



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

860 NORTH BUSH STREET • UKIAH • CALIFORNIA • 95482
120 WEST FIR STREET • FT. BRAGG • CALIFORNIA • 95437

Steve Dunicliff, Director
Phone: 707-234-6650
Fax: 707-463-5709
Ft. Bragg Phone: 707-964-5379
Ft. Bragg Fax: 707-961-2427
pbs@co.mendocino.ca.us
www.co.mendocino.ca.us/planning

MEMORANDUM

DATE: NOVEMBER 14, 2016

TO: BOARD OF SUPERVISORS

FROM: ROBERT DOSTALEK, PROJECT PLANNER

SUBJECT: APPEAL OF THE PLANNING COMMISSION'S OCTOBER 6, 2016 DETERMINATION THAT THE PROPOSED RELOCATION OF THE IIPE EAST CAMPUS IS CONSISTENT WITH CONDITION B-1 OF USE PERMIT UR_2009-0002

On October 17, 2016, Jody Sangiacamo ("Appellant") submitted the following appeal of the Planning Commission's determination that the proposed relocation of the International Institute of Philosophy and Ethics (IIPE/East Campus) located at 4951 Bodhi Way is consistent with Condition B-1 of Use Permit UR_2009-0002 and to accept the memorandum as an addendum to the Mitigated Negative Declaration adopted for Use Permit UR_2009-0002.

Appeal Statement: *"We concerned neighbors are appealing the recent decision of the Planning Commission and the lead agency's determination in the approval of the DRBA's relocated final building site plan for "East Campus" project. The moving of the project 400' to the north will have new environmental effects to the area not previously identified in 2002's certified EIR. The 2011 modification stipulation known as Condition B-1 is not being upheld: necessary set-backs, buffers, protection & preservation of prime ag land within and adjacent, new delineated wetlands being encroached upon with detention ponds and all infrastructure needed to be addressed. The visual impacts will also be significant the area."*

Background: The Dharma Realm Buddhist Association (DRBA) owns and operates the existing City of Ten Thousand Buddha's (CTTB/West Campus) educational and cultural center in Talmage. On September 15, 2011, the Planning Commission conditionally renewed and modified entitlements granted to the DRHB to develop a 249,000 square foot religious educational training facility. This facility is located on adjoining parcels east of the CTTB and is not yet constructed. The Mitigated Negative Declaration adopted with the modified project was prepared in addition to the 2002 certified EIR.

The 2011 modification reduced the size and scope of a previously approved design for the IIPE/East Campus. As a stipulation of the modification, Condition B-1 was applied to the project. It states in pertinent part:

*That the amount of new square footage authorized by this entitlement for the renewal in perpetuity of the CTTB/West Campus use permit (U 51-78) without further amendment is 30,000 square feet. The amount of new square footage authorized without further amendment for the IIPE/East Campus (U 11-99 and V 11-99) under this entitlement is 249,000 to be developed within the envelop proposed for the project and assessed by this environmental document. Maximum heights of structures are limited to the height limits provided for within the applicable Zoning Districts. **"Emphasis in selecting the final building site shall focus on preservation and protection of wetlands, significant trees and prime agricultural soils, as well as consideration of drainage related concerns and visual impacts."***

The underscored portion of Condition B-1 above provides a directive to ensure protection of key impact areas analyzed in a project EIR certified in 2002 and a Mitigated Negative Declaration adopted in 2011.

On June 27, 2016, the applicant submitted a final building site plan based on new wetland information from a survey conducted this past spring (Wear, April 2016/Revised June 2016). The spring survey revealed the wetlands have expanded since they were analyzed under previous project permutations. Correspondingly, the northern portions of the IIPE facility footprint is proposed to be re-positioned approximately 400 feet northward to protect the newly identified wetland areas. The new project location is designed to respond to the direction of Condition B-1 as highlighted and noted above.

The Department of Planning and Building Services noticed the neighboring properties on August 12, 2016 of the pending administrative determination as an opportunity for neighbors to request a public hearing before the Planning Commission if there were concerns regarding the proposed final building site consistency with Condition B-1. As a result of that notice, a public hearing was requested and scheduled.

On October 6, 2016, the Planning Commission considered testimony, and based on the evidence presented at the hearing, accepted staff's memorandum as an addendum to the Mitigated Negative Declaration adopted for Use Permit UR_2009-0002 and determined that the proposed relocation of the IIPE East Campus is consistent with Condition B-1 of Use Permit UR_2009-0002. The Planning Commission's action was properly limited to compliance with Condition B-1 only and did not re-evaluate the adequacy of previous environmental determinations. All other conditions and mitigation measures from prior decisions remain in full force and effect.

The EIR certified for the original project in 2002 (#UR 51-78, #UM 11-99 & #V 7-99) included a project scope with significant impacts to wetlands with corresponding mitigation AND the significant unavoidable impact to prime agricultural lands. The EIR was certified with overriding findings that accounted for the project's impact to locating the new 18.3± acre IIPE/East Campus within the prime agricultural lands that lay on the east side of the project site. The applicant subsequently returned in 2011 with a reduced program scope which eliminated the need for wetland fill. The applicant now pursues compliance with Condition B-1 for the location of their final building site.

KEY ISSUES

1. Setbacks and Buffers

The appellant contends the Planning Commission's determination did not uphold setbacks and buffers as related to Condition B-1.

The appellant did not provide supporting information to specify what setbacks/buffers are being referred to, their purpose, distance, where they are to be measured from and/or how they are in conflict with Condition B-1. No new evidence has been submitted or introduced to the administrative record substantiating that the project does not comply with setbacks and buffers appropriated by prior approvals.

However, the entirety of the project relocation would continue to adhere to the 600 foot setback established from Guidiville Road. This setback jointly serves to lessen visual impacts by placing the development at a greater distance from public roads and residences in the vicinity and protect prime agricultural soils. The approved relocation would also respect the 200 foot buffer/setback from the northern property boundary. This buffer/setback stems from General Plan Policy RM-109 requiring building envelopes maintain a minimum 200-foot setback from adjacent properties classified as Agricultural Lands.

2. Protection & preservation of prime ag land within and adjacent

The appellant contends the Planning Commission's determination did not preserve and protect on-site and adjacent prime agricultural lands

The appellant did not provide supporting information or documentation illuminating how the Planning Commission's decision did not uphold Condition B-1 as it relates to protection and preservation of prime agricultural soils.

However, the site has been used for livestock grazing and the soils have the potential to be used for vineyards or other intensive agriculture. In the 2002 certified EIR, the loss of prime agricultural soils as well as dividing or fragmenting the existing vineyard and orchard was considered a significant adverse impact for which mitigation was not available. A Statement of Overriding Considerations was adopted for the identified loss of prime agricultural lands. The CTTB agreed to conditions to dedicate 6.9 acres of land within the overall ownership to permanent agricultural use and agreed to pay \$157,000 to the Inland Mendocino Land Trust for use in preserving resource lands to offset this identified loss. This land was preserved and the fee was paid.

Currently, the DRBA holds entitlement to develop the project site. As noted above, the unavoidable impact to agricultural soils resulting from the project was previously identified and addressed. The 2011 modification design represented an approximately 25% reduction in building footprint. The same buffers were provided, but the developed area was more spread out in order to better fit the site and ensure no impacts to wetlands and minimal loss of any trees. It is important to note that the unavoidable impact to prime agricultural lands would occur no matter where the footprint is positioned on the property. The EIR Alternative 3 Summary to move the project northward (page 147) noted a disadvantage in that additional acreage of prime agricultural soils would be removed from production. However, at that time, the loss of agricultural land was being weighed against significant impacts to wetlands and significant trees. Condition B-1 identifies the predominant resources that could be significantly impacted by building placement and integrates flexibility for fluctuating site conditions. As currently proposed, per the direction of Condition B-1, the final building site would preserve and protect wetlands and would not increase the displacement of prime agricultural lands previously accounted for.

Positioning the final building site 400 feet to the north would occupy substantially the same land area. Again, the revised project approved in 2011 is smaller than the site that was analyzed in the EIR — which warranted the Statement of Overriding Considerations. Also, the movement of the northern portions of the IIPE's buildings to the north would not fragment additional agricultural lands.

Adjacent properties to the north and southwest are owned by the DRBA. Adjacent properties to the south and northwest are under private ownership. Guidiville Road physically separates the project site from privately owned properties to the east. The environmental reviews of the project over the years did not identify significant adverse impacts to adjacent prime agricultural land.

3. Wetlands

The appellant contends the newly delineated wetlands being encroached upon with detention ponds and all infrastructure needed to be addressed

The appellant did not include details regarding where the encroachment would occur, to what extent and how the wetland component of the project has *not* been adequately addressed.

However, as stated in the memorandum to the Planning Commission, the DRBA submitted a final building site plan to PBS based on new wetland information from a survey conducted this past spring (Wear, April 2016/Revised June 2016). The spring survey revealed the wetlands have expanded to the north from the drainage ditch where the wetlands were originally delineated under previous project permutations. Correspondingly, the northern portions of the IIPE facility footprint has been re-positioned approximately 400 feet northward to protect the newly identified wetland areas. The new project location is designed to respond to the direction of Condition B-1 noted above.

To accompany the new wetland survey, an IIPE project-specific wetland impact assessment was prepared by wetland regulatory scientist Dr. Terry Huffman, PhD (attached). Dr. Huffman indicates he has been working with the IIPE project team planners and engineers to design a project which is the least environmentally damaging practicable alternative regarding fill impacts to wetlands.

Figure 1 depicts the project site plan as approved in 2011 overlain with the newly delineated wetlands. In this configuration, the approved project would directly impact 2.32 acres of palustrine emergent wetlands (wetlands). The proposed final building site plan is shown in Figure 2. In this location, the assessment indicates that impacts to wetlands have been minimized to the maximum extent practicable. The

proposed plan would result in 0.49 acres of impacts associated with wetland fill for pedestrian pathways and roadways. Otherwise, the revised project would not require the placement of fill in wetlands for the construction of project buildings, parking areas, landscape areas, and support facilities. No impacts to sensitive species have been identified and no impacts to sensitive habitats other than wetlands have been identified. Mitigation protocol is included as a component of the assessment.

The California Department of Fish and Wildlife (DFW) preliminarily reviewed the updated project biological information. DFW comments received September 9, 2016 did not note any major concerns. Staff consulted further with Fish and Wildlife to confirm that the County will require documentation from responsible agencies at the time of zoning clearance for building permits. This may include the Army Corps of Engineers, Regional Water Quality Control Board and/or the Department of Fish and Wildlife — where jurisdiction is identified.

It is unclear in the appeal statement how the detention ponds relate to the current project. Past approvals have included detention ponds as a component of the overall drainage plan for the site. All conditions and mitigation measures pertaining to drainage still apply to the current project. As noted in the paragraph above, construction-level site grading and drainage plans would be subject to examination and regulatory compliance during the zoning clearance and building permit review processes.

4. Visual Resources

The project site is not visible from major public vantage points. Views of the site are primarily available from private property off Guidiville Road, on the Guidiville Rancheria, the lower elevations of Cow Mountain and rural roads to the south. The site is not visible from heavily-traveled roads and is not designated as a scenic resource. In addition, prior EIR visual resource analyses have suggested that the unique architectural style of the building complex may be considered a future visual resource. The previous environmental documents concluded that although the development would affect views in the area, there is no evidence in the record that the project, as approved and conditioned, would constitute a significant visual impact.

The scope of prior analyses captured the broad context of the project site's visual setting. The relocation of the project 600 feet to the north was included as Alternative 3 in the EIR (attached). The proposed relocation to comply with Condition B-1 places the footprint close to the same location as Alternative 3. The primary benefit of Alternative 3 was that most wetlands proposed to be filled would not need to be filled. A secondary benefit was that large oaks adjacent to the wetlands would be preserved. Although the Alternative 3 analysis concluded the new structures would be more visible, it's CEQA visual impacts were not judged significant given the setbacks from public roads and the few public vantage points that have views of the site.

The relocated project would be "framed" with a comparable agricultural and oak woodland backdrop and the height and massing of the buildings would be substantially the same, or smaller, than previously analyzed, by not projecting above the horizon and not silhouetting against the sky, as seen from Guidiville Road. The project analyzed in the EIR included architectural components up to 78 feet in height. Currently, development would be limited to a maximum height of 50 feet. As noted above, all conditions and mitigation measures still apply to the project — including a 600-foot setback for all structures from the east property boundary and landscaping requirements. The applicant has submitted informal, non-scaled renderings which illustrate how required landscaping trees could further obscure the project from the Guidiville Road area viewsheds.

5. CEQA Addendum

As part of their action, the Planning Commission accepted the memorandum dated October 6, 2016 as an addendum to the Mitigated Negative Declaration adopted in 2011.

Section 15164(b) of the CEQA Guidelines states:

"An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred."

Section 15162(a) states the following:

“When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;**
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or**
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:**
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;**
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;**
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or**
 - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.**

The entire East Campus site was comprehensively evaluated for project-related impacts, including alternatives, under two environmental documents — an EIR certified in 2002 and a Mitigated Negative Declaration adopted in 2011. No substantial changes are being made to the project which would require major revisions to the Mitigated Negative Declaration (MND) and there is no new information showing the factors of paragraph (a)(3) of State CEQA Guidelines section 15162. ***Condition B-1 was crafted in anticipation of, and designed to, proportionally balance previously identified significant impacts for the future selection of the final building site.*** Therefore, an Addendum to the MND is appropriate. The only change that would occur is the relocation of portions of the previously approved footprint. Otherwise, the collective scope of the project remains unchanged — including the height, massing and intensity of facility usage. No new significant effects or increase in severity of significant effects would emerge from the project site plan relocation. In fact, the relocation properly responds to the collective purpose and intent of Condition B-1 by reducing the following project impacts:

- **Wetlands:** Over the years, the project has undergone substantial levels of environmental review surrounding the presence of and mitigation for development in proximity to wetlands. Significant impacts to wetlands were identified for the two most recent iterations of the project (the 2002 and 2011 approvals). The 2002 approval involved the filling of approximately 1.25 acres of jurisdictional wetlands. The reduced scope of the 2011 approval eliminated the need to fill wetlands and also minimized direct disturbance. However, in both cases, with the incorporation

of mitigation, the impacts were reduced to a less than significant level. The language in Condition B-1 accounted for potential future fluctuations in the extent of the wetlands on the project site. The change in location for the final building site responds to this condition and the development area in wetlands would be less than 0.49 acres. Again, the impacts to wetlands would continue to remain less than significant with the incorporation of the mitigation measures and conditions associated with the 2011 project approval.

- **Significant trees:** Impacts to “significant trees” were identified as significant unless mitigated. The mitigation measures from the 2011 approval remain in effect and still apply to the project today. The applicant has indicated that shifting the final building site to the north results in the buildings being farther away from all major trees on the site. All healthy trees would be preserved, except for the walnut trees in the orchard to the north that the DRBA planted. Since no significant tree removal would occur for the final building site versus the 2011 plan configuration, the project responds favorably to Condition B-1’s focus to preserve and protect significant trees.
- **Prime Agricultural Soils:** In the 2002 certified EIR, the loss of prime agricultural soils as well as a portion of the existing vineyard and orchard was considered a significant adverse impact for which mitigation was not available. A Statement of Overriding Considerations was adopted for the identified loss of prime agricultural lands. The CTTB agreed to conditions to dedicate 6.9 acres of land within the overall ownership to permanent agricultural use and agreed to pay \$157,000 to the Inland Mendocino Land Trust for use in preserving resource lands to offset this identified loss. This land was preserved and the fee was paid. Therefore, the proposed final building site would not present create a new significant impact or increase the severity of a previously identified significant impact.
- **Drainage and Visual Impacts:** Although drainage and visual impacts are included in Condition B-1 for *consideration*, impacts to wetlands, significant trees and prime agricultural soils are paramount to the selection of the final building site. It is important to note that although private viewsheds may be assessed for the purpose of context and discussion in environmental documents, exclusive private viewshed *protection* is not in the purview of the California Environmental Quality Act (CEQA).

Drainage: As discussed in the final paragraph of Section 3 above, construction-level site grading and drainage plans would be subject to examination and regulatory compliance during the zoning clearance and building permit review processes.

Visual Impacts: As described in Section 4 above, the CEQA visual resource impacts were not judged significant given the setbacks from public roads and the few public vantage points that have views of the site. Nevertheless, the EIR recommended certain mitigations regarding lighting and landscaping, all which apply to the current project. Therefore, the final building site would, on balance, provide greater protection of the wetland resource identified as a significant impact, versus the non-significant impact to visual resources. This is consistent with Condition B-1, which places protective priority on wetland resources over visual resources.

Pursuant to the discussion above and evidence contained in the record, the following findings can be made in support of the recommended addendum to the Mitigated Negative Declaration:

- 1) The proposed final building site of the IIPE/East Campus is in compliance with Condition B-1 of Use Permit UR_2009-0002 because the supporting documentation demonstrates it is an environmentally superior alternative that appropriately takes into account the considerations listed in Condition B-1;
- 2) The staff memorandum prepared for the Board of Supervisors’ November 14, 2016, meeting and the staff memorandum prepared for the Planning Commission’s October 6, 2016, meeting, are together accepted as an addendum to the mitigated negative declaration adopted by the Planning Commission on September 15, 2011;
- 3) The acceptance of an addendum to the mitigated negative declaration is appropriate as the shifting of the final building site 400 feet to the north is not, pursuant to section 15164(b) of the

State CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*), a substantial change with respect to the circumstances under which the project is undertaken which will require major revisions of the mitigated negative declaration, and there is no new information of substantial importance, which was not known and could not have been known at the time the mitigated negative declaration was adopted that shows any of the factors listed in section 15162(a)(3) of the State CEQA Guidelines.

RECOMMENDATION: Deny the appeal and adopt a resolution finding that the proposed relocation of the IIPE/East Campus is consistent with Condition B-1 of Use Permit UR_2009-0002 and accept the staff memorandum as an addendum to the Mitigated Negative Declaration adopted for Use Permit UR_2009-0002.

ATTACHMENTS:

- A. Location Map
- B. Vicinity Map
- C. Aerial Map
- D. Memorandum to the Planning Commission (dated October 6, 2016)
- E. Wetland conditions from 2011 approval
- F. Alternative 3 (IIPE Draft EIR: March, 2001 – pages 143 to 147).
- G. Appeal Form