

CITY OF FOLSOM

NOTICE OF APPEAL

NAME OF APPELLANT: Bob Delp

MAILING ADDRESS: [REDACTED]
Folsom, CA 95630

INTEREST IN MATTER: Resident and property owner

DAYTIME TELEPHONE: [REDACTED]

APN/PROJECT REF. NO. PN 19-174 (Barley Barn Tap House)

ACTION BEING APPEALED: HDC Design Review/CUP Approval & CEQA Exemption

DATE OF DECISION OR DATE PROJECT HEARD: November 18, 2021

REASON FOR APPEAL: Information considered by the Historic District Commission was
insufficient for a fully informed decision. Issues associated with the Project, including
zoning code interpretation, warrant consideration by the City Council. The Project does not
qualify for a CEQA exemption. The project would adversely affect public safety and welfare.

[Signature]
APPELLANT'S SIGNATURE

November 24, 2021
DATE FILED

STAFF USE ONLY:

Date/Time Received: 11/24/2021 11:59am Fee Paid: \$479 Res. 10297

Admin. (staff decision) Appeal
Owner Occupied \$233
Other (deposit) \$468

Planning Comm. Decision Appeal
Owner Occupied/Single Family Dwelling \$238
Developer/other \$479

Tentative Hearing Date: _____ Time Limit Waived: W/a

Copies to: Community Development Director (2)
City Manager (2)
City Attorney (2)
City Clerk

Received by: [Signature]

City of Folsom City Clerk's Office
Attn: Ms. Christa Freemantle, City Clerk
50 Natoma Street
Folsom, CA 95630
Hand Delivered
via email to cfreemantle@folsom.ca.us

SUBJECT: Barley Barn Tap House Project (PN 19-174) – Appeal of Historic District Commission Approval to City Council

Dear Ms. Freemantle:

I am appealing to the City Council the decision by the Historic District Commission (“HDC”) approving the Barley Barn Tap House Project (PN 19-174) design review and conditional use permit (“Project”), and the HDC’s determination that the Project is exempt from the California Environmental Quality Act (“CEQA”). The attached November 18, 2021, letter was submitted to the HDC prior to its November 18, 2021, hearing and is incorporated herein by this reference (Attachment 1). I reserve the right to bring additional information and arguments to the City Council on appeal.

I am appealing to the City Council for reasons including, but not limited to, those listed below.

1. Information and analysis provided in the staff report to the HDC was insufficient for meaningful consideration of the Project’s potential impacts and for the HDC to make a fully informed decision about the Project.
2. Issues associated with the Project, including interpretation of certain provisions of the Folsom Municipal Code (“FMC”), have broad policy implications for future projects in the Historic District and warrant consideration by the City Council.
3. The change in the type and intensity of *use* at the Project site should result in a requirement for the Project to provide parking in accordance with FMC Section 17.52.510(F) parking standards or for the Project applicant to obtain approval of a variance if such parking requirements are not met. FMC Section 17.52.510(F) states, “All *uses* must provide parking spaces at the following ratios:...” Although the applicable parking standard is based on building size, it is the change in *use* that results in the requirement to comply with the standard.
4. The *actual* parking demand that would be generated by the Project was not assessed or disclosed in the staff information presented to the HDC. An understanding the actual parking demand is essential for meaningful consideration of the Project impacts to Historic District businesses, visitors, and residents as a result of the increased parking burden. Without that assessment and information, the Council is not sufficiently informed for consideration of whether the Findings required for approval of a CUP can be made.
5. The number of parking spaces for persons with a disability that are required based on the Project’s *actual* parking demand and for compliance with FMC 17.57.050 has not been identified. The Project proposes to install an accessible lift to allow use of an existing handicapped parking space at an adjacent property separated by as much as 100 feet of travel between the parking space and Barley Barn. It is unclear that this concept would

provide parking and access to the Project for persons with a disability without also reducing the availability of existing handicapped parking spaces that already serve existing businesses.

6. The existing daily and peak-hour vehicle trip volumes and estimated Project daily and peak-hour trip volumes on streets within the Project area (e.g., Scott, Bridge, Sutter, Figueroa, Mormon, Coloma, Leidesdorff, and Riley streets) have not been assessed or disclosed in the City's evaluation. Yet, an understanding of existing and Project-related vehicle trips is essential for meaningful consideration of the Project's traffic-related impacts to Historic District businesses, visitors, and residents and to understand if there are any locations and/or time periods during which Project trips would exacerbate traffic conditions in a manner that would affect motorist, bicyclist, and/or pedestrian circulation or safety (including, but not limited to, increased traffic volumes, changes in vehicle circulation patterns, and increased risk of vehicle/pedestrian collision). Without that assessment, the City Council would not be sufficiently informed for consideration of whether the Findings required for approval of a CUP can be made.
7. Issues surrounding the proposed use of the Eagles Lodge parking lot for the Project have not been seriously vetted. Staff statements at the HDC hearing suggested that staff acknowledges that there are at least three days each week that the lot is used by the Eagles. The frequency of special events and other circumstances that might also preclude use of the Eagles lot for Barley Barn parking on other days have simply not been addressed yet are important to understand in assessing whether the Eagles lot component of the Project has merit.
8. Although availability of the Eagles lot for use by the Project might be more limited than some have suggested, use of the Eagles lot by the Project would be an expansion of the existing use (e.g., more days and longer hours of use, increased simultaneous inbound/outbound vehicles, etc.) and requires meaningful evaluation in terms of required entitlements, design standards, circulation, and public safety. Issues warranting meaningful evaluation include:
 - a. The Eagles Lodge parking expansion of use should be considered in terms of FMC chapter 17.57 "Parking Requirements" associated with "change of occupancy or use" (17.57.030(C)) requirements and design standards. An assessment of required modifications to the Eagle's parking lot and the parking lot's interface with Canal Street for compliance with the FMC parking design standards is needed.
 - b. City-owned right-of-way (Canal Street) provides access to the Eagles Lodge parking lot and the expansion of use of the parking lot requires a design assessment to determine if and what modifications are required for the parking lot's ingress/egress to Canal Street and the Canal Street/Scott Street intersection.
 - c. The Project's expansion of use at the Eagles Lodge parking lot would exacerbate existing vehicle/pedestrian collision risk associated with 1) pedestrian movement along Canal Street between Bridge Street and Scott Street, 2) pedestrian circulation along Scott Street crossing Canal Street, and 3) pedestrian circulation across Scott Street between the Project (Barley Barn) and the Eagles Lodge parking lot. A meaningful evaluation of these issues is needed.

9. The Project does not qualify for CEQA exemption. Assuming for the sake of argument that CEQA Guidelines section 15303, New Construction or Conversion of Small Structures, were applicable to the *design review* approval, there is no basis for extending that exemption to approval of the CUP. Issuance of the CUP is a discretionary action and subject to CEQA. Simply put, a CUP that allows for a substantial change in the *use* of the property cannot be excused from CEQA review using a CEQA exemption applicable to the conversion of a small structure. Nor can the section 15303 exemption be extended to other components of the Project that are unrelated to the conversion of the structure (e.g., installation of a lift that is not a part of the structure and is located 50 feet or more from the structure to be converted; expansion of use at a parking lot at a separate property and located 200 feet or more from the structure to be converted). An environmental document in compliance with CEQA must be prepared to evaluate and disclose the Project's potential impacts.
10. During the HDC's November 18, 2021, meeting, comments by the Project applicant's team asserted specific direct and indirect economic benefits of the Project and referenced IMPLAN modeling that was apparently performed for the Project. Documentation of that analysis was not provided for public review prior to the hearing, and it is unclear if any documentation was provided to the HDC. To the extent that economic factors may be considered by the City Council, documentation of any economic analysis used as the basis for the Council's consideration should be provided for public review prior to a Council hearing.

Thank you for processing this appeal.

Sincerely,



Bob Delp

[REDACTED]
Folsom, CA 95630
[REDACTED]
[REDACTED]

Attachments:

1. Bob Delp, November 18, 2021, letter subject: *Barley Barn Tap House Project (PN 19-174) – Comments to Historic District Commission*

November 24, 2021

Attachment 1

**Bob Delp, November 18, 2021, letter subject:
Barley Barn Tap House Project (PN 19-174) – Comments to Historic District Commission**

City of Folsom Historic District Commission
50 Natoma Street
Folsom, CA 95630
via email to: Kelly Mullett - kmullett@folsom.ca.us

SUBJECT: Barley Barn Tap House Project (PN 19-174) – Comments to Historic District Commission

Dear Historic District Commissioners:

I am requesting that at your November 18, 2021, public hearing for the Barley Barn Tap House project (PN 19-174) (“Project”), the Historic District Commission (“HDC”) decline to approve the Project either by denying the Project or by declining to take an approval or denial action and instead direct staff to:

1. identify all relevant and necessarily entitlements, necessary for the Project and require a complete application(s) for all such entitlements,
2. prepare a clear and complete description of all aspects of the Project,
3. perform pedestrian safety analysis for the Project and seek input from the Traffic Safety Committee,
4. conduct environmental review of the Project in compliance with the California Environmental Quality Act (“CEQA”),
5. conduct a public workshop to receive input on the proposed Project and draft CEQA document,
6. prepare a revised staff report incorporating the above and provide a draft of the staff report and staff-recommended conditions of approval for public review and input,
7. finalize the staff report in consideration of public review and input on the draft,
8. provide proper hearing noticing, including posting of all parcels affected by the Project with public notices in compliance with the Folsom Municipal Code (“FMC”), and only then
9. return to the HDC for a public hearing on the Project.

To date, insufficient information is available to have a complete understanding of the Project. City staff have erroneously asserted that the Project does not require a Parking Variance. Staff have recommended use of an offsite parking lot that has dubious availability and capacity, and staff have not identified any entitlements or physical improvements that would be necessary for the use of the lot (but both would be necessary). Use of the lot would have the potential to create serious pedestrian safety issues associated with movement across Scott Street between the lot and Barley Barn. While there are many reasons to deny or decline to make a decision on the Project as currently presented, the use of the Eagles lot is in my opinion is at best poorly thought-out scheme and, worse, would create the potential for very dangerous pedestrian circumstances that appear to have been given little or no consideration thus far in the process.

I. REQUIRED NOTICING FOR THE NOVEMBER 18, 2021, HDC HEARING DID NOT COMPLY WITH THE FMC

On August 10, 2021, City staff made certain public noticing commitments on behalf of the Community Development Department. The FMC also has noticing requirements. The commitments and the FMC requirements were not fully complied with for the November 18, 2021, HDC hearing. As of November 17, 2021, no signs were posted at the Project site notifying of the November 18, 2021, HDC Public Hearing. The HDC should request City staff input regarding public hearing noticing and address any deficiencies prior to holding a public hearing.

II. THE PROJECT DESCRIPTION IS UNCLEAR AND INCOMPLETE

The staff report provides incomplete and inconsistent information about the Project making it impossible to understand the entirety of the Project. If the HDC were to approve “the Project” at its November 18, 2021, hearing, it would not be possible for the HDC to accurately understand the full extent of what you are approving.

The Applicant’s project narrative (HDC packet pg. 126) states that the Project will include “an exterior accessible lift located within the Powerhouse Pub Patio area which will provide the accessible route from the accessible parking space to the proposed tap house. The size and configuration of this element will be determined at further development of the construction documents when the CASp (California Access Specialist) is engaged.”

Yet, the staff report does not discuss the lift, where it would be located, what it would look like, how it would be operated and maintained, how it would be powered, how much noise it would generate, how much lighting it would require, or what its hours of use would be. Furthermore, there is no Powerhouse Pub Patio area, and a previous staff-level approval of a patio is no longer valid as no building permit for that patio was issued and the approval period has expired. (See Attachment A of this letter.) Identification of even the basic location, design, and operational elements of such a lift cannot be deferred and must be described and evaluated as a component of the Project prior to an HDC decision.

The staff report discusses that the Project would include the use of an existing offsite parking lot at the Eagles Lodge. However, no information is provided with regard to any entitlements, zoning restrictions/permissions, and engineered design that would be necessary for the expansions of use of that lot. Although the existing use may be grandfathered in, the substantial increase in the intensity of that use is not. The Eagles Lodge property owner should be required to obtain a Conditional Use Permit and the CUP process should require improvements such as paving, striping, lighting, pedestrian walkways, etc. Furthermore, the Eagles Lodge parking lot is accessed by City right-of-way, and would therefore require an encroachment permit and consideration of improvements to the City right-of-way. No information has been provided as to what those improvements might need to consist of. Additionally, the capacity of the Eagles lot is overstated by staff, both in potential number of spaces and in the days/times it is currently used by the Eagles and therefore not available to Barley Barn.

The Eagles Lodge parking capacity is noted in the staff report as 15 spaces, but is noted on the Applicant’s drawings as at most 14 and even that is noted as “hypothetical” needing to be field verified. Furthermore, the proposed lease attached to the staff report allows the Eagles to not just continue using the lot but also to exclude Barley Barn use at the Eagles discretion. Staff is on record as having previously advised the HDC (at its August 4, 2021 meeting) that “The Eagles Lodge parking lot is infrequently used – there are events once a month or maybe once every two months when this parking lot is utilized to its full capacity.” That is incorrect. The Eagles Lodge holds events or open hours multiple times each week during which their lot is often filled, likely beyond capacity (double parked vehicles in the City right-of-way, etc.).



Eagles Lodge Parking Availability – August 2, 2021

The Eagles lot parking scheme is dubious and, for reasons discussed below in this letter, potentially dangerous. At a minimum, this element of the Project should be eliminated unless and until it undergoes a meaningful evaluation and is subject to property approvals and conditions.

III. THE PROJECT DOES NOT QUALIFY FOR A CEQA CATEGORICAL EXEMPTION

Contrary to staff's recommendation in the staff report for the HDC's November 18, 2021, meeting, the Project does not qualify for an exemption from the California Environmental Quality Act ("CEQA").

FMC 17.52.390, "Environmental review", states, "Review by the historic district commission of applications for conditional use permits, sign permits, variances and design review is subject to the requirements of the California Environmental Quality Act (CEQA). The commission is authorized to hold public hearings on negative declarations, mitigated negative declarations, draft environmental impact reports and final environmental impact reports prepared on applications for the above permits or for design review. The commission shall not approve applications prior to considering the applicable environmental document and complying with the requirements of CEQA and any city procedures for preparation and processing of environmental documents."

The staff report for your November 18, 2021, meeting, claims one (as opposed to the two claimed in the August 4, 2021, staff report for the formerly proposed Folsom Prison Brews) CEQA categorical exemption class as the basis for staff's recommendation that the Project is exempt from CEQA— CEQA Guidelines section 15303, "New Construction or Conversion of Small Structures." The cited class is not applicable to the Project.

III.A The Project Does Not Qualify for a Class 3 CEQA Exemption

The staff report for the November 18, 2021, HDC selectively cites CEQA Guidelines Section 15303, but a more complete read of 15303 leads to a conclusion that the Project does not qualify for a Class 3 CEQA exemption. The staff report states as follows in attempting to apply the Class 3 exemption (staff report pg. 23; packet pg. 71) (note that this is a quotation from the staff report, not CEQA):

The New Construction or Conversion of Smaller Structures Exemption (15303) consists of the construction or location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and, as relevant to this project, the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. Examples of this exemption include but are not limited to: A store, motel, restaurant, or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 10,000 square feet (for up to four commercial buildings) in floor area on site zoned for such use. As described in this staff report, the proposed project includes minor alterations and modifications to an existing 4,377-square-foot commercial building located within an urbanized area, thus, the project qualifies for this exemption.

In fact, what CEQA Guidelines Section 15303 states is (emphasis added):

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and **the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.** ... Examples of this exemption include, but are not limited to:

... (c) A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, **and not exceeding 2500 square feet in floor area.** In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances **where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.**

There are several factors that exclude the Project from the Class 3 exemption; let's explore some of them.

1. "...the conversion of a **small** structure...". As cited above, the exemption considers a "small" structure as "not exceeding 2500 square feet in floor area." The staff report omits mention of the 2500 square feet criteria and instead attempts to apply the 10,000 square feet that is applicable only when there are multiple buildings under consideration. The Project does not consist of multiple buildings. It is one building that is 4,377 square feet (as cited in staff report), and clearly exceeds the criteria of a small structure as defined by CEQA. For this reason, the Project does not qualify for the Class 3 CEQA exemption.
2. "...where only **minor modifications** are made to the **existing structure**...". The Project proposes substantial modification to the existing structure. Additionally, the Project includes development of an outdoor courtyard, installation of fencing, installation of an accessible lift (details unknown as discussed in this letter), use of an off-site parking area that, although required improvements have not yet been identified, will undoubtedly require modification to be suitable for the proposed Project's use; and several public

facility infrastructure modifications (see item 3, below). For this reason, the Project does not qualify for the Class 3 CEQA exemption.

3. "...where all necessary **public services and facilities are available...**". The staff report provides no discussion of the public services and facilities requirements for the Project. First, the staff report does discuss that the Project site is unable to provide parking required for the Project – that is one facility that is not available. Second, the Project includes an accessible lift to accommodate public access, that is another public facility that is not currently available. Third, the Project requires a new sewer line and sewer and water connection, as those facilities are not available (Attachment B). Fourth, the Project requires, or could require (this is not fully disclosed), an electrical transformer tie in and a 10 ft by 10 ft concrete pad with additional area to accommodate a new transformer (Attachment B). Fifth, the Project requires the replacement of a rotting and tilted electrical pole to provide for safety of Project patrons (Attachment B). Sixth, the Project may also include or result in the undergrounding of a segment of electrical utility line (Attachment B). Each of these public facility infrastructure modifications associated with the Project individually exclude the Project from being exempt CEQA. For this reason, the Project does not qualify for the Class 3 CEQA categorical exemption.

III.B The Project's Potential to Result in Significant Environmental Effects Disqualify the Project from *any* CEQA Categorical Exemption

As discussed above, the Project does not meet the criteria required for a CEQA categorical exemption. Furthermore, even if a categorical exemption class were applicable to the Project, the Project's potential to result in significant environmental effects and cumulative impacts makes the Project ineligible for any CEQA categorical exemption.

CEQA Guidelines section 15300.2 identifies "exceptions" to the exemptions which preclude application of an exemption under certain circumstances associated with a proposed project. Section 15300.2 exceptions and their applicability to the Project include:

15300.2 Exceptions

- (b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.
- c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.
- (f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

The staff report (pg. 24, HDC packet pg. 72) states:

City staff has determined that the cumulative impacts exception does not apply because of the cumulative impact of successive projects of the same type in the same place proposed project is not significant in this case, in that the project will not result in any adverse impacts with respect to building design, site design, parking, lighting, and noise or other environmental impacts potentially caused by the proposed use.

First, the City has not evaluated potential environmental impacts of the Project. Thus, staff report's assertion that "the project will not result in any adverse impacts" is not supported in the record, nor is it factual. In fact, as discussed below, in several instances the staff report

acknowledged that impact will occur and simply downplays them and asserts that conditions of approval will minimize them but with no meaningful evaluation. As discussed herein, the Project would have the potential to result in significant impacts, therefore, it would also have the potential to result in cumulative impacts meaning that even if the Project were eligible for a categorical exemption (which, as discussed above, it is not), the cumulative impact exception to any such exemption would preclude the exemption's applicability to the Project.

The staff report (pg. 24, HDC packet pg. 72) states:

When analyzing this exception with respect to the proposed project, the City considered projects of the "same type" to be other projects with similar uses, such as those projects listed on the hours of operation chart that appears in another noise impacts section of this report. The City considered projects in the "same place" to be projects on Sutter Street.

The referenced "hours of operations" chart lists seven business within the 600 block of Sutter Street that each have bars that serve alcohol. The Project would be eighth. Although there are other businesses and other areas (not just alcohol serving and not just on the 600 block, but we can concede to the City's approach and focus on those for the purposes of discussion here).

On August 4, 2021, Assistant City Attorney Sari Dierking explained to the Historic District Commission during a hearing regarding the formerly proposed Folsom Prison Brews project (with the exception of building design, essentially the same as the currently proposed Project). Ms. Dierking advised the HDC in layman's terms that considering cumulative impacts for a CEQA exemption the issue is to determine whether there are, *"so many projects just like this one happening so that this one's sort of the straw that broke the camel's back; we can't keep doing this over and over again without making a huge impact on the environment."* The Project would be at least the eighth alcohol serving business on the 600 block of Sutter Street. Just how strong is the camel's back?

The Project would exacerbate existing parking deficiencies associated with the existing businesses in this area of the Historic District. The Project would increase vehicle travel to and through the area in the commercial district as well as adjacent neighborhoods that lack sidewalks and experience substantial aggressive drivers cutting through the neighborhoods, and the Project would therefore exacerbate existing pedestrian safety issues. The Project would increase vehicle noise and increase outdoor noise, in an unquantified manner, that would contribute to and exacerbate existing noise that frequently already reaches adjacent neighborhoods into late hours of the night and early morning. The Project would substantially increase the use of the existing Eagles Lodge parking lot, increasing the noise, light, dust, vehicles crossing the pedestrian walkway as compared to the existing use, exacerbating these cumulative effects. For these reasons, the Project would result in cumulative impacts that must be evaluated under CEQA.

Furthermore, the staff report's approach of considering only existing bars and only those on the 600 block fails to consider other existing businesses within the 600 block, bars and other businesses within other areas of the Historic District Sutter Street Subarea, and other reasonably foreseeable projects such as the proposed 603 Sutter Street project which is a current active application with the City and would increase traffic, noise, light, etc., and would further exacerbate existing parking deficiencies and related impacts in the neighboring residential area including pedestrian safety risk.

The staff report (pg. 24, HDC packet pg. 72) states:

The proposed project involves the remodel of an existing commercial building and the re-use of an existing outdoor patio area.

This description fails to acknowledge that the building would be substantially modified, the “re-use of the courtyard” would involve installation of fencing, tables, and other modifications, and fails to mention and consider other components of the Project such as the accessible lift, new sewer lines, electrical transformer, and substantial increase in use of an offsite currently gravel surfaced parking lot that will undoubtedly require improvements for safety and security (the staff report provides no discussion of offsite parking lot *improvements*, however, the existing lot does not meet City parking standards and will require improvements if it is to be used by the Project). Thus, the Project would not be limited to the mere remodeling of a building and use of outdoor patio and impacts associated with the entire Project have not been fully considered by the City for their potential contribution to cumulative impacts.

The staff report (pg. 24, HDC packet pg. 72) states:

In terms of parking, the proposed project is not required to provide any onsite parking spaces per established City practice. In addition, the applicant has entered into a lease agreement to provide 15 off-site parking spaces to further address any potential parking concerns.

Established City practice of not requiring onsite parking is inconsistent with the Folsom Municipal Code. More relevant here, however, is that it is that very practice that has created and, if perpetuated, will continue to exacerbate the existing parking deficiencies and public safety issues associated with neighborhood parking in the Project area. Furthermore, evidence in the staff report suggests that there are, at most, 14 hypothetical parking spaces at the proposed offsite location. Furthermore, the proposed offsite parking lot would only be available for Project use when it is not in use by its owner and that owner would retain the right to exclude Project use of the lot any time for any reason. Thus, the offsite parking lot component of the Project has limited value in providing parking.

Additionally, the offsite parking lot, when it is available for use, would create a situation that attracts vehicles to an already often congested segment of Scott Street and would create the potential for substantially increasing pedestrian risk conditions along Scott Street. Additional vehicles on Scott Street and additional pedestrians attempting to cross Scott Street between the lot and the Project would exacerbate pedestrian risk resulting in a significant Project impact and a substantial contribution to the existing cumulative risk. Thus, the Project would result in significant cumulative effects associated with public safety.

The staff report (pg. 24, HDC packet pg. 72) states:

In relation to noise and light, standard and project-specific conditions of approval have been placed on the proposed project to minimize any potential noise and light impacts.

The City has performed no meaningful impact analysis associated with potential noise and light impacts. Yet, the staff report acknowledges the need to apply conditions of approval to address such impacts, implicitly acknowledging that the Project would have the potential to result in noise and light impacts and, thus, proposes mitigation-like conditions attempting to address those impacts. Although the staff report discusses that these mitigations/conditions would minimize any potential effects, there is no analysis of what the pre-mitigated impacts would be, no analysis of the actual efficacy of the proposed mitigation, and no analysis of what the residual impacts would be. Even if the staff report is correct that conditions of approval would “minimize” the cumulative impacts associated with these minimized impacts is still not evaluated. In fact, the Project will have the potential to result in significant noise and light impacts and would have the potential to result in cumulative noise and light impacts. Furthermore, the City has made no

attempt to evaluate noise and lighting impacts associated with the proposed use of the offsite parking lot, which would also contribute to the Project's project-specific and cumulative impacts.

The staff report (pg. 24, HDC packet pg. 72) states:

With respect to any other potential impacts caused by the proposed use, the conditions imposed on the project in the Conditional Use Permit are designed to minimize or eliminate any negative effects on the environment created by the proposed use.

This barren attempt at blanket coverage of "any other potential impacts cause by the proposed use" is insufficient evidence of anything, except perhaps the City's acknowledgement that there are "other potential impacts [that will be] caused by the proposed use." I agree.

The City's decisions to attempt a CEQA exemption for the Project has resulted in the City's failure to perform environmental impact evaluation of the Project. Therefore, the City has thus far failed to evaluate and disclose impacts that would be associated with the discretionary approval of a CUP and design review for the Project.

Potential impacts and substantial evidence of a fair argument that the Project may have one or more significant effects discussed below. Individually, each is sufficient to invalidate the use of a CEQA categorical exemption and sufficient to require that the City prepare a CEQA document for the Project. Furthermore, each of these Project impacts has the potential to substantially contribute to cumulative effects associated with past, present, and reasonably foreseeable projects (including the currently proposed 603 Sutter Street project its substantial increase in vehicle trips and parking demand) and require evaluation under CEQA.

Aesthetics. By developing a dominating building exterior inconsistent with the architecture of existing structures, the Project would have the potential to result in a substantial adverse change in the visual character of the Historic District, including views from adjacent private properties/businesses, views from adjacent public roadways and bicycle/pedestrian trails and walkways, and views from adjacent historic properties. Figure 2 on the following page illustrates views from offsite public areas that would have the potential to be adversely affected by the Project's modification of the existing structure. Other Project components having the potential to significantly alter the visual character of the Project area – including the development of an accessible lift, an outdoor patio that apparently would be somehow joined with a speculative outdoor patio at an adjacent property, modifications and signage that would be needed to facilitate use of the Eagles Parking lot, have not been fully described. These components must be clearly described and evaluated in compliance with CEQA.

Air Quality. Vehicle emissions associated with vehicle trips generated by the Project and fugitive dust associated with unpaved parking lot use are among the Project elements that would create the potential for significant impacts and must be evaluated. The Project proposes to use offsite parking lots to meet a portion of its increased parking demand. The Project's use would be in addition to use of the lots that already occurs due to existing uses. Use of the lots would increase in intensity and with more vehicles and greater frequency and density of use with the shared use proposed by the Project. One of the proposed lots is gravel/dirt surfaced and no improvements are proposed. Increased use of the lots by adding Project-related vehicles would increase fugitive dust emissions that will adversely affect adjacent properties. Air quality impacts of the Project must be evaluated in compliance with CEQA.

Biological Resources. A recent CEQA document prepared by the City for a project approximately 200 feet from the Project site (603 Sutter Street Commercial Building Revised Initial Study/Mitigated Negative Declaration, July 2021) identified that valley oak and ornamental trees on that project site could provide nesting habitat for bird species found in the vicinity of the project. The study also the State-threatened Swainson's hawk has occurred in the project vicinity and that there is a noted occurrence within 0.5 miles of that project site. The study notes that Swainson's hawks generally forage within 10 miles of their nest tree, and more commonly within 5 miles; and that existing trees within that project parcel may serve as nesting trees. The Project site is less than 200 feet from the 603 Sutter Street project location. The proximity of the proposed Project to the 603 Sutter Street site and the Project site's proximity to woodland areas to the north and along Lake Natoma (also as near as 200 ft) clearly indicate that Project construction activities would have the potential to adversely affect protected nesting bird species in the same or similar manner as those of the 603 Sutter Street project. The 603 Sutter Street project identifies mitigation measures attempting to address the impacts, but no such provisions are provided for construction activities associated with the Project. Potential impacts to biological resources must be evaluated for the proposed Project and mitigation measures identified to avoid impacts to protected bird species. This analysis and mitigation requirements to avoid significant impacts to special-status species must be evaluated and documented in a CEQA document.

Land Use/Planning. The proposed leasing of the Eagles Lodge parking lot for use by another party must be assessed in terms of applicable General Plan policies and zoning requirements.

Noise. The Project would increase the intensity of use of the Project site and extend the hours of use (discussed above). The staff report identifies staff's concerns with potential noise impacts and recommends conditions of approval modifying the hours of operation and making other use restrictions. However, staff provides no evidence or evaluation to actually present the potential noise impacts associated with the Project or to assess and determine the efficacy of the recommended conditions of approval. Staff's identification of potential noise issues indicates that staff recognizes the potential for noise impacts yet provides no analysis of noise impacts associated with the site use, offsite vehicle trips, or offsite parking use – all of which are potentially significant noise components of the Project. An actual noise analysis must be conducted by a qualified acoustician for compliance with CEQA.

On August 4, 2021, during a presentation to the HDC regarding the then-proposed Folsom Prison Brews project, staff planner Steve Banks stated to the HDC, "noise and noise-related issues were evaluated at great length by City staff." Subsequent to that HDC meeting, the Community Development Direct advised that the Department does not have in-house capabilities to perform noise evaluations. The staff report for the November 18, 2021, HDC hearing states that "staff evaluated potential noise impacts associated with the proposed project," yet staff does not have the capability to perform noise evaluations. The staff report discusses hours of operation for the proposed tap house and discusses existing hours of operation for other businesses in the area, but the staff report neither cites a noise study nor presents any information resembling a noise impact evaluation.

Basic and fundamental information essential for a noise impact evaluation, such as existing and predicted with-project noise levels, is not provided in the staff report nor any supporting documentation. There is no discussion in the staff report "Noise Impacts"

section (packet pgs. 57-59) of the predicted noise levels associated with the proposed tap house, nor is there any discussion of noise impacts associated with the Project's use of the Eagle Lodge parking lot. There is no discussion of anticipated vehicle trips and associated traffic noise levels that would result from the project. The distances to nearest residences cited in the staff report fail to acknowledge residential uses at 605 and 607 Sutter Street (both of which are within less than 100 feet of the project site and within 200 feet of the proposed outdoor patio) or residential uses in proximity to the Eagles Lodge parking lot component of the project. The staff report fails to discuss other noise-sensitive land uses, such as the existing outdoor dining areas at nearby restaurants.

Also, even though the staff report seemingly attempts to base the "evaluation" on hours of operation, there is no discussion of the City General Plan daytime and nighttime exterior standards or time periods for which those standards are based, which then fails to disclose the fact that the project's proposed hours of operations on Thursday, Friday, and Saturday extend into the nighttime period during which the General Plan standards recognize increased noise sensitivity. Instead, the staff report incorrectly suggests that the Project would not result in noise impacts because other bars and restaurants are also open late into the evening.

The Project would have the potential to result in significant noise impacts associated with construction activities, the proposed tap house use, the proposed use of the Eagles Lodge parking area, the proposed lift operation, and the increased vehicle trips and resulting traffic noise. A noise impact evaluation must be prepared and potential impacts and mitigation identified in compliance with CEQA.

Transportation/Public Safety. The Project would increase the intensity of the Project site use and of offsite parking lots use as compared to the existing business at the site. The staff report acknowledges the Project would increase parking demand, but provides no analysis of Project trip generation or impacts of vehicle circulation. CEQA no longer requires, or permits, a lead agency to identify traffic *congestion* as a Project impact; however, CEQA does require that a lead agency provide an analysis of impacts related to vehicle miles traveled (VMT) and public safety and hazards. Consideration of public safety impacts associated with vehicle circulation in the Historic District commercial and residential areas must be evaluated.

Discussed below as relates to findings necessary for issuing a Conditional Use Permit, the City must evaluate and acknowledge that exacerbation of the existing spillover parking of visitors and workers coming to the Historic District and parking in adjacent neighborhoods is already substantially adversely affecting the health, safety, and wellbeing of Historic District residents. Vehicles circulating in residential neighborhoods and vehicles parking on residential streets create risks, especially for bicyclists and pedestrians in Historic District neighborhoods. The Project's vehicle trip generation and parking demand must be evaluated and the increased/exacerbated risk to pedestrians and bicyclists resulting from increased vehicle movement and increased spillover parking in residential neighborhoods must be meaningfully evaluated.

Furthermore, the proposed use of the Eagle Lodge parking lot and pedestrian movement between that lot and the Barley Barn site would require pedestrian crossing of the busiest segment of Scott Street, which is often congested and/or traveled at unsafe speeds. The discussion of pedestrian access in the staff report fails to even acknowledge this connection, and no evaluation of pedestrian access and safety associated with the Eagle Lodge lot component of the Project has been performed.

For any one of the reasons discussed above, the Project does not qualify for a CEQA categorical exemption. Furthermore, even if it did, three exceptions to that exemption would preclude the use of a categorical exemption. Therefore, the City must prepare and circulate a CEQA environmental document for public review prior to proceeding with a Project decision.

IV. THE PROJECT WOULD SUBSTANTIALLY ADVERSELY AFFECT THE HEALTH, SAFETY, AND COMFORT OF THE GENERAL PUBLIC, AND THE FINDINGS REQUIRED FOR ISSUANCE OF A CUP CANNOT BE MADE

FMC 17.60.040 requires for CUPs that, "The findings of the planning commission [in this case, the HDC] shall be that the establishment, maintenance or operation of the use or building applied for will or will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood, or to the general welfare of the city."

The staff report discusses pedestrian circulation, but is limited to merely describing how people would walk from adjacent parking areas to the proposed business (the discussion does not consider pedestrian movement between the Eagles lot and Barley Barn site) and provides no indication that staff considered public and pedestrian safety, health, or welfare.

Pedestrians and bicyclists on Historic District residential streets are subject to existing risk from drivers and are especially at risk compared to other areas of the City due to factors including but not limited to: 1) absence of sidewalks along many Historic District residential streets, 2) substantial use of neighborhood streets for vehicle travel through the Historic District, 3) substantial use of neighborhood streets for parking which forces pedestrians and bicyclists to share the same street sections as motor vehicles, 4) the relatively high proportion of businesses and visitation to the Historic District which results in increased neighborhood traffic through extended periods of daytime, nighttime, and early morning hours as compared to other neighborhoods in the City, 5) a relatively high proportion of alcohol serving businesses in the Historic District commercial areas increasing the likelihood of driver intoxication and contributes the extended night and early morning trips in Historic District neighborhoods, 6) the continuing and worsening patterns of illegal, aggressive, distracted, inattentive, and otherwise dangerous driver behavior throughout the City, including the Historic District.

It is well known, but not addressed in the staff report, that workers and visitors to the Historic District commercial area often park on streets in the residential neighborhoods in the 400-600 blocks south and east of Sutter Street. These parked vehicles result in making the residential streets narrower and more dangerous for pedestrians. As the residential streets become loaded with vehicles, drivers and pedestrians have less ability to negotiate around each other creating increased risk to pedestrians. When drivers are focused on finding parking, they often drive more hurriedly/aggressively and less conscientious of pedestrians. There is limited street lighting in the neighborhoods making pedestrians more difficult to see. With the exception of a short segment on the east side of Scott St, south and east of the Sutter/Scott Street intersection there are no connected sidewalks in the residential neighborhoods, and pedestrians must walk in the street.

Furthermore, and as discussed above, the proposed use of the Eagle Lodge parking lot and pedestrian movement between that lot and the Barley Barn site would require pedestrian crossing of the busiest segment of Scott Street, which is often congested and/or traveled at unsafe speeds. The direct path between the Barley Barn site and the Eagles lot is mid-block on Scott Street (between Sutter and Riley streets) and pedestrians would likely seek to cross there where no crosswalk is available. The discussion of pedestrian access in the staff report fails to even

acknowledge this connection, and no evaluation of pedestrian access and safety associated with the Eagle Lodge lot component of the Project has been performed. The City's Traffic Safety Committee has not been given an opportunity to meet and discuss the Project and made recommendations to City decision-makers.

Speeding, distracted driving, right-of-way violations, and DUIs were recently cited in the Local Road Safety Plan adopted by the City Council as the leading causes of fatal and severe injury collisions in the City of Folsom. The Project would increase vehicle trips to and from the Historic District and would substantially exacerbate the existing public safety risk associated with motor vehicle operation. The staff report provides no discussion of these issues and the related effects of the Project on the health, safety, and comfort of the general public.

For these and other reasons, the Project would substantially adversely affect the health, safety, and comfort of the general public and the findings required for issuing a CUP cannot be made.

V. THE PROJECT REQUIRES A PARKING VARIANCE, AND HAS NOT APPLIED FOR AND DOES NOT QUALIFY FOR SUCH A VARIANCE

The Project would increase the intensity of use and increase the parking demand associated with the Project site as compared to existing conditions. The staff report provides no information regarding the existing site use entitlement or allocation of existing parking. Yet, the staff report asserts "City policy" associated with parking, stating that "*City policy has also been that development projects that do not result in an increase in density...are not required to provide any additional on-site parking.*" Although requested, City staff has provided no documentation of when and how the City Council adopted such a policy – and there is no evidence that such a policy exists.

The staff report does not provide information regarding existing entitlements/use permits/conditions of approval associated with either of the two private lots at which the Project presumes could be used to meet the Project's parking demand. Evidence of such entitlements are required components to be included as a component of a project application (17.52.310(C)), yet they are not provided. For a meaningful analysis of the proposal, the proposed off-site parking areas and their existing entitlements, and parking allocations, must be identified in order to allow an assessment of whether their proposed use for parking from another project has any merit.

The Project narrative included in the staff report acknowledges the increased demand and additional parking required, yet the Project does not provide a feasible mechanism to actually provide additional parking that would be available during all days and times of Project operation. The Project proposes use of the Eagles Lodge property to meet some of the Project's increased parking demand. Yet this proposed approach is fundamentally flawed in terms of providing ensured parking capacity. According to a lease provided in the staff report, the Eagles Lodge would continue to utilize its parking area and, in fact, the lease presented includes language expressly allowing the Eagles Lodge to preclude use by the Project.

The Project's parking requirements must be determined and the Project should not be approved unless and until such approval includes an application for and approval of a parking variance through a public hearing process at which a City decision making body is able to consider whether the Project meets the findings required for such variance.

VI. CONCLUSION

To date, insufficient information is available to have a complete understanding of the Project. City staff have erroneously asserted that the Project does not require a Parking Variance. Staff have recommended use of an offsite parking lot that has dubious availability and capacity, and

November 18, 2021

staff have not identified any entitlements or physical improvements that would be necessary for the use of the lot (but both would be necessary). Use of the lot would have the potential to create serious pedestrian safety issues associated with movement across Scott Street between the lot and Barley Barn. While there are many reasons to deny or decline to make a decision on the Project as currently presented, the use of the Eagles lot is in my opinion is at best poorly thought-out scheme and, worse, would create the potential for very dangerous pedestrian circumstances that appear to have been given little or no consideration thus far in the process.

Please require that a more complete description of the Project be developed which comprehensively identify all required entitlements, conduct the necessary safety and environmental analysis, and invite the community to engage in discussion of the Project's potential benefits and challenges before making an approval decision.

Sincerely,



Bob Delp
Historic District Resident
Folsom, CA 95630
[REDACTED]

Attachments:

- A. Email Correspondence – Delp to Johns 9/30/2021 “Re: 614 Sutter Street Patio (PN 18-219) Approval is Null and Void
- B. Email Correspondence – Banks and Konet et al, 10/14/2020 “FW: Folsom Prison Brews Update and Questions_2020-10-08”

Attachment A

**Email Correspondence – Delp to Johns 9/30/2021 “Re: 614 Sutter Street Patio (PN 18-219)
Approval is Null and Void**

Re: 614 Sutter Street Patio (PN 18-219) Approval Is Null and Void

Bob Delp <bdelp@live.com>

Thu 9/30/2021 7:16 AM

To: Pam Johns <pjohns@folsom.ca.us>

Cc: Sari Dierking <sdierking@folsom.ca.us>

Pam:

Per my message below, can you please confirm that the City's records have been adjusted to reflect the expiration of the 2018 staff-level approval for hardscape/landscape work at 614 Sutter Street and that any future similar proposal would be presented for review and approval by the HDC through a public hearing process?

Thank you,

-Bob Delp

Bob Delp

916-812-8122

bdelp@live.com

From: Bob Delp

Sent: Sunday, September 12, 2021 9:20 AM

To: Pam Johns <pjohns@folsom.ca.us>

Cc: Sari Dierking <sdierking@folsom.ca.us>

Subject: 614 Sutter Street Patio (PN 18-219) Approval Is Null and Void

Ms. Johns:

At the August 4, 2021, Historic District Commission (HDC) meeting during a presentation regarding the proposed Folsom Prison Brews project, Steve Banks advised the HDC that the Folsom Prison Brews applicant had received separate staff-level approval of hardscape and landscape improvements on the adjacent Powerhouse Pub property (614 Sutter Street). As discussed below, records indicate that this approval is null and void and I am requesting that the record be adjusted accordingly.

In materials I received as a result of a public records request for entitlements associated with properties including 614 Sutter Street, I have reviewed a September 11, 2018, staff letter approving PN 18-219 Site Design Review of a proposed excavated landscaped patio at 614 Sutter Street. FMC 17.52.350 states that, "an approval by the historic district commission shall be null and void unless the applicant submits a complete application for a building permit within one year from the date of approval" and allows that the HDC may grant a 1-year extension of an approval if specific actions are taken by the applicant, including a written request for such extension at least 60 days prior to the initial expiration. Staff-level approvals (which are to be limited to *design* decisions only) are allowed by delegation of HDC's authority and are therefore subject to the same requirements and expiration terms of an approval granted by the HDC.

I see no evidence in the records provided that a building permit application has been submitted for the patio improvements. Without such an application having been submitted prior to September 11, 2019, the 2018 approval is null and void. The record for PN 18-219 should be adjusted to reflect that expiration.

In addition to acknowledging that the approval is null and void, I am requesting that any future proposal for a development in the Historic District that would consume 1 or more existing parking spaces and/or in any manner expand any commercial use (the patio would have done both) be publicly noticed and brought to the HDC for consideration and not be permitted by staff-level review. In fact, since the matter of the patio was not merely a "design" issue and also involved grading, expansion of use, and elimination of existing parking, a staff-level approval was in conflict with FMC Section 17.52.395(B) which limits HDC delegation of its authority to staff to matters of design only (delegation is allowed only if "approval of the design of the project is the only matter within the jurisdiction of the historic district commission").

Nor in the record for PN 18-219 did I see any evidence that staff presented the approval to the HDC as required by the FMC. Perhaps this occurred and was not included in the records I received, however, please be reminded that FMC Section 17.52.395(E) requires that "the planning, inspections and permitting department shall review the design of all approved projects with the historic district commission at its regular monthly meeting. Such review will allow the commission to provide input to the department concerning the appropriateness of the approvals and help the commission and the department develop a consistent approach to design review."

Thank you,
-Bob

Bob Delp
916-812-8122
bdelp@live.com

Attachment B

**Email Correspondence – Banks and Konet et al, 10/14/2020 “FW: Folsom Prison Brews
Update and Questions_2020-10-08”**

From: [Steven Banks](#)
To: [Reggie Konet](#)
Subject: FW: Folsom Prison Brews Update and Questions_2020-10-08
Date: Wednesday, October 14, 2020 2:00:00 PM
Attachments: [North of 50 Development Impact and Permit Fees for \(2020.07.01\).pdf](#)
[Impact Fee Estimate Data Sheet.pdf](#)

FYI

From: Daniel Wolfe <dwolfe@folsom.ca.us>
Sent: Wednesday, October 14, 2020 2:00 PM
To: Steven Banks <sbanks@folsom.ca.us>; Bryan Holm <bholm@folsom.ca.us>
Subject: RE: Folsom Prison Brews Update and Questions_2020-10-08

From: Steven Banks <sbanks@folsom.ca.us>
Sent: Wednesday, October 14, 2020 1:33 PM
To: Daniel Wolfe <dwolfe@folsom.ca.us>; Bryan Holm <bholm@folsom.ca.us>
Subject: FW: Folsom Prison Brews Update and Questions_2020-10-08

Hi guys,

Would you be able to help answer some of the utility questions below associated with the Folsom Prison Brews project?

Thanks,

Steve

From: Steven Banks
Sent: Thursday, October 8, 2020 12:46 PM
To: Daniel Wolfe <dwolfe@folsom.ca.us>
Subject: FW: Folsom Prison Brews Update and Questions_2020-10-08

Hi Dan,

The applicant for the Folsom Prison Brews project was forwarded me with a list of questions, some of which I may need your assistance with (see below No. 1, No. 2, and No. 3).

Thanks,

Steve

From: Reggie Konet <konetarchitecture@gmail.com>
Sent: Thursday, October 8, 2020 10:44 AM
To: Steven Banks <sbanks@folsom.ca.us>
Cc: Murray Weaver <powerhousepub@aol.com>

Subject: Folsom Prison Brews Update and Questions_2020-10-08

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

RE: Folsom Prison Brews
PN18-174

Good morning Steve,

I hope this email finds you well.

Murray and I met with my MEP engineers yesterday at the site. The SMUD agent did not show up and never responded to my invites.

But we did have a productive meeting and I'd like to ask you the following questions.

1. For our new waste line, we may tie into the existing connection at the WEST side of the building, or we may tie into the waste line downhill from the building to the NORTH. If so, what is the sewer connection fee for a new connection?

Each Parcel shall have it's own water and sewer connection. If the parcel has an existing connection it may use it. It may not tie into a service on a different parcel. Same goes for water. A fee schedule is attached. I can give you an estimate if you fill out the data sheet and send it back to me.

2. For our new electric, we will need to tie into a transformer. There is an existing one at the EAST edge of parking lot. Do you feel that SMUD will allow us to do so? If we have to provide our own new transformer, it needs to be located on a 10' x 10' conc pad with the additional clear floor area. This would drastically reduce Murray's outdoor patio area.

That is between you and SMUD. The city does not get involved unless we are inspecting new service improvements for code compliance.

3. CITY UTILITIES PLAN. Do you have access to the underground utility location map? Location, size of pipes, easements, etc.

We get you the utility maps that we have on file. Please be aware that they are not always 100% accurate.

4. Remind me again on the time schedule for the HDC review? How far are they backed up?

5. Last but not least, the elec pole that is on the northwest edge between this property and the Powerhouse Pub is rotting and tilted. I realize that SMUD comment 1 states that if it needs to be moved for the project, the cost is on Murray. BUT, we do not need to move it for this project. ALTHOUGH, we are very concerned about

the safety of Murray's properties due to the condition of this pole. Also, it is the last above grade pole. The continuation of the lines are buried at that point moving east. So we thought it may behoove the Historic District to request SMUD to bury the lines at this point going west to the next pole. It would eliminate our concern of safety and it would benefit the aesthetic of the Historic District entry point. Many folks park in that lot and walk up the stairs toward Sutter Street. This particular pole is visually detrimental. Is there something we could do to request action on SMUD's part to perform this work?
PLEASE SEE MURRAY'S LETTER attached.

Thank you so much, Steve. I realize how busy you are and I greatly appreciate your assistance.

REGGIE KONET, AIA

CA LIC #33835
NY LIC #031827

KONET ARCHITECTURE

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