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Superior Court of California
County of Mendocino

By: *M. Stafford*
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Deputy Clerk

7 Attorneys for Petitioners LESLIE KASHIWADA and
8 FB LOCAL BUSINESS MATTERS

9 THE SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF MENDOCINO

12 FB LOCAL BUSINESS MATTERS; and
13 LESLIE KASHIWADA,

14 Petitioners,

15 vs.

16 CITY OF FORT BRAGG

17 Respondent;

18 _____
19 BEST DEVELOPMENT GROUP, LLC;
20 BRR ARCHITECTURE, INC.; GROCERY
21 OUTLET INC.; JENNA MARKLEY; and
22 DOES 1 through 25, inclusive;

23 Real Parties in
24 Interest.

Case No.: 21CV00652

**PETITION FOR WRIT OF
MANDATE**

[Code Civ. Proc. § 1094.5; California
Environmental Quality Act, Pub. Resources
Code § 21168 ; State Planning & Zoning
Law, Gov't Code § 65000]

1 **INTRODUCTION**

2 1. With this lawsuit, Petitioners FB LOCAL BUSINESS MATTERS, an
3 unincorporated association of Fort Bragg citizens and businesses, and LESLIE KASHIWADA,
4 an adult citizen of Mendocino County (“Petitioners”), challenge the July 26, 2021 final actions
5 by Respondent CITY OF FORT BRAGG (“City”) adopting a Mitigated Negative Declaration
6 pursuant to the California Environmental Quality Act (“CEQA”), Pub. Resources Code § 21000
7 et seq., and approving Coastal Development Permit 8-19, Design Review 1-19, and Parcel
8 Merger 1-19 (“Approvals”) for a new 16,157 square-foot grocery store with a 55-space parking
9 lot 825, 845, and 851 South Franklin Street in the City (“Project”). The Project owners and/or
10 proponents are Real Parties In Interest BEST DEVELOPMENT GROUP, LLC; BRR
11 ARCHITECTURE, INC.; GROCERY OUTLET INC., and JENNA MARKLEY (“Real
12 Parties”).

13 2. Petitioners contend the City prejudicially abused its discretion by adopting and
14 relying on a Mitigated Negative Declaration (“MND”) in lieu of preparing a full environmental
15 impact report (“EIR”) for the Project. Under CEQA, if there is substantial evidence in the
16 administrative record before a public agency that a proposed project may have a significant
17 impact on the environment, the agency must prepare an EIR, even if other substantial evidence
18 shows the project will have no such impact. In this case, there is substantial evidence in the
19 record before the City that the Project not only may but will have several significant
20 environmental effects, most notably in the areas of air quality, biological resources,
21 geology/soils, greenhouse gas emissions, land use planning, and cumulative impacts. The City
22 therefore had a mandatory duty under CEQA to prepare and circulate an EIR before approving
23 the Project. Petitioners also contend the City abused its discretion by approving the Project
24 despite material inconsistencies and incompatibilities with governing goals, policies, and
25 regulations contained in the Fort Bragg General Plan, in violation of the State Planning and
26 Zoning Law, Gov’t Code § 65000.

27 3. Petitioners accordingly seek a peremptory writ of mandate under Code of Civil
28 Procedure section 1094.5 and Public Resources Code section 21168 commanding the City to set

1 aside its approvals, and to reconsider its actions after preparing and circulating a draft EIR for
2 public review and comment in accordance with CEQA. Petitioners further seek a stay of the
3 effect of the City’s actions during the pendency of these proceedings. Finally, Petitioners seek an
4 award of costs and attorneys’ fees under Code of Civil Procedure section 1021.5, together with
5 any other relief the Court deems necessary and proper.

6 In support whereof, Petitioners allege:

7 **PARTIES**

8 **FB Local Business Matters**

9 4. Petitioner FB LOCAL BUSINESS MATTERS is an unincorporated association
10 of residents and business owners living or operating in the City of Fort Bragg. Its organizational
11 purposes include advocating for environmentally and economically responsible land use
12 planning and policy, as well as diligent enforcement of planning and environmental laws in Fort
13 Bragg.

14 5. Members of FB LOCAL BUSINESS MATTERS, including Fort Bragg resident
15 Ken Armstrong, maintain a direct and regular geographic nexus with the City of Fort Bragg
16 and/or the Project site, and will suffer direct harm as a result of any adverse environmental
17 impacts caused by the Project.

18 6. FB LOCAL BUSINESS MATTERS and/or its constituent members presented
19 oral and written comments in opposition to the Project either prior to or during public hearings
20 culminating in the City Council’s July 26, 2021 final approval actions, and either raised or
21 supported all claims and issues presented herein.

22 **Leslie Kashiwada**

23 7. Petitioner LESLIE KASHIWADA is an adult U.S. Citizen residing in Mendocino
24 County.

25 8. LESLIE KASHIWADA maintains a direct and regular geographic nexus with the
26 City of Fort Bragg and/or the Project site, and will suffer direct harm as a result of any adverse
27 environmental impacts caused by the Project.

28

1 Emeryville, Alameda County.

2 17. Petitioners are informed and believe that GROCERY OUTLET INC. is an
3 owner and/or proponent of the Project described, and is an applicant for and recipient of the
4 land use entitlements and approvals described herein.

5 **Jenna Markley**

6 18. Petitioners are informed and believe that Real Party In Interest JENNA
7 MARKLEY is an adult U.S. Citizen domiciled in San Francisco, California, and is an employee
8 of Real Party In Interest BRR ARCHITECTURE, INC. Petitioners are informed and believe that
9 JENNA MARKLEY is a proponent of the Project described, and is an applicant for and
10 recipient of the land use entitlements and approvals described herein.

11 **Real Party In Interest Does 1 through 25, Inclusive**

12 19. Petitioners currently do not know the true names and capacities of entitlement
13 recipients or Project owners and/or proponents DOES 1 through 25 inclusive, and therefore
14 names them by such fictitious names. Petitioners will seek leave from the court to amend this
15 petition to reflect the true names and capacities of DOES 1 through 25 inclusive if and when
16 ascertained.

17 **JURISDICTION & VENUE**

18 20. This action is brought pursuant to the writ of mandate provisions of Code of
19 Civil Procedure section 1094.5, and the judicial review provisions of Public Resources Code
20 section 21168. Venue is proper in Mendocino County under Code of Civil Procedure section
21 395.

22 **FACTUAL BACKGROUND**

23 21. The Real Parties propose to construct a Grocery Outlet retail grocery store on a
24 1.63-acre Site located at 825, 845, and 851 S. Franklin Street, Fort Bragg. The Project includes
25 the demolition of an existing 16,436-square-foot vacant former office building and associated
26 parking lot and wooden fencing along the property line, and the construction and operation of a
27 16,157-square-foot, one-story, retail store with a 55-space parking lot and associated
28 improvements and infrastructure.

1 22. In 2019, BRR Architecture applied to the City for land use entitlements for the
2 Project, including a Coastal Development Permit, Design Review, and a Parcel Merger.

3 23. In December, 2020 the City released a draft Initial Study and Environmental
4 Checklist and a proposed Mitigated Negative Declaration (“IS/MND”) in accordance with
5 CEQA, purporting to evaluate the Project’s potential environmental impacts.

6 24. Petitioners submitted timely written comments on the IS/MND raising concerns
7 and objections over the document’s lack of substantive analysis of potential environmental
8 impacts, most notably in the areas of air quality, biological resources, traffic, and land use
9 planning.

10 25. On May 26, 2021 the City’s Planning Commission held a public on the Project.
11 Petitioners and other members of the public presented oral and/or written comments objecting
12 to the Project, asserting that a full EIR was required in order for the City to approve the Project,
13 and pointing out several inconsistencies and incompatibilities with governing provisions of the
14 Fort Bragg General Plan. After requesting additional information from City staff and Real
15 Parties, the Planning Commission continued the hearing to a later date.

16 26. On June 9, 2021, the Planning Commission reopened the public hearing on the
17 Project. Once again, Petitioners objected orally and/or in writing to the Approvals, pointing out
18 the analytic omissions and other deficiencies in the IS/MND, and asking that a full EIR be
19 prepared for the Project. After closing the public hearing, a majority of the Planning
20 Commission voted to adopt the IS/MND and approve the Project.

21 27. Petitioners timely appealed the Planning Commission’s actions to the City
22 Council in accordance with the appeal provisions of the Fort Bragg Municipal Code (“FBMC”).

23 28. On July 26, 2021, the City Council held a public hearing on the IS/MND and
24 Project. Before and/or during the hearing, Petitioners and other members of the public
25 presented oral and/or written comments objecting to the Project, presenting evidence and
26 expert testimony that the Project would have significant environmental impacts, asserting that a
27 full EIR was required in order for the City to approve the Project, and pointing out several
28 inconsistencies and incompatibilities with governing provisions of the Fort Bragg General Plan.

1 After closing the public hearing, a majority of the City Council voted to uphold the Planning
2 Commissions actions, and approved the IS/MND and the Project.

3 29. On July 27, 2021 the City posted a Notice of Determination with the Mendocino
4 County Clerk in accordance with CEQA, declaring that the Project would have no significant,
5 unmitigated environmental impacts.

6 **CLAIM FOR RELIEF**
7 **(Violation of CEQA – Failure to Prepare Environmental Impact Report)**

8 30. Petitioners here incorporate by reference all preceding paragraphs in their entirety.

9 31. At all times relevant to this action the City was the “Lead Agency” responsible for
10 the review and approval of the Project under Public Resources Code section 21067.

11 32. Under Public Resources Code section 21080(d), if there is substantial evidence in
12 light of the whole record before a lead agency that a project it intends to carry out or approve
13 may have a significant effect on the environment, the lead agency must prepare an EIR.

14 33. Under Public Resources Code section 21080(c)(1), a lead agency may adopt a
15 negative declaration or mitigated negative declaration for a project, only if an initial study shows
16 there is no substantial evidence in light of the whole record before the agency that the project
17 may have a significant effect on the environment. If a lead agency is presented with a “fair
18 argument” that a project may have a significant effect on the environment, the lead agency shall
19 prepare an EIR, even though it may also be presented with other substantial evidence that the
20 project will not have a significant effect. *No Oil, Inc. v. County of Los Angeles* (1974) 13 Cal. 3d 68;
21 14 Cal.Code.Reg. § 15064(f)(1).

22 34. For purposes of CEQA, “substantial evidence” is defined as including: “facts,
23 reasonable assumptions predicated upon facts, and expert opinion supported by facts.” 14
24 Cal.Code.Reg. § 15064(f) (5). Thus, if there is disagreement among expert opinion supported by
25 facts over the significance of an effect on the environment, the lead agency “shall treat the effect
26 as significant and shall prepare an EIR.” *Id.* at subd. 15064(g).

27 35. There is substantial evidence in light of the whole record before the City that the
28 Project not only may but will have significant direct, indirect, and cumulative effects on the

1 environment, in areas including but not limited to air quality, biological resources, geology/soils,
2 greenhouse gas emissions, traffic and transportation, and land use planning. There is substantial
3 evidence in the form of facts, reasonable assumptions predicated upon facts, and expert opinion
4 supported by facts that the Project will have these and other significant adverse direct, indirect,
5 and cumulative environmental effects. The City therefore had a mandatory duty under CEQA to
6 prepare and circulate a full EIR for the Project before taking any action to approve it.

7 36. The City therefore prejudicially abused its discretion by approving the Project in
8 reliance only on a MND, by failing to proceed in the manner required by CEQA, and by
9 adopting findings that are not supported by substantial evidence in the record.

10 **SECOND CLAIM FOR RELIEF**
11 **(Violations of State Planning & Zoning Law)**

12 37. Petitioners here incorporate by reference all preceding paragraphs in their entirety.

13 38. Under the State Planning and Zoning law, Government Code §§ 65000 *et seq.*, a
14 local public agency may entitle a proposed land use only if the land use is consistent with the
15 goals, policies, and objectives contained in a valid, current, internally consistent General Plan,
16 including any applicable subsidiary specific plans and/or planned unit development approvals.

17 39. The Project site is subject to the goals, policies, and objectives contained in Fort
18 Bragg Coastal General Plan (“General Plan”), and the development standards and regulations
19 contained in the Fort Bragg Coastal Land Use and Development Code (“CLUDC”).

20 40. The Project is inconsistent and incompatible with governing goals, policies, and
21 programs of the General Plan, and development standards and regulations of the CLUDC.

22 41. Despite these inconsistencies, the City adopted findings that the Project is fully
23 consistent with the General Plan and CLUDC.

24 42. The City therefore prejudicially abused its discretion by approving the Project
25 notwithstanding these inconsistencies and incompatibilities, and by adopting findings of
26 consistency that are clearly erroneous and not supported by substantial evidence.

1 3. For a preliminary and permanent injunction directing the City and Real Parties to
2 cease and refrain from engaging in any future actions predicated upon the approval actions
3 challenged herein until the City comes into compliance with applicable law.

4 4. For costs of suit.


5 5. For an award of attorneys' fees.

6 6. For other legal or equitable relief that the court deems just and proper.

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Dated: August 24, 2021

M. R. WOLFE AND ASSOCIATES, P.C

By: 

Mark R. Wolfe
John H. Farrow
Attorney for Petitioners
LESLIE KASHIWADA and FB LOCAL
BUSINESS MATTERS

VERIFICATION

I, Leslie Kashiwada, declare as follows:

I am a Petitioner in the above-captioned action.

I have read the foregoing PETITION FOR WRIT OF MANDATE and know the contents thereof. The statements made therein are true of my own knowledge, except as to those matters which are alleged on information and belief, and as to those matters I believe them to be true.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Dated: August 24, 2021

By: Leslie Kashiwada
Leslie Kashiwada