305-111-007 also known as the Country Club Market, and more
2 specifically described on Exhibit A attached hereto and made a part hereof by this reference
3 ("Market Parcel") which they obtained by a Grant Deed from Walter Eich and the Walter
4 Eich 1991 Revocable Trust, dated February 4, 1998, and recorded March 2, 1998, as
5 Document No. 1998-5032-3, in the Official Records of Humboldt County, California.

6 9. Plaintiffs, NOGA, are also the fee owners and are in possession and control of
7 that certain unimproved real property located on S. Broadway, Eureka, Humboldt County,
8 California APN 305-101-054 and more specifically described on Exhibit B attached hereto
9 and made a part hereof by this reference ("Noga Unimproved Parcel") which they obtained
10 by a Grant Deed from Humboldt Hill Property Partnership, a California General Partnership,
11 dated March 6, 2009, and recorded January 14, 2011, as Document No. 2011-1161-2, in the
12 Official Records of Humboldt County, California.

13 10. The southerly boundary of the Market Parcel and the northerly boundary of the
14 Noga Unimproved Parcel are contiguous boundary lines.

15 11. On information and belief, defendants Cookman, Meyer and Partnership are
16 the owners in fee and are in possession and control of unimproved real property located at
17 5707 S. Broadway, Eureka, Humboldt County, California (APN 305-101-054)
18 ("Cookman/Meyer Property"), which they have owned since March 6, 2009, and more
19 specifically described on Exhibit C attached hereto and made a part hereof by this reference.

20 12. The southerly boundary of the Noga Unimproved Parcel and the northerly
21 boundary of the Cookman/Meyer Property are contiguous boundary lines.

22 **FIRST CAUSE OF ACTION**
23 **(Prescriptive Easement-Plaintiffs NOGA)**

24 13. Plaintiffs NOGA allege and incorporate herein by reference all allegations
25 contained in paragraphs 1 through 12 with the same force and effect as though fully set forth
26 herein.

27 //

28 **SECOND AMENDED COMPLAINT FOR PRESCRIPTIVE EASEMENT; FOR PROMISSORY ESTOPPEL;
FOR QUIET TITLE; FOR DECLARATORY RELIEF; AND FOR MANDATORY AND PROHIBITORY
INJUNCTION**
DR140658

- 3 -

1 14. Over both the Noga Unimproved Parcel and the Cookman/Meyer Property is
2 a paved road that was formerly part of Highway 101. Said roadway intersects with South
3 Broadway where it enters the Cookman/Meyer Property, then traverses over the
4 Cookman/Meyer Property and the Noga Unimproved Parcel where it then again intersects
5 with South Broadway is depicted in **Exhibit D** which is attached hereto and incorporated
6 herein by reference. This roadway affords plaintiffs NOGA and their Country Club Market
7 customers, especially customers driving semi-trucks, a means of ingress, egress and
8 temporary parking while shopping at the Country Club Market located on the Market Parcel.
9 This roadway is referred to in this complaint as the "Roadway Easement."

10 15. Since at least March 6, 2009, and continuously since that time, plaintiffs
11 NOGA have had actual, notorious, continuous and uninterrupted use and have openly
12 possessed the Roadway Easement under claim of right and/or color of law in that NOGA and
13 their customers of the Country Club Market have continuously used the Roadway Easement
14 over the Cookman/Meyer Property for ingress, egress and parking.

15 16. Plaintiffs NOGA and their customers use and possession of the Roadway
16 Easement has been, and continues to be, hostile and adverse to defendants' claim to the real
17 property.

18 17. As prescriptive owners of the Roadway Easement, plaintiffs NOGA and their
19 customers are entitled to the rights and privileges on and over the Cookman/Meyer Property
20 as alleged in this complaint.

21 18. On information and belief, plaintiffs NOGA believe, and thereon allege, that
22 defendants are contemplating the sale of the Partnership Property to Dollar General in
23 anticipation of the construction of a Dollar General Store on the site of the Cookman/Meyer
24 Property. Based upon the preliminary sketches of the project, the parking lot and building
25 for the Dollar General Store will be constructed directly over the location of the Roadway
26 Easement; thereby unreasonably interfering with plaintiffs NOGAS' and their customers'
27

1 use and rights as prescriptive owners of said easement. Copies of the site plan for the Dollar
2 General Store and the photograph depicting the location of the Dollar General Store site
3 where it overlaps the Easement are attached hereto as Exhibits E and F, respectively, and
4 made parts hereof by this reference.

5 19. Based upon the anticipated sale of the Cookman/Meyer Property to Dollar
6 General and the construction of the Dollar General Store and parking lot over the Roadway
7 Easement, plaintiffs NOGA are informed and believe and on that basis allege that defendants
8 claim an interest which is adverse to plaintiffs NOGAS' title to the Easement. These claims
9 are without any right and defendants have no right, title, estate, lien, or interest superseding
10 plaintiffs NOGAS' title to the Easement.

11 20. WHEREFORE, plaintiffs pray for judgment against defendants as set forth
12 below

13 **SECOND CAUSE OF ACTION**

14 **(Promissory Estoppel by Plaintiffs Noga)**

15 21. Plaintiffs NOGA allege and incorporate herein by reference all allegations
16 contained in paragraphs 1 through 20 with the same force and effect as though fully set forth
17 herein.

18 22. On or about November 22, 2002, Plaintiff Noga, defendants Cookman and
19 Meyer and Keith Forbes, doing business as Humboldt Hill Property Partnership acquired a
20 parcel of real property that was subsequently split into three lots which became the Noga
21 Unimproved Parcel, The Cookman/Meyer Property and a lot that went to Keith and Rera
22 Forbes, which property lies adjacent to, and south of, the Cookman/Meyer Property
23 commonly referred to as Assessor Parcel no. 305-101-040 and located at 2042 Eich Road.

24 23. In or around March 2009, the partners of Humboldt Hill Property Partnership,
25 including defendants, made promises and representations to each other that none of the
26 partners would develop, or allow their respective property to be sold and developed into a
27

28 **SECOND AMENDED COMPLAINT FOR PRESCRIPTIVE EASEMENT; FOR PROMISSORY ESTOPPEL;
FOR QUIET TITLE; FOR DECLARATORY RELIEF; AND FOR MANDATORY AND PROHIBITORY
INJUNCTION
DR140658**

1 business that would be detrimental to or compete with the other's business such as the
2 County Club Market. Defendants knew or should have known that plaintiffs NOGA would
3 be reasonably induced to rely on, and in fact did justifiably rely upon this representation
4 made by Cookman and Meyer.

5 24. Despite these representations by Cookman and Meyer, defendants entered into
6 an agreement with a third party for the sale of the Cookman/Meyer Property for the
7 development and operation of a Dollar General store. The operation of this store would be
8 detrimental to NOGAS' operation and ownership of Country Club Market.

9 25. As a result of defendants' breach of the agreement plaintiffs sustained damages
10 in the amount to be determined at trial.

11 WHEREFORE, plaintiffs pray for judgment against defendants as set forth below.

12 **THIRD CAUSE OF ACTION**
13 **(Quiet Title By Plaintiff Friends of South Broadway)**
14 **(Cal. Civ. Proc. Code, § 760.010 et seq.)**

15 26. Plaintiff, FRIENDS, incorporates by reference the allegations in paragraphs
16 1 through 25 above as though fully set forth herein.

17 27. Plaintiff, FRIENDS, and its members, hold an interest in the Roadway
18 Easement as members of the general public. For more than five years prior to 1972
19 numerous and diverse members of the public made open, continuous, and adverse use of the
20 Roadway Easement to access the Noga Property. For example, 18 wheelers use and have
21 used the Roadway Easement for parking their big rigs. That use demonstrates an implied
22 dedication of a public easement in the Roadway Easement under the common law doctrine
23 of applied dedication as it existed prior to the adoption of Civil Code section 1009 in 1972.
24 See *Friends of the Trails v. Blasius* (2000) 78 Cal. App. 4th 810.

25 28. Defendants claim an interest in the Roadway Easement adverse to the
26 FRIEND'S and the public. Defendants are owners of the fee title to the properties in which
27 the Roadway Easement is located, and they deny that the portion of South Broadway on

1 which the Roadway Easement is located is subject to any public easements.

2 29. FRIENDS seek a determination of the public's title to a nonexclusive easement
3 in the Roadway Easement as of the date of the filing of this Amended Complaint. If a public
4 easement was perfected prior to the 1972's, the public retains title today.

5 WHEREFORE, plaintiffs pray for judgment against defendants as set forth below

6 **FOURTH CAUSE OF ACTION**
7 **(Declaratory Judgment By Plaintiff Friends of South Broadway)**

8 30. Plaintiff, FRIENDS, incorporates by reference the allegations in paragraphs
9 1 to 29 above as though fully set forth herein.

10 31. An actual controversy presently exists between FRIENDS and defendants
11 regarding their respective rights and duties with regard to the Roadway Easement. FRIENDS
12 contend that the portion of South Broadway on which the Roadway Easement is located is
13 subject to a nonrestrictive public easement to access the Noga Property. Defendants deny
14 that the public holds any easement in that portion of South Broadway on which the Roadway
15 Easement is located.

16 32. A judicial declaration of the rights and responsibilities of the parties, and of the
17 public, is necessary and appropriate at this time because defendants have deprived, or intend
18 to deprive, the public of access to the Roadway Easement on South Broadway.

19 33. Neither FRIENDS nor other members of the public, have any plain, speedy,
20 or adequate remedy in the course of ordinary law.

21 WHEREFORE, plaintiffs pray for judgment against defendants as set forth below

22 **FIFTH CAUSE OF ACTION**
23 **(Mandatory Injunction By All Plaintiffs)**

24 34. Plaintiffs incorporates by reference the allegations in paragraphs 1 to 33 above
25 as though fully set forth herein.

26 35. In or around 2014 defendants or their agents took measures to stop the public
27 from using the Roadway Easement. These measures include selling the Cookman/Meyer

1 Property to Dollar General in anticipation of the construction of a Dollar General store on
2 the site of the Cookman/Meyer Property. Based upon the preliminary sketches of the project,
3 the parking lot and building for the Dollar General store will be constructed directly over the
4 location of the Roadway Easement; thereby unreasonably interfering with plaintiffs' use and
5 rights as owners of said easements .

6 36. Neither FRIENDS nor other member of the public has an adequate remedy at
7 law for the harm caused by defendants' obstruction of public access to the Roadway
8 Easement over South Broadway.

9 37. Plaintiffs seek a mandatory injunction compelling defendants and their agents
10 from developing the Cookman/Meyer Property in such a way that interferes with the
11 Roadway Easement.

12 WHEREFORE, plaintiffs pray for judgment as follows:

13 As to the First Cause of Action for Prescriptive Easement:

14 1. For judgment quieting title as to plaintiff s' right to use the Easement for
15 ingress and egress;

16 2. Plaintiffs' costs of suit incurred herein; and

17 3. Such other and further relief as may be just and proper.

18 As to the Second Cause of Action for Promissory Estoppel:

19 4. For an amount to be determined at trial, with interest on this sum at 10 percent
20 per year from December 4, 2014, as allowed by law;

21 5. Plaintiffs' costs of suit incurred herein; and

22 6. Such other and further relief as may be just and proper.

23 As to the Third Cause of Action for Quiet Title:

24 7. Quieting title in the public to the Roadway Easement to access the Noga
25 Property;

26 8. Plaintiffs' costs of suit incurred herein; and

27

28 SECOND AMENDED COMPLAINT FOR PRESCRIPTIVE EASEMENT; FOR PROMISSORY ESTOPPEL;
FOR QUIET TITLE; FOR DECLARATORY RELIEF; AND FOR MANDATORY AND PROHIBITORY
INJUNCTION
DR140658

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9. Such other and further relief as may be just and proper

As to the Fourth Cause of Action for Declaratory Relief:

10. Declaring that the Noga Property is subject to the Roadway Easement;

11. Plaintiffs' costs of suit incurred herein; and

12. Such other and further relief as may be just and proper.

As to the Fifth Cause of Action for Mandatory Injunction:


13. For and order preventing defendants or their predecessors in interest from interfering with the Roadway Easement;

14. Plaintiffs' costs of suit incurred herein; and

15. Such other and further relief as may be just and proper

Dated: October 1, 2015

FLOYD LAW FIRM

By 
Bradford C Floyd, Attorneys for Plaintiffs

VERIFICATION

I, DAVE HARRIS, the undersigned, declare as follows:

I have read the foregoing Second Amended Complaint for Prescriptive Easement, for Promissory Estoppel; for Quiet Title; for Declarative Relief; and for Mandatory and Prohibitory Injunction and know its contents.

I am an officer of Friends of South Broadway, a plaintiff in this proceeding and am authorized to make this verification for and on its behalf, and I make this verification for that reason. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed this 30th day of ~~October~~^{September} 2015 at Eureka, California.



DAVE HARRIS

EXHIBIT A

LEGAL DESCRIPTION

That real property situated in the County of Humboldt, State of California described as follows:

Those portions of the Southeast quarter of Section 8, Township 4 North, Range 1 West of Humboldt Meridian, described as follows:

PARCEL ONE:

COMMENCING on the East line of the California State Highway right of way described at Parcel One in Deed from Sophia C. Newett, et al, to the State of California, recorded in Book 228, Page 196 of Deeds, at a point located South 30 degrees 21 ½ minutes West 1181.6 feet from the quarter section corner on the East line of said Section 8;

thence South 63 degrees 58 minutes East 93 feet;

to the West line of the County Road leading to Humboldt Hill, as it existed prior to 1954;

thence along said road South 8 degrees 2 minutes West 100 feet to an iron pipe set by A.B. Bones in connection with Survey made November 23, 1948;

to the East line of said State Highway;

thence Northerly along the East line of said highway 100 feet, more or less; to the point of beginning.

PARCEL TWO:

COMMENCING at a point located North 15 degrees 50 minutes West 51.4 feet from the most Southerly corner of the land conveyed to Avery E. Graham and wife, recorded in Book 284, Page 158 of Deeds, hereinbefore referred to:

thence North 75 degrees 50 minutes East 4 feet;

thence North 15 degrees 50 minutes West 8 feet;

thence South 75 degrees 50 minutes West 8 feet;

thence South 15 degrees 50 minutes East 8 feet;

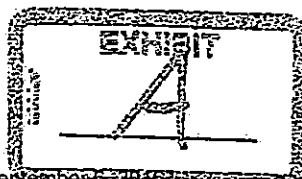
thence North 75 degrees 50 minutes East 4 feet to the point of beginning.

PARCEL THREE:

A right of way for ingress and egress from the County Road to the State Highway referred to in Parcel One, to be jointly used by Avery E. Graham and Ethel Miller Graham and by Walter W. Eich, their heirs, successors and assigns, over the following described parcel:

COMMENCING on the Southeast corner of said Parcel One on the West line of said County Road;

thence along said West line South 8 degrees 02 minutes West 25 feet;



thence North 65 degrees 47 minutes West 145 feet, more or less, to the East line of said State Highway;
thence Northeasterly along the East line of said State Highway 25 feet, more or less, to the Southwest corner of the land hereinbefore described in Parcel One;
thence South 65 degrees 47 minutes East 135.1 feet to the point of beginning.

PARCEL FOUR:

An easement 3 feet in width for pipe line, for the conveyance of water, the center line of which is described as follows:

COMMENCING at a point on the Southwesterly line of said Parcel Three distant North 65 degrees 47 minutes West 7 feet from the Southeasterly corner thereof;
thence Southerly along a line that is distant West 7 feet (measured at right angles) and parallel to the East line of the land described in Deed to Avery E. Graham and wife hereinbefore referred to, to a point that bears North 75 degrees 50 minutes East from the center point of the well site hereinbefore described as Parcel Two;
thence South 75 degrees 50 minutes West to the Northeasterly line of said Parcel Two.

PARCEL FIVE:

An easement for the installation of a sewer drainage line of pipe, together with the right to repair, replace and maintain the same in such manner as shall not disturb or interrupt the right of ingress and egress over Parcel Three hereinbefore referred to, over, under and across the following described land:

BEGINNING at the Southwest corner of Parcel One hereinbefore described and running Southerly along the Easterly line of the present State Highway 101, 200 feet;
thence Southeasterly at right angles to said State Highway line a distance of 15 feet;
thence Northeasterly and parallel with the East line of said State Highway 140 feet;
thence Northeasterly in a direct line to a point on the South line of said Parcel One that bears South 65 degrees 47 minutes West 70 feet from the point of beginning;
thence North 65 degrees 47 minutes West 70 feet to the point of beginning.

PARCEL SIX:

That portion of the Southeast Quarter of Section 8, Township 4 North, Range 1 West, Section 8, Township 4 North, Range 1 West, Humboldt Base and Meridian, described as follows:

EASEMENT for sewer purposes over a strip of land 5 feet wide, the center line of which is described as follows:

BEGINNING at a point on the Westerly line of the County Road which is South 8 degrees 2 minutes West 137 feet from the Southeast corner of land heretofore conveyed to Walter Eick by Deed recorded January 28, 1949, under Recorder's Serial No. 648. in the Office of the County Recorder of said County;
thence South 70 degrees West 165 feet.

APN: 305-111-007

EXHIBIT B

LEGAL DESCRIPTION

All that real property situated in the County of Humboldt, State of California, described as follows:

Parcel 3 as shown on Parcel Map No. 3439 filed in the office of the County Recorder of said Humboldt County in Book 33 of Parcel Maps, pages 73 and 74.

APN: 305-101-055

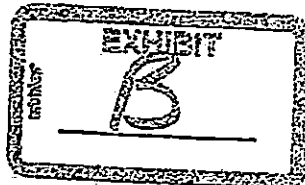


EXHIBIT C

LEGAL DESCRIPTION

All that real property situated in the County of Humboldt, State of California, described as follows:

PARCEL ONE

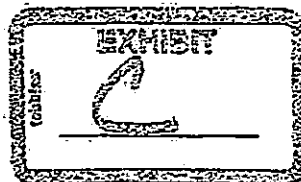
Parcel 2 as shown on Parcel Map No. 3439 filed in the office of the County Recorder of said Humboldt County in Book 33 of Parcel Maps, pages 73 and 74.

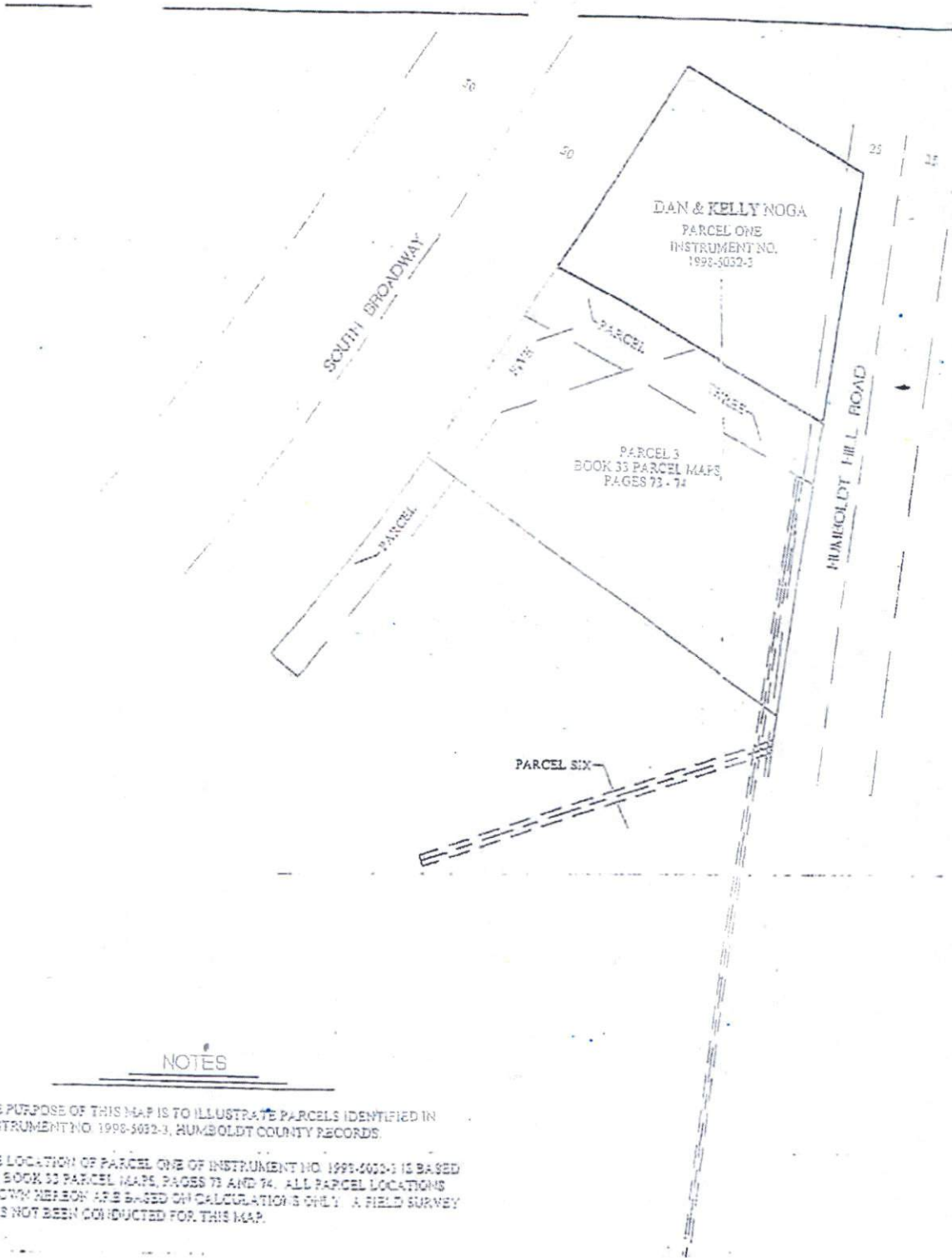
Reserving therefrom, for the benefit of Parcel 1 of said Parcel Map No. 3439, a non-exclusive easement for ingress and egress over and across that portion of Parcel One above lying within Parcel "A" as shown on said Parcel Map.

PARCEL TWO

A non-exclusive easement for ingress and egress over and across that portion of Parcel 1 of said Parcel Map No. 3439 lying within Parcel "A" as shown thereon.

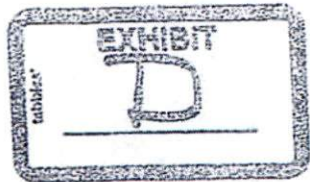
APN: 305-101-054





NOTES

1. THE PURPOSE OF THIS MAP IS TO ILLUSTRATE PARCELS IDENTIFIED IN INSTRUMENT NO. 1998-5032-3, HUMBOLDT COUNTY RECORDS.
2. THE LOCATION OF PARCEL ONE OF INSTRUMENT NO. 1998-5032-3 IS BASED ON BOOK 33 PARCEL MAPS, PAGES 73 AND 74. ALL PARCEL LOCATIONS SHOWN HEREON ARE BASED ON CALCULATIONS ONLY. A FIELD SURVEY HAS NOT BEEN CONDUCTED FOR THIS MAP.

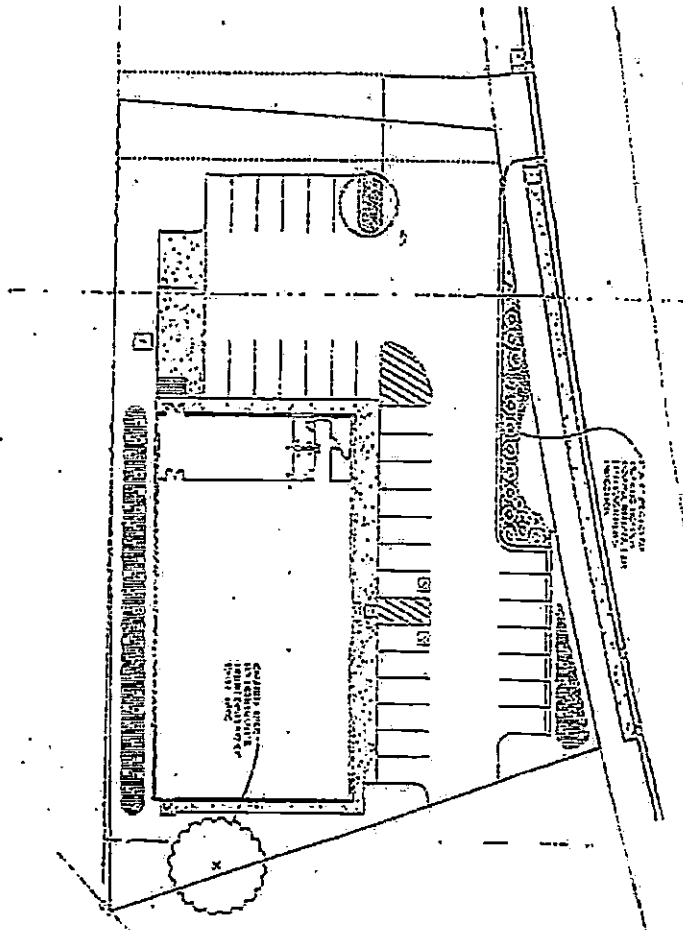


SITE
OF DOLLAR
GENERAL
STORE

ROADWAY EASEMENT

NOVA
PROPERTY





Plant List

PLANT	SYMBOL	PLANT NAME	PLANT CODE	PLANT QUANTITY	PLANT SPECIES
1	1	PLANT 1	PLANT 1	1	PLANT 1
2	2	PLANT 2	PLANT 2	2	PLANT 2
3	3	PLANT 3	PLANT 3	3	PLANT 3
4	4	PLANT 4	PLANT 4	4	PLANT 4
5	5	PLANT 5	PLANT 5	5	PLANT 5
6	6	PLANT 6	PLANT 6	6	PLANT 6
7	7	PLANT 7	PLANT 7	7	PLANT 7
8	8	PLANT 8	PLANT 8	8	PLANT 8
9	9	PLANT 9	PLANT 9	9	PLANT 9
10	10	PLANT 10	PLANT 10	10	PLANT 10

LANDSCAPE ARCHITECTURE

ARCHITECT: [Name]

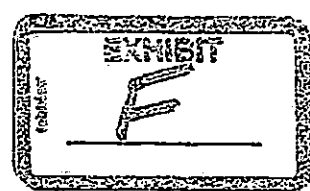
DATE: [Date]

PROJECT: [Project Name]

SCALE: [Scale]

LANDSCAPE ARCHITECTURE

PLANT LIST WITH THE REDLINE LIBRARY IS NOT A PART OF THE CLASSIFICATION OF LANDSCAPE ARCHITECTURE. CONSULT THE ARCHITECT FOR THE CORRECT PLANT LIST.



LANDSCAPE ARCHITECTURE

LANDSCAPE ARCHITECTURE IS THE ART AND SCIENCE OF DESIGNING AND CREATING THE OUTDOOR ENVIRONMENT. IT INCLUDES THE DESIGN OF PLANTINGS, HARDSCAPE, AND OTHER ELEMENTS THAT CONTRIBUTE TO THE OVERALL AESTHETIC AND FUNCTIONALITY OF AN OUTDOOR SPACE.

LANDSCAPE ARCHITECTS WORK WITH ARCHITECTS AND OTHER PROFESSIONALS TO DEVELOP COMPREHENSIVE PLANS FOR THE DESIGN AND CONSTRUCTION OF LANDSCAPES. THEIR WORK IS ESSENTIAL TO THE SUCCESS OF ANY BUILDING PROJECT, AS IT ENSURES THAT THE OUTDOOR ENVIRONMENT IS INTEGRATED WITH THE BUILDING AND ITS SURROUNDINGS.

LANDSCAPE ARCHITECTS ARE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF LANDSCAPES THAT ARE BOTH BEAUTIFUL AND FUNCTIONAL. THEY CONSIDER A WIDE RANGE OF FACTORS, INCLUDING CLIMATE, SOIL, AND LIGHT, TO CREATE A DESIGN THAT IS SUSTAINABLE AND ENJOYABLE FOR YEARS TO COME.

LANDSCAPE ARCHITECTURE IS A DIVERSE FIELD THAT OFFERS MANY OPPORTUNITIES FOR PROFESSIONALS. FROM RESIDENTIAL PROJECTS TO LARGE-SCALE COMMERCIAL DEVELOPMENTS, LANDSCAPE ARCHITECTS PLAY A CRUCIAL ROLE IN SHAPING THE OUTDOOR ENVIRONMENT OF OUR SOCIETY.

LANDSCAPE ARCHITECTURE IS A PROFESSION THAT IS IN CONSTANT GROWTH. AS OUR SOCIETY BECOMES MORE AWARE OF THE IMPORTANCE OF THE OUTDOOR ENVIRONMENT, THE DEMAND FOR LANDSCAPE ARCHITECTS IS EXPECTED TO INCREASE SIGNIFICANTLY IN THE YEARS TO COME.

LANDSCAPE ARCHITECTURE

LANDSCAPE ARCHITECTURE

LANDSCAPE ARCHITECTURE

LANDSCAPE ARCHITECTURE

LANDSCAPE ARCHITECTURE

1 PROOF OF SERVICE

2 The undersigned declares:

3 I am over the age of 18 years and not a party to this action. My address is 819 Seventh Street,
4 Eureka, California, which is located in Humboldt County where the service described below took place.

5 On October 1, 2015, I served all parties in said action with the following document:

6 SECOND AMENDED COMPLAINT OR PRESCRIPTIVE EASEMENT; FOR
7 PROMISSORY ESTOPPEL; FOR QUIET TITLE; FOR DECLARATORY RELIEF;
AND FOR MANDATORY AND PROHIBITORY INJUNCTION

8 X U.S. Mail: by placing a true copy thereof enclosed in a sealed envelope, addressed
9 as shown below and placing the envelope for collection and mailing on the date
10 and at the place shown below, following our ordinary business practices. I am
11 readily familiar with this business' practice for collecting and processing
correspondence for mailing. On the same day that correspondence is placed for
collection and mailing, it is deposited in the ordinary course of business with the
United States Postal Service in a sealed envelope with postage fully prepaid.


12 _____ Personal Service: by placing a true copy thereof enclosed in a sealed envelope,
13 addressed as shown below and causing same to be delivered to the individual
14 named below or to that individual in care of a member of her/his office, prior to
5:00 p.m.

15 _____ Overnight Mail: by placing a true copy thereof enclosed in a sealed envelope
16 addressed as shown below and causing said envelope to be deposited in a box or
17 other facility regularly maintained by the express service carrier, or delivered to an
authorized courier or driver authorized by the express service carrier to receive
documents, in an envelope or package designated by the express service carrier
with delivery fees paid or provided for.

18 _____ Facsimile or Electronic Transmission: Based on a court order or an agreement
19 of the parties to accept service by email or electronic transmission, I caused the
20 documents to be sent to the persons at the e-mail addresses or at the facsimile
21 numbers listed above. I did not receive, within a reasonable time after the
transmission, any electronic message or other indication that the transmission was
unsuccessful. I am readily familiar with my firm's business practice of processing
and transmitting documents via facsimile or electronic transmission(s) and any
such documents would be transmitted in the ordinary course of business.

22 ADDRESSEE(S):
23 William F. Barnum, Esq.
24 Barnum Law Office
25 PO Box 173
Eureka CA 95502-0173
26 wfb@barnumlaw.net
Attorney for Defendants

27 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on October 1, 2015, at Eureka, California.

28 
Ann Maxcy

FLOYD LAW FIRM

Attorneys:

Bradford C Floyd
Carlton D. Floyd

819 Seventh Street
Eureka, California 95501
Telephone:(707) 445-9754
Facsimile:(707) 445-5915
E-mail: bcfloyd@floydlawfirm.net

July 7, 2016

Humboldt County Planning Commission
825 Fifth Street, Room
Eureka, CA 95501

**Re: Dollar General - Eich Road, Humboldt Hill area;
Coastal Development Permit, Special Permit
Application Number 9329, Case Number CDP-14-033/ SP-14-049 .**

Dear Commissioners:

By way of this letter, my client is adopting the arguments set forth in the letter to the Commissioners from Kimberly Tays dated July 4, 2016, and her supplemental comments dated July 5, 2016. Copies of these letters are attached hereto as **Exhibits A** and **B**, respectively. In addition to adopting Ms. Tays' comments (objections), we add the following objections based upon our review of the Staff Report and its attachments.

First, we object to a 16-foot (+/-) wetlands set back from the designated wetlands area to the improvement. The Code requires a 100-foot setback. Given the quantified wetlands on the subject property and its location in relationship to Humboldt Bay and the ocean, a 16 foot (+/-) setback provides insufficient protection. Furthermore, the wetlands delineation prepared by Virginia Dains is dated May 6, 2015. In her Wetland Determination Form, Ms. Dains indicates she inspected the subject property on February 25, 2015, during a "very dry January and February." Also, the vegetation on site had been mowed down just a few months prior to Ms. Dains' inspection. Since February 25, 2015, the vegetation on the subject property, especially vegetation associated with wetlands, has changed dramatically. For instance, Hooker's willow now abound and are 10 to 15 feet tall, as depicted by photographs we will be submitting to the Commission. We believe a wetland study performed today would find a much greater area of wetlands than designated by Ms. Dains.

Second, as noted in the Staff Report, the footprint of the proposed building requires 32 parking spaces for the retail store and warehouse. The applicant has requested, and staff approved, a reduction from 32 parking spaces to 24. Staff accepts a parking survey provided by Dollar General Store. The three stores used in Dollar General's survey sample were in Gridley, Los Molinos, and Orland, California. The respective populations for those cities are 6,531, 2,037, and 7,482. Hardly representative of the population surrounding the proposed site. The number of vehicles entering and exiting Country Club Market, which carries similar products, and has a footprint of just over half of the footprint proposed by Dollar General, indicates a much greater parking demand than estimated by Dollar General. Country Club Market was required to, and provides, 28 parking spaces.

Humboldt County Planning Commission
July 7, 2016
Page Two

Thank you for your consideration of the above. As previously stated, we object the approval of this project.

Respectfully submitted,

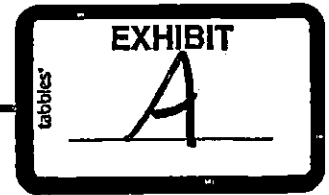
A handwritten signature in black ink, appearing to be 'BCF', followed by a horizontal line extending to the right.

Bradford C Floyd

BCF/gme
Enclosures

EXHIBIT A

Brad Floyd



From: Kimberly Tays <kimkat067@gmail.com>
Sent: Monday, July 04, 2016 12:38 AM
To: planningclerk@co.humboldt.ca.us
Cc: Kraemer, Melissa@Coastal; Jennifer Kalt; bcfloyd@floydlawfirm.net; Colin Fiske
Subject: Comments on CDP 14-033; Dollar General (DG) Proposed Development

Dear Planning Clerk:

Please forward this email regarding Dollar General's proposed project on a 0.87-acre vacant parcel of land within the certified Humboldt Bay Area Plan (HBAP) in Eureka, CA, to Humboldt County Planning Commissioners Alan Bongio, David Edmonds, Noah Levy, Kevin McKenny, Robert Morris, Ben Shepherd and Lee Ulansey.

I oppose Dollar General's project for the following reasons:

(1) Interference with Natural Drainage Patterns: The mitigation measures identified in the Humboldt County Planning Dept.'s staff report are insufficient to protect the 150 sq.ft. wetland. The amount of impermeable surfaces that would be introduced to the undeveloped site (including a 9,300 sq. ft. building surrounded by an asphalt parking lot, sidewalks, retaining walls, curbs and gutters), in addition to the grading that would need to be done, will interfere with the drainage patterns and degrade this sensitive wetland. The water that would typically reach the wetland from the surrounding area will not reach it once the site is developed, as a *concrete curb will encircle the wetland buffer to prevent parking area runoff from entering the wetland*. While the staff report states the hydrology of the wetland will be *augmented by roof runoff which is channeled from the rear of the building into a vegetated swale and which overflows into the wetland area through curb openings (figure 1)*, it seems unlikely that water from the roof will be enough to recharge this small wetland. I am also questioning the type of materials that will be used for the roof (the plans were difficult to read) and whether those materials would contain pollutants or if, during the dry season, air-borne pollutants could settle on the roof and then drain into the wetland and degrade the water quality.

(2) Unacceptable Reduction to Buffer Zone: The staff report states that the standard buffer of 100 feet needs to be reduced to allow for this development. Instead of a 100-foot buffer, a setback that varies between 16 to 20 feet (or an average of approx. 17 feet) is being proposed, thus reducing the standard buffer by 83%. Due to the fact that over 90% of wetlands in California have been lost or impacted from development, this wetland should not be compromised to allow for the development of a chain store that does not sell anything that consumers cannot buy at other nearby chain stores (i.e., K-Mart, Walmart, Target, etc.). The problem with reducing the buffer by such a large percentage is that this small wetland, which currently benefits from an undeveloped, vegetated environment, will be almost completely hemmed in by hardscape and man-made structures. While the applicant proposes to plant native plants in the wetland and buffer zone, the rest of the vegetation that currently surrounds the wetland will be paved over and displaced by a 9,300 sq. ft. building. This will drastically reduce the amount of vegetation that exists on the site and provides important habitat for wildlife. Altering this site in such a drastic way, and providing almost no buffer zone, will surely degrade the quality of this wetland and will impact the health and wellbeing of the wildlife that uses or depends on this unique environment. We cannot afford to continue on with this sort of development, as we have so few wetland environments left in coastal California.

(3) Light Pollution: DG proposes to install 2 large illuminated signs (for a total of 291 sq. ft. of lighting) that will be on 7 days a week until 10 p.m. I am assuming the Dollar General sign that will be attached to the building will be illuminated all night long, in addition to the lighting that will be turned on for safety purposes. Since no specific lighting plan was included in the staff report, the public has no way of knowing the extent of the light pollution that will be created by this development and how it will impact wildlife using the wetland, especially species that are nocturnal and require darkness to navigate and forage.

(4) Traffic Congestion/Noise Pollution/Greenhouse Emissions: The traffic predictions about this project are confusing and ambiguous. A memo dated October 8, 2014 (included in the staff report) states: *the typical Dollar General Store is expected to generate approximately 583 daily trips OR 385 'new' daily trips*. [Emphasis added.] However, when you read the Dollar General Humboldt Hills Plan of Operation (also included in the staff report), it says: *We typically have 10-13 trips per hour so the increase in [sic] not significant*. Using the figures of 10 and 13 trips per hour, I calculated there would be 50,400 and 65,520 vehicle trips, respectively, per year. I arrived at those figures by multiplying 10 and 13 vehicles per hour x 14 (the number of store hours) x 30 days/month x 12 months/year. If you compare the vehicle trips mentioned in the October 8 memo with the vehicle trips mentioned in the Plan of Operation, you will see there is a large discrepancy in the forecasted vehicle trips

generated by this store. Instead of 50,400 and 65,530 annual vehicle trips, the figures rise dramatically to 138,600 vehicle trips and 209,880 new vehicle trips, respectively, per year. I came up with the latter two figures by multiplying, separately, 385 *new* daily trips and 583 daily trips x 30 days/month x 12 months/year. These figures do not include the number of large trucks (3 STAA-sized trucks per day) and the unspecified number of smaller delivery trucks that would visit the site. DG is minimizing the impacts from its vehicle and truck traffic on the nearby streets and neighborhoods. The traffic data does not even use traffic studies conducted in California. The data surveys were conducted in Florida in the years 2010, 2011 and 2012. Vehicle and truck traffic has increased in the past 4-6 years, especially since the economy has improved and people are driving more now that gas prices have dropped. In Florida, especially during the years 2011 and 2012, gas prices were around \$3.50 to \$4.00 per gallon (causing people to drive less) compared to current gas prices of around \$2.40 per gallon. The applicant needs to provide current data that is relevant to this area of California in order to adequately address the traffic congestion, noise pollution and greenhouse gas emissions that would be emitted from customer vehicles and delivery trucks (not to mention the increased damage to our roads and danger that these bigger trucks pose to drivers on our rural roads). This tremendous increase in vehicle and truck traffic (and attendant noise pollution and gas emissions) will negatively impact the nearby neighborhoods and community, at large. It will also disturb the wildlife that uses the wetland environment.

(5) Lack of Wildlife Studies: I did not see any studies indicating the type of birds, amphibians, etc. that currently use this wetland. The only studies I saw in the staff report related to the various types of vegetation growing in and around the wetland. A biological evaluation needs to be conducted to assess the types of birds and other wildlife that use the wetland and how those species would be impacted by this development.

(6) CA Coastal Commission Suggestions: In the letter dated August 24, 2014 from Melissa Kraemer of the CA Coastal Commission, Ms. Kraemer mentions: (1) *reducing the amount of proposed hardscape*, (2) *requiring the use of porous pavement rather than traditional asphalt for the proposed parking lot*, and (3) *requiring preservation of native vegetation*. After looking online at images of DG stores, it is apparent the proposed design for this store differs little from the cookie-cutter style stores it has built throughout the U.S. The October 8 memo that is included in the staff report mentions that: *Dollar General Stores are typically stand-alone 9,100 sf retail stores located off of state highways and "Main Streets" in suburban and rural areas*. The stand-alone store proposed for this site is 9,300 sq.ft. (200 sq.ft. bigger than the typical-sized store), which means the applicant made no attempt to decrease the footprint of the store in order to allow for an adequate buffer between the development and wetland. In spite of the suggestion to incorporate a porous pavement into the parking lot design instead of traditional asphalt, it appears that regular asphalt is being used for this parking lot, evidenced by the need to build a curb to encircle the wetland buffer in order to direct pollutant-laden runoff away from the wetland. If a porous surface or paving stones were introduced into the parking lot design, that would allow rain water to percolate into the ground and recharge the wetland. Porous surfaces would also reduce the threat of pollution entering the wetland, as the ground would work to filter out the pollutants. While the plans call for the planting of native plants in and around the wetland, any native plants outside that very small area would be destroyed by the building, parking lot and hardscape surfaces.

(7) Stand-Alone Stores Encourage Single-Driving Trips: Not only will this development degrade a sensitive wetland environment, building stand-alone retail stores, such as the one proposed here, encourages single-driving trips, as this store would not be centrally located or connected to other shopping areas. The only store that DG would be near is the locally owned Country Club Market that would surely suffer due to an inability to compete with DG's corporate bulk-buying power. The money that DG would make from this store would be sent to its headquarters in Tennessee, unlike the market that is owned by the Nogas. Any jobs that would be created by DG could be lost if the Country Club Market was put out of business.

(8) Reduced Walkability/Bikeability: More car and truck traffic diminishes the walkability and bikeability of our communities, as people are intimidated by the inhospitable nature of such an environment. When people drive everywhere, this further exacerbates the obesity problems in this country.

(9) Alternative Building Sites: The staff report states that there is no alternative to this proposed project site, but this is not a true statement. Instead of destroying important (and increasingly rare) wetland habitat, DG should investigate renting space in the Bayshore Mall, as there is plenty of space available for new retail stores. By filling up the Bayshore Mall with different retailers, shoppers are provided with the opportunity to consolidate their shopping trips versus driving, specifically, to stand-alone stores such as the one that DG proposes to build.

I am respectfully requesting the Humboldt County Planning Commissioners deny Dollar General's project, as proposed, due to the significant impacts it would have on this sensitive wetland environment.

Sincerely,

EXHIBIT B

Brad Floyd

From: Kimberly Tays <kimkat067@gmail.com>
Sent: Tuesday, July 05, 2016 1:06 PM
To: planningclerk@co.humboldt.ca.us; cc: Kraemer, Melissa@Coastal; Jennifer Kalt; Bradford Floyd
Subject: Supplemental Comments on CDP 14-033; Dollar General (DG) Proposed Development

Dear Planning Clerk:

Please forward my supplemental comments (to be attached to my July 4 email) regarding Dollar General's proposed project on a 0.87-acre vacant parcel of land within the certified Humboldt Bay Area Plan (HBAP) in Eureka, CA, to Humboldt County Planning Commissioners Alan Bongio, David Edmonds, Noah Levy, Kevin McKenny, Robert Morris, Ben Shepherd and Lee Ulansey.

Upon further examination of the staff report regarding the above-mentioned project, I have concerns about Conditions of Approval 14 and 19 re: the stormwater issue (MS4 Program) and the issue regarding the statement that this project would not harm fish and wildlife.

Under Condition of Approval 14, it says: *The applicant shall submit a Drainage Plan for approval by the Department of Public Works that incorporates Low Impact Development techniques into the project design in a manner complementary to the requirements of COA #3 (oil-water filtration) and COA #4 (stormwater detention). The Drainage Plan shall comply with the standards of a Regulated Project under the State Water Board's Phase II Small Municipal Separate Storm Sewer System (MS4) Program. Areas identified as treatment areas shall be maintained for the life of the project. The purpose of these combined measures is to maximize 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. (p.13 of staff report)*

MY COMMENTS RE: COA #14, ABOVE: The Drainage Plan must be presented to the Planning Commissioners, so they know what they are approving, and also to the public so that we have a complete picture of what is being proposed and how the impacts will be mitigated. **Allowing the Drainage Plan to be approved by the Public Works Department (after review and approval of the project) deprives the public of the information we need to be properly informed about the true impacts of this project on a sensitive wetland.** Other than the plan to direct roof runoff into a channel and vegetated swale to overflow into the wetland through curb openings, I have seen no other plans that incorporate LID techniques into this project. Roof runoff may replenish the wetland somewhat, but the wetland is still being deprived of the runoff it would normally receive if the site was not hemmed in by asphalt, pavement and a large building. Diverting contaminated runoff away from the wetland only serves to deprive the wetland of the water it needs to stay healthy and functioning, which would, in turn, harm wildlife.

Under Condition of Approval 19, it says: *Within five (5) days of the effective date of the approval of this permit, the applicant shall submit a check to the Planning Division payable to the Humboldt County Recorder in the amount of \$2,260.25. Pursuant to Section 711.4 of the Fish and Game Code, the amount includes the Department of Fish and Wildlife (DFW) fee plus a \$50 document handling fee. The fee is effective through December 31, 2016 at such time the fee will be adjusted pursuant to Section 713 of the Fish and Game Code. Alternatively, the applicant may contact DFW by phone at (916) 651-0603 or through the DFW website at www.wildlife.ca.gov for a determination that the project will have no effect on fish and wildlife. [Emphasis Added] *If DFW concurs, a form will be provided exempting the project from the \$2,210.25 fee payment requirement. In this instance, only a copy of the DFW form and the \$50.00 handling fee is required. (p. 14 of staff report)**

MY COMMENTS RE: 19, ABOVE: A wildlife study needs to be prepared prior to approval of this project, as the Planning Commissioners and public members are in the dark about what wildlife is using the wetland and may be impacted by this project. Allowing the applicant to **simply make a phone call to DFW's office in Sacramento** (to a person that has not even visited the site or evaluated the impacts)--**with no records of what was discussed or how the determination was made that the project will have no effect on fish and wildlife**--means the public review process is being circumvented and the Planning Commissioners and public members are being deprived of the information they need to be properly informed about the true impacts of this project.

As mentioned in my July 4 email, I am opposed to this proposed project and am asking the Planning Commissioners to deny the project until further information is provided about the true impacts of this development and more efforts are made by the applicant to reduce the impacts their project will have on a sensitive wetland environment, including consideration of an alternative site for their store (i.e., Bayshore Mall and other vacant retail space in Eureka).



Regards,
Kimberly Tays
Resident of Humboldt County











September 6, 2015

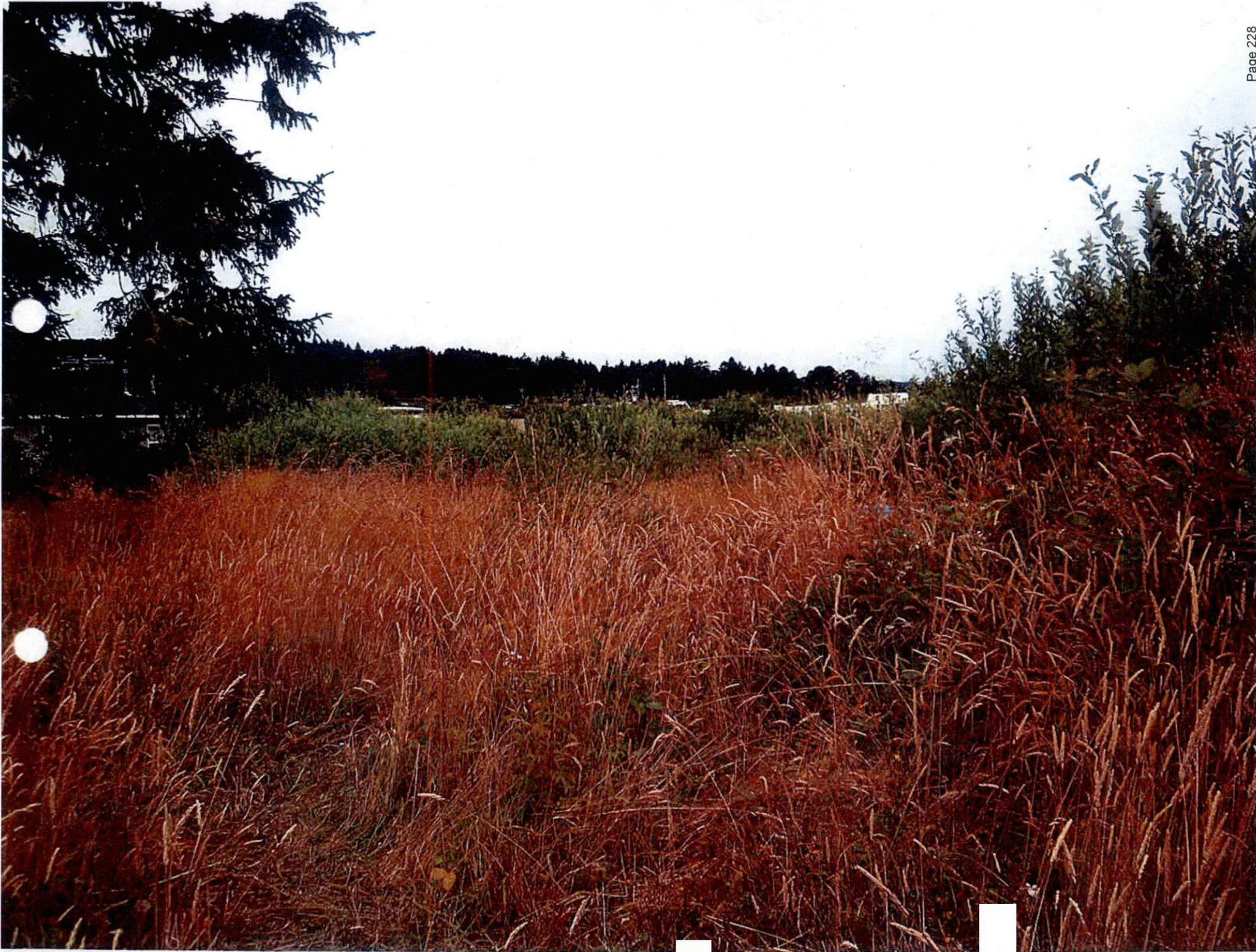
CBS 14-0839A













SUPPLEMENTAL INFORMATION

No. 2

For Planning Commission Agenda of:
July 7, 2016

- | | | | |
|-------------------------------------|----------------------------|---|-------|
| <input type="checkbox"/> | Administrative Agenda Item | } | |
| <input type="checkbox"/> | Continued Hearing Item | } | |
| <input checked="" type="checkbox"/> | New Hearing Item | } | No. 1 |
| <input type="checkbox"/> | Old Business Item | } | |
| <input type="checkbox"/> | New Business Item | } | |

Re: Applicant: Dollar General
Case Nos.: CDP-14-033, SP-14-049
File No.: APN: 305-101-054

Attached for the Planning Commission's record and review are the following supplementary information items:

1. Correspondance from Kimberly Tays.

From: Kimberly Tavs
To: Planning Clerk
Cc: Kraemer, Melissa@Coastal; Jennifer Kalt; bcfloyd@floydlawfirm.net; Colin Fiske
Subject: Comments on CDP 14-033; Dollar General (DG) Proposed Development
Date: Monday, July 04, 2016 12:38:27 AM

Dear Planning Clerk:

Please forward this email regarding Dollar General's proposed project on a 0.87-acre vacant parcel of land within the certified Humboldt Bay Area Plan (HBAP) in Eureka, CA, to Humboldt County Planning Commissioners Alan Bongio, David Edmonds, Noah Levy, Kevin McKenny, Robert Morris, Ben Shepherd and Lee Ulansey.

I oppose Dollar General's project for the following reasons:

(1) Interference with Natural Drainage Patterns: The mitigation measures identified in the Humboldt County Planning Dept.'s staff report are insufficient to protect the 150 sq.ft. wetland. The amount of impermeable surfaces that would be introduced to the undeveloped site (including a 9,300 sq. ft. building surrounded by an asphalt parking lot, sidewalks, retaining walls, curbs and gutters), in addition to the grading that would need to be done, will interfere with the drainage patterns and degrade this sensitive wetland. The water that would typically reach the wetland from the surrounding area will not reach it once the site is developed, as a *concrete curb will encircle the wetland buffer to prevent parking area runoff from entering the wetland*. While the staff report states the hydrology of the wetland will be *augmented by roof runoff which is channeled from the rear of the building into a vegetated swale and which overflows into the wetland area through curb openings (figure 1)*, it seems unlikely that water from the roof will be enough to recharge this small wetland. I am also questioning the type of materials that will be used for the roof (the plans were difficult to read) and whether those materials would contain pollutants or if, during the dry season, air-borne pollutants could settle on the roof and then drain into the wetland and degrade the water quality.

(2) Unacceptable Reduction to Buffer Zone: The staff report states that the standard buffer of 100 feet needs to be reduced to allow for this development. Instead of a 100-foot buffer, a setback that varies between 16 to 20 feet (or an average of approx. 17 feet) is being proposed, thus reducing the standard buffer by 83%. Due to the fact that over 90% of wetlands in California have been lost or impacted from development, this wetland should not be compromised to allow for the development of a chain store that does not sell anything that consumers cannot buy at other nearby chain stores (i.e., K-Mart, Walmart, Target, etc.). The problem with reducing the buffer by such a large percentage is that this small wetland, which currently benefits from an undeveloped, vegetated environment, will be almost completely hemmed in by hardscape and man-made structures. While the applicant proposes to plant native plants in the wetland and buffer zone, the rest of the vegetation that currently surrounds the wetland will be paved over and displaced by a 9,300 sq. ft. building. This will drastically reduce the amount of vegetation that exists on the site and provides important habitat for wildlife. Altering this site in such a drastic way, and providing almost no buffer zone, will surely degrade the quality of this wetland and will impact the health and wellbeing of the wildlife that uses or depends on this unique environment. We cannot afford to continue on with this sort of development, as we have so few wetland environments left in coastal California.

(3) Light Pollution: DG proposes to install 2 large illuminated signs (for a total of 291 sq. ft. of lighting) that will be on 7 days a week until 10 p.m. I am assuming the Dollar General sign that will be attached to the building will be illuminated all night long, in addition to the lighting that will be turned on for safety purposes. Since no specific lighting plan was included in the staff report, the public has no way of knowing the extent of the light pollution that will be created by this development and how it will impact wildlife using the wetland, especially species that are nocturnal and require darkness to navigate and

forage.

(4) Traffic Congestion/Noise Pollution/Greenhouse Emissions: The traffic predictions about this project are confusing and ambiguous. A memo dated October 8, 2014 (included in the staff report) states: *the typical Dollar General Store is expected to generate approximately 583 daily trips OR 385 'new' daily trips.* [Emphasis added.] However, when you read the Dollar General Humboldt Hills Plan of Operation (also included in the staff report), it says: *We typically have 10-13 trips per hour so the increase in [sic] not significant.* Using the figures of 10 and 13 trips per hour, I calculated there would be 50,400 and 65,520 vehicle trips, respectively, per year. I arrived at those figures by multiplying 10 and 13 vehicles per hour x 14 (the number of store hours) x 30 days/month x 12 months/year. If you compare the vehicle trips mentioned in the October 8 memo with the vehicle trips mentioned in the Plan of Operation, you will see there is a large discrepancy in the forecasted vehicle trips generated by this store. Instead of 50,400 and 65,520 annual vehicle trips, the figures rise dramatically to 138,600 vehicle trips and 209,880 new vehicle trips, respectively, per year. I came up with the latter two figures by multiplying, separately, 385 *new* daily trips and 583 daily trips x 30 days/month x 12 months/year. These figures do not include the number of large trucks (3 STAA-sized trucks per day) and the unspecified number of smaller delivery trucks that would visit the site. DG is minimizing the impacts from its vehicle and truck traffic on the nearby streets and neighborhoods. The traffic data does not even use traffic studies conducted in California. The data surveys were conducted in Florida in the years 2010, 2011 and 2012. Vehicle and truck traffic has increased in the past 4-6 years, especially since the economy has improved and people are driving more now that gas prices have dropped. In Florida, especially during the years 2011 and 2012, gas prices were around \$3.50 to \$4.00 per gallon (causing people to drive less) compared to current gas prices of around \$2.40 per gallon. The applicant needs to provide current data that is relevant to this area of California in order to adequately address the traffic congestion, noise pollution and greenhouse gas emissions that would be emitted from customer vehicles and delivery trucks (not to mention the increased damage to our roads and danger that these bigger trucks pose to drivers on our rural roads). This tremendous increase in vehicle and truck traffic (and attendant noise pollution and gas emissions) will negatively impact the nearby neighborhoods and community, at large. It will also disturb the wildlife that uses the wetland environment.

(5) Lack of Wildlife Studies: I did not see any studies indicating the type of birds, amphibians, etc. that currently use this wetland. The only studies I saw in the staff report related to the various types of vegetation growing in and around the wetland. A biological evaluation needs to be conducted to assess the types of birds and other wildlife that use the wetland and how those species would be impacted by this development.

(6) CA Coastal Commission Suggestions: In the letter dated August 24, 2014 from Melissa Kraemer of the CA Coastal Commission, Ms. Kraemer mentions: (1) *reducing the amount of proposed hardscape*, (2) *requiring the use of porous pavement rather than traditional asphalt for the proposed parking lot*, and (3) *requiring preservation of native vegetation*. After looking online at images of DG stores, it is apparent the proposed design for this store differs little from the cookie-cutter style stores it has built throughout the U.S. The October 8 memo that is included in the staff report mentions that: *Dollar General Stores are typically stand-alone 9,100 sf retail stores located off of state highways and "Main Streets" in suburban and rural areas.* The stand-alone store proposed for this site is 9,300 sq.ft. (200 sq.ft. bigger than the typical-sized store), which means the applicant made no attempt to decrease the footprint of the store in order to allow for an adequate buffer between the development and wetland. In spite of the suggestion to incorporate a porous pavement into the parking lot design instead of traditional asphalt, it appears that regular asphalt is being used for this parking lot, evidenced by the need to build a curb to encircle the wetland buffer in order to direct pollutant-laden runoff away from the wetland. If a porous surface or paving stones were introduced into the parking lot design, that would allow rain water to percolate into the ground and recharge the wetland. Porous surfaces would also reduce the threat of pollution entering the wetland, as the ground would work to filter out the pollutants. While the plans call for the planting of native plants in and around the wetland, any native plants outside that very small area would be destroyed by the building, parking lot and hardscape surfaces.

(7) Stand-Alone Stores Encourage Single-Driving Trips: Not only will this development degrade a sensitive wetland environment, building stand-alone retail stores, such as the one proposed here, encourages single-driving trips, as this store would not be centrally located or connected to other shopping areas. The only store that DG would be near is the locally owned Country Club Market that would surely suffer due to an inability to compete with DG's corporate bulk-buying power. The money that DG would make from this store would be sent to its headquarters in Tennessee, unlike the market that is owned by the Nogas. Any jobs that would be created by DG could be lost if the Country Club Market was put out of business.

(8) Reduced Walkability/Bikeability: More car and truck traffic diminishes the walkability and bikeability of our communities, as people are intimidated by the inhospitable nature of such an environment. When people drive everywhere, this further exacerbates the obesity problems in this country.

(9) Alternative Building Sites: The staff report states that there is no alternative to this proposed project site, but this is not a true statement. Instead of destroying important (and increasingly rare) wetland habitat, DG should investigate renting space in the Bayshore Mall, as there is plenty of space available for new retail stores. By filling up the Bayshore Mall with different retailers, shoppers are provided with the opportunity to consolidate their shopping trips versus driving, specifically, to stand-alone stores such as the one that DG proposes to build.

I am respectfully requesting the Humboldt County Planning Commissioners deny Dollar General's project, as proposed, due to the significant impacts it would have on this sensitive wetland environment.

Sincerely,
Kimberly Tays
Resident of Humboldt County

From: Kimberly Tays
To: Planning Clerk; cc: Kraemer, Melissa@Coastal; Jennifer Kalt; Bradford Floyd
Subject: Supplemental Comments on CDP 14-033; Dollar General (DG) Proposed Development
Date: Tuesday, July 05, 2016 1:05:55 PM

Dear Planning Clerk:

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