



**COUNTY OF MENDOCINO**  
**DEPARTMENT OF PLANNING AND BUILDING SERVICES**

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**MEMORANDUM**

**DATE:** JUNE 27, 2019  
**TO:** BRENT SCHULTZ, COASTAL PERMIT ADMINISTRATOR  
**FROM:** JULIANA CHERRY, PLANNER III  
**SUBJECT: REQUESTS FOR ADDITIONAL CLARIFICATIONS TO CDP 2017-0032**

**BACKGROUND:** On March 28, 2019, Staff requested a continuance to consider and discuss with the applicant's agent, Spade Natural Resources Consulting (SNRC), comments received from California Coastal Commission Staff and SNRC requesting to modify recommended conditions. At the April 25, 2019, Coastal Permit Administrator Meeting, the applicant requested the item be continued to June 27, 2019. During the intervening weeks, PBS Staff met with the SNRC on three occasions and has received additional correspondence from Commission staff and the applicant's agent. The following responds to the March 28, 2019, request from Commission Staff to clarify the scope of the proposed project. This memorandum also summarizes the applicant's request to amend conditions recommended by Staff in the April 25, 2019 Report. Copies of correspondence are attached. The State Clearinghouse posted the Mitigated Negative Declaration, Initial Study, and the March 28, 2019 and April 25, 2019 Staff Reports for CDP 2017-0032 Fritz on May 13, 2019 (SCH# 2019059056 is available via <https://ceqanet.opr.ca.gov/>).

**RECOMMENDATION:** Staff requests the Coastal Permit Administrator find the environmental impacts identified for the project are adequately mitigated so that no significant adverse environmental impacts will result from this project; and thereby adopt a Mitigated Negative Declaration for the project. Pursuant to the provisions of Chapter 20.532 and Chapter 20.536 of the Mendocino County Code, Staff requests the Coastal Permit Administrator approve the proposed project, accept the November 14, 2018 revised Wetland and Rare Plan Avoidance and Mitigation Plan, and adopt the findings and conditions attached.

**ITEMIZED REQUESTS FOR CLARIFICATIONS AND MODIFICATIONS:**

**A.** On April 26, 2019, PBS received additional comments from Commission Staff (See Memorandum Attachment D). The correspondence provides guidance for the County's review of CDP 2017-0032's consistency with the Coastal Element of Mendocino County's General Plan (or LCP). Commission Staff requested clarifications to the project description to support Staff's analysis and recommendations in the March 28, 2019 Report and the April 25, 2019 Report. At this site, the leach fields are associated with use permit U 47-88, which authorized temporary occupancy of a travel trailer during construction of a home and requires the property owner to "secure all necessary permits and clearances from the California Coastal Commission (See U 47-88 Condition #6)." Secured permits and clearances from the Commission have yet to be established.)

The following is intended to clarify the **PROJECT DESCRIPTION** section of the April 25, 2019 Staff Report - Standard CDP (Report):

"A Standard Coastal Development Permit request to remove a travel trailer and shed; to construct a 1,848-square-foot residence, 952-square-foot detached garage, and accessory structures less than 50-feet from the edge of a Bishop Pine forest, wetlands, and California sedge. Accessory structures include 40-square-foot propane tank, 57-square-foot water-storage tank, 465 square feet of decks and covered porches, 396-square-feet additional driveway area, and an existing 50-square-foot pump house. The applicant seeks after-the-fact authorization for the existing primary leach field installed in July 1988 and authorization for the replacement leach field location previously approved by the Division of Environmental Health. Nominal trenching to connect services to the residence is proposed; the

application questionnaire states that grading would be limited to five cubic yards. The existing electric post would be relocated to a new site within the approved development area.”

**B.** On May 21, 2019, PBS received a copy of correspondence from SNRC and addressed to Commission Staff (See Memorandum Attachment E). The correspondence is a response to the April 26, 2019 Commission Staff letter and includes statements supporting the applicant’s requests to revise or delete the following numbered conditions in the April 25, 2019 Report: 13, 14, 15 and 19. For convenience, included with this analysis are the applicant’s March 14, 2019 requested revisions, where they were not superseded by their May 21, 2019 requests.

For example, on March 14, 2019, the applicant requests revising **Condition #12(e)**, as follows:

- 12.e. An Open Space Easement shall be established ~~for the entire site, with development allowed in the locations as~~ shown on the Revised Site Plan dated March 22, 2018.

While Staff does not oppose the requested modification; a suitable Open Space Easement Exhibit needs to be accepted. Since the Revised Site Plan does *not* depict the boundaries for an open space easement. Staff recommends the CPA, when reviewing the deed restriction, have the option of accepting an appropriate exhibit which would be based on Exhibit A of SNRC correspondence dated March 14, 2019 (See Memorandum Attachment B). A simplified Open Space Easement Exhibit should suffice; for example, an exhibit printed in black and white and depicting the property boundary, the open space easement boundary, and the approved development envelope. See recommended Condition #12.e (Memorandum Attachment A).

The applicant requests revising **Condition #13**, as follows:

13. Pursuant with MCC Section 20.496.020(A)(1) et seq., a buffer area shall be established adjacent to all environmentally sensitive habitat areas. ~~A 100-foot buffer width shall be established for all on-site environmentally sensitive habitat areas (ESHA), including Bishop Pine Forest and Wetland ESHAs. A 50-foot reduced buffer width shall be established between the off-site Sphagnum bog and Mendocino cypress trees as~~ described in the Biological Scoping Survey, Botanical Survey and Wetland Delineation Report dated May 23, 2018, and including its Appendix F: Reduced Buffer Analysis.

Whether the buffer width is reduced to 50-feet, or not, has no practical effect on the protection of on-site ESHAs as the outward edge of the buffer width extends beyond the property boundary (See attachment *Site Plan*). In practice the property owner can only effect the protection of ESHA on lands they own; they have no control of lands beyond their property boundary. As the proposed development, with limited exceptions, would be located within the buffer width, Staff would not object to the applicant’s request, but on principal would note that CDFW has yet to agree upon a reduced buffer width (See Memorandum Attachment A, Condition #13). The basis of SNRC’s request is to affirm that a 50-foot buffer width for wetland-type ESHA is common practice. Staff would note that MCC Section 20.496.020(A)(1) is regularly implemented as it directs CDFW and PBS to agree that a 100-foot buffer is not necessary to protect resources. The basis for recommended condition #13, and its subsequent April 2019 clarification, are comments received from CDFW in October 2017 (See March 28, 2019 Report page 9 or April 25, 2019 Report pages 10-11).

On May 23, 2019, CDFW provided the following additional comments about the width of the Wetland ESHA buffer, “I’ve waffled all along about 50’ versus 100’ on the wetland, and that may be part of her frustration. If it makes things easier to drop it to 75’ or even 50’ I don’t think I would have too much heartburn. The biggest success was getting the garage moved away, and I’d like to see as much buffer maintained on that side as possible (e.g. not a yard and a swing set in the buffer behind the garage) (Daniel Harrington).”

The applicant requests revising **Condition #14(a)(i)** and **#14(a)(vii)**, as follows:

14. Pursuant with MCC Section 20.496.020(A)(4), development within 100-feet of identified ESHA shall comply with the following standards:
  - a. Avoidance measures shall be implemented to ensure that development is compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.
  - i. **Invasive Plants** - Invasive plants present on the site, including bull thistle (*Cirsium vulgare*), shall be removed to improve habitat value. Prior to use on the site, heavy equipment shall be washed down off-site to prevent accidental contamination with invasive plant seeds. Special care shall be taken to wash tires and undercarriages, where invasive seeds might be present. Invasive plants as listed by the California Invasive Plant Council (Cal-IPC) (<https://www.calipc.org/plants/inventory/>) shall not be used as landscaping species. Landscaping shall consist of native plants compatible with the onsite plant communities. Landscaping shall not occur in wetlands and invasive plant removal shall only occur by hand in wetlands, with no use of machinery. The work shall comply with the Final Wetland Restoration Plan.
  - ii. **Erosion Control** – see April 25, 2019 Report
  - iii. **Birds** – see April 25, 2019 Report
  - iv. **Bats** – see April 25, 2019 Report
  - v. **Northern Red-Legged Frog** – see April 25, 2019 Report
  - vi. **Sonoma Tree Vole** – see April 25, 2019 Report
  - vii. **Wetland and Rare Plant Impacts** – No direct impacts are to occur to on-site wetlands or rare plants from construction or related activities. All staging and materials storage, and other project components must occur outside of ~~ESHA buffers, wetlands, and rare plant areas~~. Staging and materials storage and other project components may be located within the authorized development areas. ~~If any work should occur within wetland areas or their buffer, it shall comply with the Final Wetland Restoration Plan.~~
  - viii. **Low Impact Development** – see April 25, 2019 Report

Staff would not object to the applicant's request to modify Condition #14(a), as it is a recommended mitigation measure for the project. Staff would recommend referencing Figure 3, in the Wetland and Rare Plant Avoidance Plan dated November 11, 2018 (See Memorandum Attachment A, Condition #14.a). Staff would note that whenever development impacts a Wetland ESHA or its buffer, it would be subject to an approved Final Restoration Plan. [The Final Restoration Plan would be the means of agreeing upon how to mitigate for permitted development within Wetland ESHA (see MCC Section 20.496.025(B)(1)(b)), or permitted development within a Wetland ESHA buffer area (see MCC Section 20.496.020(A)(4)(e)), is specified by MCC Section 20.532.065 *Wetland Restoration Plan Procedures*. Memorandum Attachment C is the *Wetland and Rare Plant Avoidance Plan*, Figure 3.

The applicant requests revising **Condition #14(b)**, as follows:

- 14.b. ~~Development shall be limited to the areas identified on the March 22, 2018 revised site plan. Future residential improvements shall be limited to those allowable under the repair and maintenance exemptions, and to any other improvements, within the development envelope as shown in Exhibit A, that meet residential CDP exemption requirements.~~

Staff would not object to the applicant's request to modify Condition #14(b) (See Memorandum Attachment A, Condition #14.b). As shown on the March 22, 2018 revised site plan, the proposed project would be located entirely within ESHA buffer or, in limited instances Wetland ESHA. While there are

exemptions for improvements to authorized development, those exemptions are predicated. For example, 14 CA ADC 13252(a)(3) states any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area or within 50-feet of environmentally sensitive habitat area shall require a coastal development permit, because they involve a risk of substantial adverse environmental impact. Development at this location, including repair and maintenance of authorized structures, is unlikely to be eligible for a repair or maintenance exemption.

The applicant requests the CPA not adopt the April 25, 2019, recommended **Conditions #14(e) and #14(f)**. Staff does not oppose this request, because as proposed the project would satisfy MCC Sections 20.496.020(A)(4)(e) and (f) regulations. Noting, recommended condition #14(f)(i) and #14(f)(iv) are included at the request of Commission Staff. The project proposes to grade five cubic yards of soil and the application has demonstrated compliance with MCC Chapter 20.492 *Grading Erosion and Run-off* (See April 25, 2019 Report pages 9 and 13). Regardless of whether a Building Permit is specified by condition, grading and BMP inspections will be part of the Building Permit for this residential structure.

On April 15, 2019, the applicant requests revising the April 25, 2019, **Condition 14(g)**, as follows:

- 14.g.ii Wetland Restoration Plan Procedures shall be implemented pursuant with MCC Section 20.532.065 should wetlands be impacted. The Final Wetland Restoration Plan shall be followed, should one be warranted due to proposed or accidental wetland impacts.

Staff does not oppose this request (See Memorandum Attachment A, Condition #14.e.ii).

The applicant requests the CPA not adopt the April 25, 2019, recommended **Condition #15(b)**. Staff does not oppose the applicant's request and acknowledges that CDFW staff, with the support of CCC staff, requested conditions that would limit human intrusion into the buffer area and be consistent with MCC Sections 20.496.020(A)(4)(f) and 20.496.025(A). Establishing an open space easement would similarly reduce the effect of human intrusion into the buffer areas and support the limited development opportunities within identified Wetland ESHA.

The applicant requests revising **Condition #15(d)**, as follows:

- 15.d ~~The property owner shall avoid use of areas outside of the approved development envelope. Passive Recreation activities are allowed within the Open Space Easement. Only Passive Recreation and restoration and maintenance activities shall be allowed by the property owner and their guests within the open space easement, as described below. Passive recreation is defined in the LCP as "Leisure activities that do not require permits nor constitute 'development' and that involve only minor supplementary equipment. Examples include but are not limited to sight-seeing, hiking, sunbathing, jogging, bird watching, picnicking, bicycling, horseback riding, photography, nature study and painting." To the extent that these uses do not detrimentally impact ESHA, these uses shall be allowable within the Open Space easement and other areas of the property. Areas of rare plants and wetlands areas where the soil is saturated or inundated shall be avoided by passive recreation activities that could degrade these areas. Property owners, upon obtaining necessary permits, including but not limited to Coastal Development permits where such are required, shall also be permitted to repair and maintain the existing septic infrastructure or any other existing utility lines located within the Open Space Easement, as necessary, and manage the open space area, as necessary, including hand removal of refuse and invasive plant species, dangerous and diseased tree removal as recommended by a professional forester or arborist, and vegetation maintenance as needed to adhere to CalFire safety clearance requirements.~~

Staff would welcome a more simplified approach to establishing allowed uses within Open Space

Easements, but does not oppose this request (See June 27, 2019 Condition #15.c). For example, the condition as recommended in the April 25, 2019 Report reads: "The property owner shall avoid use of areas outside of the approved development envelope. *Passive Recreation* activities are allowed within the Open Space Easement." Other examples that have been accepted by the Coastal Permit Administrator include CDP 2016-07 adopted condition #14, which reads: "*The use of the buffer area is limited to open spaces and passive recreation, such as walking or bird watching. No development shall occur within the buffer area as shown in the Biological Scoping Survey Report dated March 13, 2015, Spade Natural Resources Consulting, Figure 1.*" And CDP 2017-0036 adopted condition #19, which reads: "*In accordance with MCC Section 20.496.025, on-site Stream ESHA, Riparian ESHA, Wetland ESHA, and their 100-foot wide buffer areas shall be protected by an Open Space Easement. A deed restriction and its exhibits shall memorialize the boundaries of the Open Space Easement. Those activities authorized for Open Space Districts, including restoration of the ESHA, shall be allowed within the easement subject to MCC Chapter 20.532. (The deed restriction exhibit may be similar to "Figure 4 Plant Communities Map" in the Biological Scoping Survey, Wetland Delineation & Botanical Report for 43200 N Highway One, dated June 7, 2017, Wynn Coastal Planning, page 7.)*" Staff recommends a minor clarification, to the applicant's requested modification to Condition 15(d), to correctly reference the defined *Passive Recreation* land use (See Memorandum Attachment A, Condition #15.c).

The applicant requests the CPA not adopt recommended **Condition #19**. Staff does not oppose this request, because regardless of whether it is an adopted condition the property owner is required by MCC Section 20.532.065 to satisfy wetland restoration plan procedures. MCC Sections 20.496.020(A)(4) and 20.496.025(B)(1) specify the requirements for permitted development within buffer areas and Wetlands. As the project would impact either a wetland-type ESHA buffer or, in limited instances, a wetland, MCC Section 20.532.065 *Wetland Restoration Plan Procedures* are required to be followed. Condition #19 is intended to facilitate compliance with the specified regulation. Staff recommends that the CPA accept the submitted Wetland and Rare Plant Avoidance and Mitigation Plan, based on the analysis provided in the April 25, 2019 Report (See page 12) and the March 28, 2019 Report (See page 9). Similar to other projects approved by the Coastal Permit Administrator where development would occur within Wetland ESHA or buffers, staff recommends an additional condition that would establish when the property owner shall comply with MCC Section 20.532.065 *Wetland Restoration Plan Procedures*. The recommended condition is as follows:

21. *Prior to Final Occupancy and to the satisfaction of the Coastal Permit Administrator, the property owner shall provide a post-construction report identifying on-site impacts to ESHA or within ESHA buffers. If the Coastal Permit Administrator finds, after consultation with California Department of Fish and Wildlife and the California Coastal Commission, that the effects of developing on ESHA buffer area results in significant adverse impacts to the ESHA, then mitigation measures will be required and MCC Section 20.532.065 *Wetland Restoration Plan Procedures* shall be implemented prior to issuing final occupancy.*

The applicant requests the CPA not adopted recommended **Condition #20**. Staff suggests modifications to the condition (See Memorandum Attachment A, Condition #19).

#### ATTACHMENTS:

- A. June 27, 2019 Recommended Findings and Conditions
- B. March 14, 2019 Correspondence Exhibit A. Potential Open Space Easement Exhibit.
- C. Figure 3 from the Wetland and Rare Plant Avoidance Plan, November 11, 2018.
- D. Correspondence from California Coastal Commission Coastal Program Analyst Destiny Preston to Juliana Cherry, Planning and Building Services, County of Mendocino. April 23, 2019.
- E. Correspondence from Spade Natural Resources Consulting Teresa Spade to Destiny Preston, California Coastal Commission. May 20, 2019.



ATTACHMENT A

**PROJECT FINDINGS AND CONDITIONS**

Pursuant to the provisions of Chapter 20.532 and Chapter 20.536 of the Mendocino County Code, the Coastal Permit Administrator adopts a mitigated negative declaration, accepts the Wetland and rare Plant Avoidance and Mitigation Plan (as revised November 14, 2018), and approves the proposed project, and adopts the following findings and conditions.

**FINDINGS:**

1. Pursuant with MCC Section 20.532.095(A)(1), the proposed development is in conformity with the certified Local Coastal Program, except MCC Section 20.496.020(A)(1) relating to buffer widths from Environmentally Sensitive Habitat Areas, which is specifically addressed by the Supplemental Finding #8 below. A single-family residence, garage, and pump house are consistent with the intent of the Rural Residential classification; and
2. Pursuant with MCC Section 20.532.095(A)(2), the proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities. The proposed project will be served by an existing test well, to be converted to a domestic well under this permit and a sewage disposal system. Canterbury Lane (private drive) will be improved to Department of Transportation standards and is adequate to serve the proposed development. Drainage and other necessary facilities have been considered in project design; and
3. Pursuant with MCC Section 20.532.095(A)(3), the proposed development is consistent with the purpose and intent of the Rural Residential zoning district, as well as all other provisions of Division II of Title 20 of the Mendocino County Code, and preserves the integrity of the Rural Residential District. With compliance with the conditions of approval, the proposed single-family residence, appurtenant structures, and associated utilities would satisfy all development requirements for the district; and
4. Pursuant with MCC Section 20.532.095(A)(4), the proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act. An Initial Study and adoption of a Mitigated Negative Declaration is recommended. Condition 18 is recommended to insure compliance with the California Environmental Quality Act requirements for a Mitigated Negative Declaration; and
5. Pursuant with MCC Section 20.532.095(A)(5), the proposed development would not have any adverse impact on any known archaeological or paleontological resources if constructed in compliance with the conditions of approval, as there are known resources within the vicinity of the site; and
6. Pursuant with MCC Section 20.532.095(A)(6), other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development. Solid waste service is available either as curbside pick-up or at the Caspar Transfer Station. While the project would contribute incrementally to traffic volumes on local and regional roadways, such incremental increases were considered when the LCP land use designations were assigned to the site; and
7. Pursuant with MCC Section 20.532.095(B), the proposed development would not diminish public access to Mendocino County coastal areas and conforms to the goals and policies of the Coastal Element of the General Plan. The project site is not designated as a potential public access point. Coastal access follows Little Lake Road.
8. Pursuant to MCC Section 20.532.100(A)(1) No development shall be allowed in an ESHA unless the

resource as identified will not be significantly degraded by the proposed development, there is no feasible less environmentally damaging alternative, and all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted. Alternatives to the proposed development were considered. Adjacent properties in the vicinity were reviewed to determine that the size and scale of development is in conformance with adjacent properties. Mitigation measures have been recommended to reduce any potential impacts from the proposed project. As conditioned, the proposed development will not significantly degrade the resource as identified.

**CONDITIONS OF APPROVAL:**

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten (10) working day appeal period to the California Coastal Commission has expired and no appeal has been filed with the California Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.
2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code (MCC).
3. To remain valid, progress towards completion of the project must be continuous. The property owner(s) has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.
4. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
5. This permit shall be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
6. The Applicants shall secure all required Building Permits for the proposed project as required by the Building Division of the Department of Planning and Building Services.
7. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
  - a. The permit was obtained or extended by fraud.
  - b. One or more of the conditions upon which the permit was granted have been violated.
  - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.
  - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.
8. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
9. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the property owner shall cease and desist from all further excavation and disturbances within 100

feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

10. Conditions approving CDP\_2017-0032 shall be attached to any building permit application and shall be a part of on-site construction drawings.
11. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Wildlife filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2,404.75 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services within 5 days of the end of any appeal period. Any waiver of the fee shall be on a form issued by the California Department of Fish and Wildlife upon their finding that the project has “no effect” on the environment. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if the project is approved) or returned to the payer (if the project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. **The property owner has the sole responsibility to insure timely compliance with this condition.**
12. Prior to the issuance of a Building Permit associated with CDP 2017-0032, the property owner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator and County Counsel. The deed restriction will include the following statements and, or exhibits:
  - a. The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorneys’ fees and costs of the suit) arising out of the design, construction, operation, maintenance, existence or failure of the permitted project. Including, without limitation, all claims made by any individual or entity or arising out of any work performed in connection with the permitted project; and
  - b. The landowner agrees that any adverse impacts to the property caused by the permitted project shall be fully the responsibility of the property owner; and
  - c. The conditions of CDP 2017-0032 permit are imposed as covenants, conditions and restrictions on the use and enjoyment of the property.
  - d. The adopted findings and conditions approving CDP\_2017-0032 and the Revised Site Plan dated March 22, 2018 shall be attached as exhibits to the Deed Restriction.
  - e. An Open Space Easement shall be established for the entire site as shown on an Exhibit. The Coastal Permit Administrator, or their designee, shall review and accept an exhibit printed in black and white, and depicting the property boundary, the open space easement boundary, the approved development envelope, and other details requested by the Coastal Permit Administrator.

The document shall run with the land, bind all successors and assigns, and shall be recorded free of all prior liens and encumbrances, except for tax liens.
13. Pursuant with MCC Section **20.496.020(A)(1)** *et seq.*, a buffer area shall be established adjacent to all environmentally sensitive habitat areas. A 50-foot reduced buffer width shall be established as described in the Biological Scoping Survey, Botanical Survey and Wetland Delineation Report dated May 23, 2018, and including its Appendix F: Reduced Buffer Analysis.

14. Pursuant with MCC Section **20.496.020(A)(4)**, development within 100-feet of identified ESHA shall comply with the following standards:
- a. Avoidance measures shall be implemented to ensure that development is compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.
    - i. **Invasive Plants** - Invasive plants present on the site, including bull thistle (*Cirsium vulgare*), shall be removed to improve habitat value. Prior to use on the site, heavy equipment shall be washed down off-site to prevent accidental contamination with invasive plant seeds. Special care shall be taken to wash tires and undercarriages, where invasive seeds might be present. Invasive plants as listed by the California Invasive Plant Council (Cal-IPC) (<https://www.calipc.org/plants/inventory/>) shall not be used as landscaping species. Landscaping shall consist of native plants compatible with the on-site plant communities. Landscaping shall not occur in wetlands and invasive plant removal shall only occur by hand in wetlands, with no use of machinery.
    - ii. **Erosion Control** – Standard Best Management Practices (BMPs), such as straw bales, fiber rolls, and/or silt fencing structures, shall be employed to assure the minimization of erosion resulting from construction and to avoid runoff into sensitive habitat areas. Ground disturbance shall be limited to the minimum necessary and disturbed soil areas shall be stabilized as soon as feasible. Any soil stockpiles shall be covered or otherwise stabilized to prevent dust impacts. Any bare soil created by the construction phase of the project shall be revegetated with native vegetation and/or native seed mixes for soil stabilization.
    - iii. **Birds** - The bird breeding season typically extends from February to August. The clearing of vegetation and the initiation of construction shall be done in the non-breeding season between September and January. If these activities cannot be done in the non-breeding season, a qualified biologist shall perform pre-construction breeding bird surveys within 14 days of the onset of construction or clearing of vegetation. If active breeding bird nests are observed, no ground disturbance activities shall occur within a minimum 100-foot exclusion zone. These exclusion zones may vary depending on species, habitat, and level of disturbance. The exclusion zone shall remain in place around the active nest until all young are no longer dependent upon the nest. A biologist shall monitor the nest site weekly during the breeding season to ensure the buffer is sufficient to protect the nest site from potential disturbance.
    - iv. **Bats** - Bat roost sites can change from year to year, so pre-construction surveys are usually necessary to determine the presence or absence of bat roost sites in a given area. Pre-construction bat surveys do not need to be performed if work or vegetation removal is conducted between September 1 and October 31, after young have matured and prior to the bat hibernation period. However, if it is necessary to disturb potential bat roost sites between November 1 and August 31, pre-construction surveys shall be performed by a qualified biologist 14 days prior to the onset of development activities, and shall involve surveying trees, rock outcrops, and buildings subject to removal or demolition for evidence of bat use (guano accumulation, or acoustic or visual detections). If evidence of bat use is observed, then a qualified biologist shall conduct acoustic surveys under appropriate conditions using an acoustic detector, to determine whether a site is occupied. If bats are found, a minimum 50 foot buffer shall be implemented around the roost tree. Removal of roost trees shall occur in September and October, or after the bats have left the roost.
    - v. **Northern Red-Legged Frog** – Project contractors will be trained by a qualified biologist in the identification of the northern red-legged frog (*Rana aurora*). A survey for Northern red-legged frog shall occur within two weeks prior to construction. Construction crews will

begin each day with a visual search around all stacked or stored materials, as well as along any silt fences to detect the presence of frogs. If a special status frog is detected, construction crews will contact California Department of Fish and Wildlife or a qualified biologist to relocate northern red-legged frogs prior to re-initiating work. If a rain event occurs during the construction period, all ground disturbing construction-related activities will cease for a period of 48 hours after the rain stops. Prior to resuming ground disturbing construction activities, trained construction crew member(s) will examine the site for the presence of frogs. If no special status frogs are found, construction activities may resume.

- vi. **Sonoma Tree Vole** – If Douglas fir or Bishop pine trees are to be removed to accommodate the development, a Sonoma tree vole survey shall occur within two weeks of tree removal activities. Protocols per the California Department of Fish and Wildlife shall be followed should Sonoma tree vole nests be identified in trees to be removed.
  - vii. **Wetland and Rare Plant Impacts** – No direct impacts are to occur to onsite wetlands or rare plants from construction or related activities. All staging and materials storage, and other project components must occur outside of wetlands and rare plant areas. Staging and materials storage and other project components may be located within the authorized development areas as shown in Figure 3 of the *Wetland and Rare Plant Avoidance Plan* revised November 11, 2018.
  - viii. **Low Impact Development** – Creation of new impervious surfaces shall be minimized. A low-impact development design shall be incorporated into the development to address runoff from new impervious surfaces, assuring runoff from the site is adequately infiltrated within the boundaries of the property, and runoff patterns for wetland and sensitive plant areas are maintained or improved.
- b. Future residential improvements shall be limited to those allowable under the repair and maintenance exemptions, and to any other improvements, within the development envelope as shown in Exhibit A, that meet residential CDP exemption requirements.
  - c. Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas.
  - d. Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity. Identified avoidance measures shall be implemented.
  - e. Permanent open space and wetland restoration shall be implemented as mitigation measures for development adjacent to environmentally sensitive habitats, including Wetlands and Bishop pine forests.
    - i. To assure the protection of resources and to assure that development is compatible with the continuance of the mapped habitat areas, a Deed Restriction shall establish an Open Space Easement on the property. The boundaries of the easement shall be the property boundaries.
    - ii. Wetland Restoration Plan Procedures shall be implemented pursuant with MCC Section 20.532.065 should wetlands be impacted. The Final Wetland Restoration Plan shall be followed, should one be warranted due to proposed or accidental wetland impacts.
15. Pursuant with MCC Sections **20.496.025(A)**, to protect environmentally sensitive habitat areas, such as wetlands, riparian corridors, and other environmentally sensitive habitat, the property owner shall immediately prior to, during, and immediately following construction-related activities:

- a. Install and maintain protective fencing during construction as shown on the November 14, 2018 revised Figure 3 of the Wetland and Rare Plant Avoidance and Mitigation Plan.
  - b. Staging and stockpiling of construction materials shall be located as identified on the November 14, 2018 revised Figure 3 in the Wetland and Rare Plant Avoidance and Mitigation Plan.
  - c. Only *Passive Recreation*, restoration, and maintenance activities shall be allowed by the property owner, and their guests, within the open space easement, as described below. MCC Section 20.340.015 defines *Passive Recreation* as “*Leisure activities that do not require permits nor constitute ‘development’ and that involve only minor supplementary equipment. Examples include but are not limited to sight-seeing, hiking, sunbathing, jogging, bird watching, picnicking, bicycling, horseback riding, photography, nature study and painting.*” To the extent that these uses do not detrimentally impact ESHA, these uses shall be allowable within the Open Space easement and other areas of the property. Areas of rare plants and wetlands areas where the soil is saturated or inundated shall be avoided by passive recreation activities that could degrade these areas. Property owners, upon obtaining necessary permits, including but not limited to Coastal Development permits where such are required, shall also be permitted to repair and maintain the existing septic infrastructure or any other existing utility lines located within the Open Space Easement, as necessary, and manage the open space area, as necessary, including hand removal of refuse and invasive plant species, dangerous and diseased tree removal as recommended by a professional forester or arborist, and vegetation maintenance as needed to adhere to CalFire safety clearance requirements.
16. In accordance with MCC Section **20.500.025** and at the request of California Department of Forestry and Fire Prevention, the property owner shall provide for storing 4,100 gallons of water on-site for fire suppression in the location shown on the Revised Site Plan dated March 22, 2018.
17. Pursuant with MCC Section **20.504.025**, the Coastal Permit Administrator, or their designee, shall determine whether a Coastal Development Permit, or a modification to an existing permit, is required prior to the removal of any tree.
18. In accordance with MCC Section **20.532.060(E)(5)**, Mitigation Measures, including restoration measures and proposed buffer areas, shall be in place during all development activities:
- a. Prior to any project-related ground disturbing activities, orange plastic construction fence shall be erected at the locations shown in Figure 3 of the Wetland and Rare Plant Avoidance and Mitigation Plan. This construction fence shall be maintained in good working order until all ground disturbance, staging, storage, and heavy equipment use associated with the project is complete. Fencing shall be staked with approximately 6 foot metal t-posts at 4 to 6 foot intervals, and secured to the t-posts with zip ties. If ground disturbing activities are to occur during the rainy season (between October 31 and May 1 of any year), silt fencing shall also be properly installed and maintained in place on the outer (side away from wetlands) side of the construction fence.
  - b. Staging and stockpiling shall be limited to areas within the single-family residence and garage footprint and the stockpile and staging area shown in revised Figure 3 of the Wetland and Rare Plant Avoidance and Mitigation Plan submitted on November 14, 2018. No equipment or materials shall enter sensitive areas, and all contractors shall be made aware of the purpose of the construction fence and where to store materials.
  - c. Prior to the onset of ground disturbing activities, an on-site contractor training shall occur. Contractors and subcontractors shall be trained by a qualified biologist or ecologist, to recognize on-site special status habitats, including but not limited to wetlands, rare plants, and special status vegetation alliances. The contractors shall be made aware of the purpose of the construction fence, how it shall be maintained in place in good working order throughout project implementation, how equipment and materials shall stay out of sensitive areas, and where staging is to occur. A copy of the Wetland and Rare Plant Avoidance and Mitigation Plan shall be provided

to contractors and kept on-site.

- d. All heavy equipment maintenance, such as filling with oil and lubricants, shall be performed off-property. Fuel, oils, and lubricants used for heavy equipment shall not be stored at the site. Paints, stains, cement, and other construction materials that may spill shall be stored inside sheds or other storage structures if feasible, or in a dedicated portion of the staging area where a tarp or similar device is placed, preventing absorption into the soil if accidentally spilled. Brushes, pans, and other equipment to be rinsed shall be wrapped in a plastic bag and rinsed off-site. Wash water shall not be thrown into the bushes.
- e. An accidental spill kit shall be kept on site, which shall include a shovel, heavy duty plastic bags, absorbent pads, and personal protective devices (gloves, goggles etc.) necessary for the types of materials kept on the site. The Caltrans Spill Prevention and Control manual (WM-4) included as Appendix A of the Wetland and Rare Plant Avoidance and Mitigation Plan (or a more current version if available), shall be followed for spill prevention and control procedures.
- f. As soon as it is discovered that wetlands, Bishop Pine Forest, California sedge, or areas mapped as such have been detrimentally impacted during project implementation, all disturbances to the sensitive area shall stop. Any equipment or materials shall be removed from the area as carefully as possible. Protective fencing and/or flagging shall be immediately placed around the disturbed area to prevent further impacts. The head contractor on-site shall be responsible to contact the California Department of Fish and Wildlife (CDFW), who shall be allowed on-site as soon as possible in order to assess and record the extent of the disturbance. California Department of Fish and Wildlife contacts include Daniel Harrington at (707) 964-7683 and Jennifer Garrison at (707) 964-1476. After permission is granted by CDFW, any disturbed soils shall be replaced to previous conditions to the extent feasible. Care shall be taken to avoid impacts to any undisturbed areas or special status plants still present.
  - i. If areas of Bishop Pine Forest are detrimentally impacted, CDFW shall determine whether a Bishop Pine Forest restoration plan will be required, or if other measures, such as understory planting will suffice. Restoration efforts shall result in restoration of plants lost at a ratio of at least 2:1 or as required by the CDFW.
  - ii. If areas of California sedge are detrimentally impacted, areas shall be restored to natural conditions to the extent feasible. A restoration plan shall be developed if required by CDFW. Restoration shall occur under the guidance of CDFW and/or qualified botanist with a CDFW special status plant collection permit. Restoration shall result in a replacement ratio of at least 1:1 for plants lost, or as required by CDFW.
  - iii. If areas of wetlands are detrimentally impacted, a Final Restoration Plan shall be prepared pursuant with MCC Section 20.532.065. Any permits required for disturbance shall be obtained after the fact. Wetland restoration efforts shall result in a replacement of plants lost at a ratio of at least 2:1 or as required by the CDFW.
  - iv. Monitoring shall occur until replacement ratio goals are achieved.
  - v. Reports shall be received by the CDFW by December 1 of each year until replacement goals have been met and CDFW signs off on the restoration effort. Reports shall include the following information: (1) Name and contact information of person in charge of monitoring activities, and name and contact information of reporting party. (2) Color photos of the active management areas at the beginning and end of the reporting period. (3) A summary of any issues encountered and management steps taken during the reporting period. (4) Methods used during that monitoring period to eradicate weeds, improve ecosystem health, and encourage appropriate vegetative growth. (5) Any new invasive plant species observed or evidence of pathogen presence shall be described.

Reports shall be sent by US Mail to:

Daniel Harrington or Jennifer Garrison  
California Department of Fish and Wildlife  
32330 North Harbor Drive  
Fort Bragg, CA 95437

19. Prior to commencing ground disturbing activities within a Wetland ESHA, pursuant with MCC Section 20.532.065, and to the satisfaction of the Coastal Permit Administrator, wetland restoration plan procedures shall be implemented and a Final Wetland Restoration Plan accepted.
20. Prior to the issuance of a Building Permit and pursuant with MCC Chapter 20.516 Transportation, Utilities, and Public Services, new development that requires the expansion or extension of public works or private facilities shall satisfy septage and leach field, water supply and transportation requirements including:
  - a. Converting the existing test well to a production well; and
  - b. Limiting vehicular access and development opportunities within the Septic Easement or the replacement leach field area; and
  - c. Constructing a private road approach onto Little Lake Road (CR 408) and Canterbury Lane (Private) in accordance with Mendocino County Road and Development Standards No. A51B, or as modified by property owner and approved by Department of Transportation staff during field review. The road approach is to be paved with asphalt concrete or comparable surfacing to the adjacent road. Concrete driveways shall not be permitted; and
  - d. The property owner shall obtain an encroachment permit from the Mendocino County Department of Transportation for work within County rights-of-way.
  - e. A Coastal Permit, or an amendment to CDP 2017-0032, shall be obtained prior to changing the location or design of the primary or replacement leach field.
21. Prior to Final Occupancy and to the satisfaction of the Coastal Permit Administrator, the property owner shall provide a post-construction report identifying on-site impacts to ESHA or ESHA buffers. If the Coastal Permit Administrator finds, after consultation with California Department of Fish and Wildlife and the California Coastal Commission, that the effects of developing on ESHA or buffer areas results in significant adverse impacts to the ESHA, then mitigation measures will be required and MCC Section 20.532.065 *Wetland Restoration Plan Procedures* shall be implemented prior to issuing final occupancy.

ATTACHMENT B  
POTENTIAL OPEN SPACE EASEMENT EXHIBIT

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Fritz  
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**Legend**

- Open Space Easement Boundary (Red dashed line)
- Proposed Development (Red solid line)
- Wetland (Light blue diagonal hatching)
- California Sedge (Yellow diagonal hatching)
- Mendocino Cypress Forest (Orange diagonal hatching)
- Bishop Pine Forest (Green triangles)
- Chaparral (Green dots)
- Parcel Boundary (Purple solid line)



**ATTACHMENT C  
WETLAND AND RARE PLANT AVOIDANCE PLAN, FIG 3**

**JUNE 27, 2019  
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### 3 IMPACT AVOIDANCE PLAN

#### 3.1 Staging and Fencing

Prior to any project-related ground disturbing activities, orange plastic construction fence will be erected at the locations shown in Figure 3. This construction fence will be maintained in good working order until all ground disturbance, staging, storage, and heavy equipment use associated with the project is complete. Fencing will be staked with ~6 foot metal t-posts at 4 to 6 foot intervals, and secured to the t-posts with zip ties.

If ground disturbing activities are to occur during the rainy season (between October 31 and May 1 of any year), silt fencing will also be properly installed and maintained in place on the outer (side away from wetlands) side of the construction fence. Proper silt fence installation is illustrated in Figure 4.

Staging and stockpiling will be limited to areas within the shown proposed SFR footprint and stockpile and staging area shown in Figure 3, to the greatest degree feasible. No equipment or materials will enter sensitive areas, and all contractors will be made aware of the purpose of the construction fence, and where to store materials.

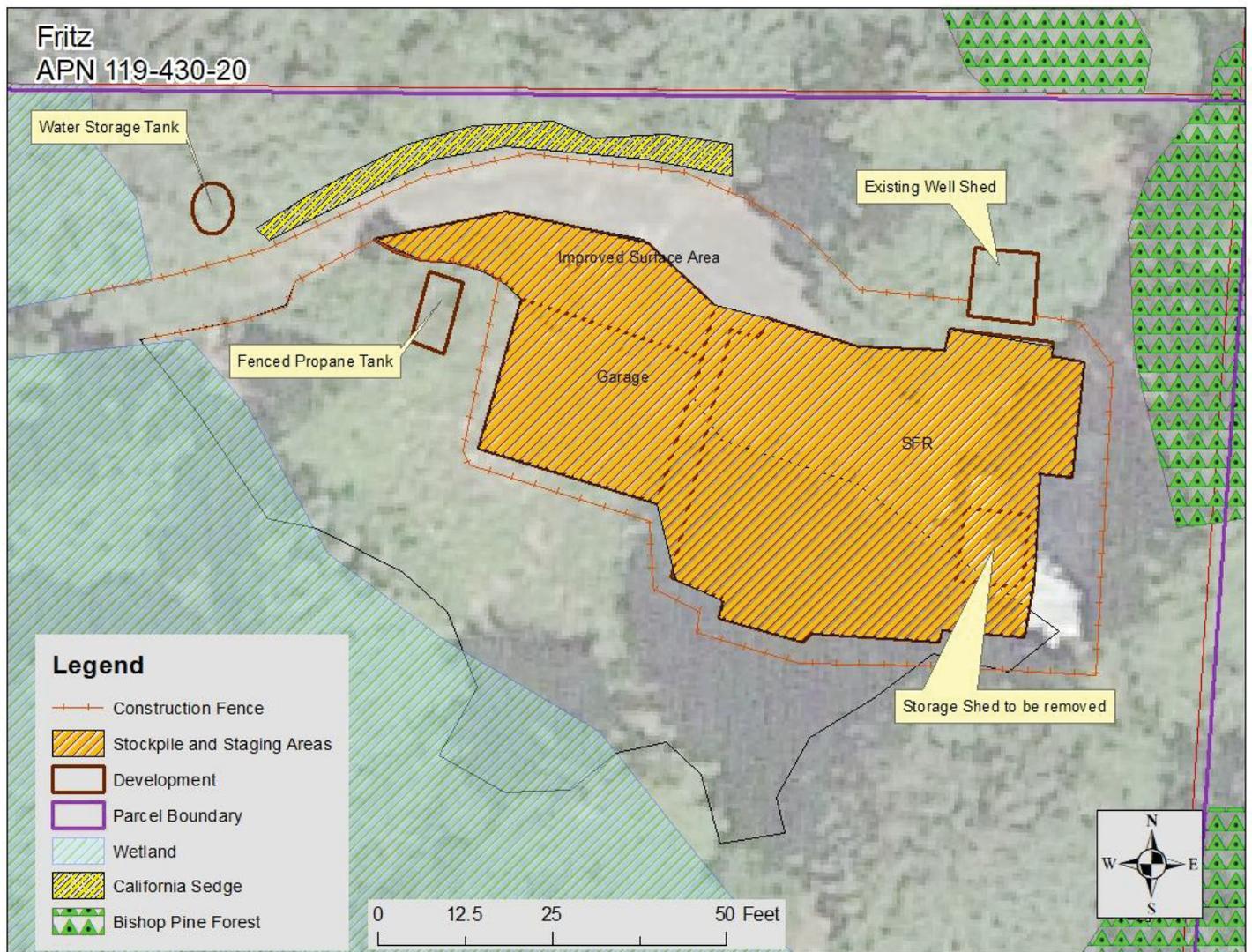


Figure 3. Locations for construction fence, and stockpile and staging area.



**CALIFORNIA COASTAL COMMISSION**

NORTH COAST DISTRICT OFFICE  
1385 EIGHTH STREET, SUITE 130  
ARCATA, CA 95521  
VOICE (707) 826-8950  
FAX (707) 826-8960  
[WWW.COASTAL.CA.GOV](http://WWW.COASTAL.CA.GOV)



April 23, 2019

Attn: Juliana Cherry, Planner III  
County of Mendocino  
Dept. of Planning and Building Services  
120 West Fir Street,  
Fort Bragg, CA 95437

SUBJECT: Additional Commission staff comments regarding CDP\_2017-0032 (Fritz)

Dear Ms. Cherry:

Thank you for taking the time to discuss over the phone the subject CDP application on April 17 and April 19, 2019. We appreciate having the opportunity to review and comment on the proposed development's consistency with the Mendocino County certified Local Coastal Program (LCP). This letter is meant to summarize what we discussed and to provide guidance for the County's review of the project's consistency with the LCP. We realize this application has been scheduled for an upcoming public hearing and we appreciate the County's consideration of our comments. We have summarized our main recommendations below:

- Ensure all proposed development being considered under this CDP application, including after-the-fact development and future repair and maintenance, is clearly and accurately described in the project description and displayed on the site plan.
- Specify that no development shall be allowed within the Open Space Easement without an amendment to this permit, with the exception of wetland restoration in conformance with the Final Wetland Restoration Plan and the development allowed under the subject CDP. Restrict future development to cover only (1) restoration of ESHA; and (2) repair and maintenance.
- Require a revised Tentative Wetland Restoration Plan prior to issuance of the subject CDP.
- Include a condition of approval that specifies the mitigation measure of riparian plantings to enhance wetland buffers.

The remainder of this letter explains each of the above recommendations and goes into further detail regarding the project description and conditions of approval.

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### 1. Clarification on Project Description.

#### Summary from the County staff report

The County staff report, dated April 25, 2019, describes the project description as follows:

“A Standard Coastal Development Permit to request to **remove a travel trailer and shed**, and to construct a 1,848-square-foot residence, 952-square-foot detached garage, and accessory structures less than 50 feet from the edge of a Bishop Pine forest, wetlands, and California sedge. Accessory structures include 40-square foot propane tank, 57-square foot water storage tank, 465-square-feet of decks and covered porches, 396-square-feet additional driveway area, **and an existing 50-square-foot pump house**. The applicant seeks after-the-fact authorization for the existing primary leach field installed in July 1988 and authorization for the replacement leach field location previous[ly] approved by the Division of Environmental Health” (see pg. 1-2).

On August 29, 2018, the applicant provided a statement of the project description, which differs, in-part, in the following ways:

“Connect to utilities...Request connection to existing primary septic system; request probable future repair/replacement of septic tank, **installation of new pump tank and trenching septic line from said tank and associated infrastructure to secondary/replacement septic field**. Request connection to existing water well and future conversion of test wells to production wells” (see pg. 2).

The Revised Site Plan, dated March 22, 2018, referenced in the staff report illustrates the items that will be removed – an existing pump house, trailer, and shed. It also includes the location of the existing driveway, the proposed driveway expansion, the proposed 2,500 gallon water storage tank, the proposed propane tank, and an existing electric post to be relocated. In addition, the location of the existing primary leachfield, replacement leachfield and their siting within the septic easement boundary are delineated. Finally, the presence of Environmentally Sensitive Habitat Areas (ESHA) are illustrated, consisting of onsite wetlands, California sedge, and Bishop pine forest and off-site Bishop pine and Mendocino Cypress Woodland. The Revised Site Plan demonstrates that the onsite and off-site ESHA are within 50 feet of the proposed development.

The Takings section of the County staff report describes the total footprint equal to around 3,365 square feet for existing and proposed development. This section of the staff report concludes that this is consistent with the size of similar residential parcels, which have an average size of 3,724 square feet (see pg. 15 of County staff report dated April 25, 2019). The Grading, Erosion, and Run-Off section of the staff report states: “Grading is required for the entrance to the garage and for the **3,495-square-foot flat parking area** (see pg.13 of the County staff report dated April 25, 2019).

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#### Commission staff comments

A complete project description is important to appropriately capture the full extent of development, which allows for a thorough analysis of the project's consistency with the LCP. It should be noted that the after-the-fact review includes all currently unpermitted development, consisting of the **well/pump house, utility box/electric post, shed, travel trailer, primary leachfield and secondary leach field**. It is my understanding that the pump house, trailer, and shed will be removed based upon information provided in the Revised Site Plan, dated March 22, 2018. Page 2 of the County staff report, dated April 25, 2019, describes the applicant's request to continue use of the well, pump house, and relocated electric-utility box. **The applicant's request to relocate the electric-utility box is not captured in the County's summary of the project description and the proposed location of the electric-utility box is also not delineated on the Revised Site Plan.**

The County's project description describes the request for "an existing 50-foot pump house," but this is in contrast to the Revised Site Plan, which illustrates that the pump house will be removed. In addition, the County's project description does not capture the applicant's request to propose a new septic tank. The Revised Site Plan also does not show the proposed septic tank, the areas proposed for trenching, or the location of the relocated utility post/ utility-box. Commission staff raised these inconsistencies with the County over the phone on April 19, 2019. The County followed up with the applicant and subsequently emailed Commission staff on April 23, 2019, stating that the applicant is no longer proposing trenching because it is not necessary for the connection to the proposed septic tank.

In sum, the project description and Revised Site Plan should be updated to reflect the total proposed development. The after-the-fact authorization should be clearly noted, as any existing development obtained without the benefit of a CDP must be analyzed as new development that must be consistent with the LCP and found to be the least environmentally damaging alternative. Further clarification regarding the septic tank, well pump house, parking areas, utility lines (including whether it's aboveground or underground), and the electric post/utility box (will it be removed or relocated?) are necessary to accurately capture the full extent of development.

## **2. Conditions of Approval**

On April 10, 2019, Commission staff received the County's amended staff report, dated April 25, 2019. The applicant's representative responded to the County's revisions with recommended additional changes on April 15, 2019. The following comments address the recommended conditions of approval, the above-mentioned revisions, and Commission staff recommendations to ensure consistency with the LCP.

#### Open Space Easement

**Special Condition No. 15(d)** states that Passive Recreation activities are allowed within the Open Space Easement. The agent revised this condition to specify, in-part, examples of activities that align with the definition of Passive Recreation provided in Mendocino County Zoning Code (MCZC) Section 20.308.105(D). The suggested revisions from the agent include the following statements:

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“Only Passive Recreation and restoration and maintenance activities shall be allowed by the property owner and their guests within the Open Space Easement, as described below... Property owners shall also be permitted to repair and maintain the existing septic infrastructure or any other existing utility lines located with the Open Space Easement, and manage the open space area, including hand removal of refuse and invasive plant species, dangerous and diseased tree removal as recommended by a professional forester or arborist, and vegetation maintenance as needed to adhere to CalFire safety clearance requirements” (pg. 7 of Attachment A).

We believe that development within the deed restricted area should be limited. We agree that passive restoration activities may be an appropriate use within the restricted area. However, under the County’s LCP Section 20.308.105(D), Passive Recreation allows for certain more intensive uses that would not be appropriate to allow in the deed restricted area due to potential ESHA impacts (e.g., horseback riding, bicycling, and other uses that could result in adverse impacts to the resource, particularly the wetlands). The Commission has conditioned similar projects with natural resource constraints as an Open Space Restricted Area. In Attachment B, we include sample language for the County’s consideration for a Special Condition that establishes allowable activities in a deed restricted area. Also, while we understand the desire to maintain the septic system and other utility lines, the scope of work of future repair and maintenance development has not been described under the scope of this CDP. Therefore, we recommend that the County include a condition that clearly requires that any future development within the deed restricted area, including future repair and maintenance activities, shall require separate CDP authorization.

We disagree with the agent’s recommendation that **Special Condition No. 14(b)** be deleted, because to do so would conflict with the LCP. The Commission’s regulations apply to the County’s LCP and Section 13252(a) includes the following pertinent sections (emphasis added):

*For the purposes of Public Resources Code Section 20610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:*

...

*Repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area...that include (A) The placement or removal, whether temporary or permanent,... forms of solid materials; (B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.*

*All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the Coastal Act. The provisions of this section shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse*

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impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.

The regulations state that a CDP is required as long as repair and maintenance activities include the placement or removal of solid materials or the use of mechanized equipment or construction materials within 50 feet of ESHA. Considering the proposed development's siting in ESHA and within 50 feet of ESHA buffers, we feel that it is important to understand the full scope of repair and maintenance activities on the subject property. Unless such activities are clearly specified under the subject CDP, an amendment to the subject CDP should be required for future repair and maintenance activities.

#### Landscaping

The County's staff report, dated April 25, 2019, includes recommended mitigation measures for invasive plant removal under **Special Condition No. 14(a)(i)**. Specifically, it states that "Landscaping shall consist of native plants compatible with the onsite plant communities" (see pg. 19 of the County staff report). The agent recommended the addition of the statement: "Landscaping shall not occur in wetlands and invasive plant removal shall only occur by hand in wetlands with no use of machinery." The agent also recommended the deletion of the statement: "The work shall comply with the Final Wetland Restoration Plan" (see pg. 3 of Attachment A). We believe that it would be preferable to reframe this condition to affirm that (1) only wetland restoration activities that comply with the Final Wetland Restoration Plan shall be allowed in the wetland ESHA and its buffers; and (2) Landscaping outside the Open Space Easement Area and within the development footprint shall consist of native plants compatible with the onsite plant communities.

#### ESHA buffers

Mendocino County LCP Sec. 20.496.020 states the requirement that buffers be established to protect ESHA from degradation and to ensure development is compatible with the continuance of such habitat areas. In addition, this section states the minimum buffer area shall be 100 feet, unless consultation and agreement with the California Department of Fish and Wildlife (CDFW) and County Planning staff result in a determination that 100 feet is not needed to protect the resource from significant disruption. In any case, the buffer cannot be less than 50 feet in width. This section also states: "Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area." Section 20.496.020 (A)(4) describes the required standards for development permitted within the buffer area. The County's staff report, dated April 25, 2019, addresses the requirements of Section 20.496.020(A)(4)(f) by recommending **Special Condition No. 14(f)**.

CDFW provided email comments on the proposed ESHA buffers on October 5, 2017, March 14, 2018, and April 18, 2019. The comments provided in 2017 stated support for the off-site ESHA buffer reduction from 100 feet to 50 feet. CDFW raised concerns regarding the development's less than 50 foot encroachment of onsite ESHA in email comments provided on the dates noted above. CDFW comments on April 18, 2019 specifically note the recently updated mapping of Mendocino Cypress Woodland and its proximity to the parcel. The comments highlight the fact

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that the onsite ESHA is hydrologically connected to Mendocino Cypress Woodland ESHA and helps serve to buffer it. Considering the summary of comments provided by CDFW, we recommend the County keep **Special Condition No. 13** and not adopt the agent's proposed changes (see pg. 3 of Attachment A).

The site's environmental constraints cause the proposed development to be inconsistent with the ESHA protection policies of the certified LCP. The County found that prohibiting development within 50 feet of an ESHA would deprive the owner of all economic use of the property, which could result in regulatory takings. In any case, should the County recommend some development to avoid a regulatory takings claim, the development needs to be the least environmentally damaging alternative. Pursuant to Sec. 20.496.020(A)(4)(e), mitigation measures are required to replace the protective values of the buffer area, at a minimum ratio of 1:1, which are lost as a result of the development. As previously mentioned, the proposed development would be located both within ESHA and ESHA buffers, so mitigation measures must be adopted.

Considering the LCP requirements regarding development within ESHA buffers, we support the County Staff's recommendation to include **Special Condition No. 14(f)**. In addition, we believe the proposal for a symbolic wildlife friendly low-split rail fence along the boundaries of the Open Space Easement Area is important to avoid accidental encroachment, which helps to ensure long-term protection, and because it serves as a visual reminder of these boundaries in perpetuity.

#### Restoration Plan

Since the subject CDP application includes the proposed primary leachfield and secondary replacement leachfield in wetland ESHA, a Wetland Restoration Plan is required pursuant to Section 20.532.065 of the certified LCP. The agent recommended **Special Condition No. 14(g)(ii)** be amended to state that a Wetland Restoration Plan only be implemented "should wetlands be impacted" or "should one be warranted due to proposed or accidental wetland impacts" (see pg. 3 of Attachment A). In addition, the agent suggested changes to **Special Condition No. 19**, specifically stating that a Final Wetland Restoration Plan only be required "prior to issuance of the permit for installation of the secondary leachfield, and prior to any repairs to the existing leach field that may result in impacts to wetlands" (see pg. 4 of Attachment A). The agent's proposed changes to **Special Condition No. 20**, specifically adding "Section 20.532.065(H), the Coastal Permit Administrator shall require submittal of a Final Wetland Restoration Plan and determine whether the Final Wetland Restoration Plan is in substantial conformance with the approved tentative plan" (see pg. 4 of Attachment A).

We believe that the proposed development in wetlands and wetland ESHA buffers is already impactful. As such, to maintain consistency with Sec. 20.532.065, a Wetland Restoration Plan is warranted under the subject CDP. Commission staff supports the County's recommendations for **Special Condition No. 14(g)(ii)**, but we would like to suggest that riparian plantings to enhance wetland buffers be specified as an additional mitigation measure.

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The agent's changes to **Special Condition No. 19** are unclear; the subject CDP includes the request for the secondary leachfield, so it will not be a part of a separate permit. We recommend keeping **Special Condition No. 19** with the wording that was developed in the County Staff Report, dated April 25, 2019. Based on the telephone call with County staff on April 17, 2018, we understand may wish to amend **Special Condition No. 19** to state "Prior to any work within the Wetland ESHA or its buffers and pursuant with MCC Section 20.532.065...A Final Wetland Restoration Plan shall be prepared..." – we would support those revisions. The agent's suggested changes to **Special Condition No. 20** are not consistent with the requirements of Sec. 20.532.065(H), it serves no purpose to highlight the submittal requirement because the requirement that a Final Wetland Restoration Plan be prepared by the applicant is already achieved with the requirements of Sec. 20.532.065(G). We understand the County may wish to amend **Special Condition No. 20** with the preamble "Prior to commencing ground disturbing activities with a Wetland ESHA..." – we would support that revision.

The agent prepared a Wetland and Rare Plant Avoidance and Mitigation Plan (WRPAMP), dated September 17, 2018. A revised map was prepared and the agent resubmitted the WRPAMP on November 4, 2018, although the document itself is still dated September 17, 2018 on the cover page, pg. 6 of the report is labeled "PBS Received 11/14/2018". It is unclear if this document is meant to satisfy the requirements of the Tentative Wetland Restoration Plan. In any case, CDFW has found the Tentative Wetland Restoration Plan to be inadequate because it "does not identify impacts and propose mitigations, nor propose specific success criteria and monitoring" (see email comments submitted April 18, 2019). Our staff also finds that the Tentative Wetland Restoration Plan does not meet the requirements of Sec. 20.532.065. Considering the need for an entirely new Tentative Wetland Restoration Plan that meets LCP requirements, we recommend the County consider drafting a Special Condition that requires that prior to issuance of the subject CDP, the applicant prepare a Tentative Wetland Restoration Plan to be approved by CDFW. We believe the completion of a Tentative Wetland Restoration Plan is crucial because it establishes the standard for the Final Wetland Restoration Plan, and the County is only required to ensure the Final Wetland Restoration Plan is in conformance with the Tentative Wetland Restoration Plan. It is therefore important to ensure the baseline Tentative Wetland Restoration Plan is thorough and adequate to address the project's impact to the wetlands.

#### Staging and Materials Storage

The WRPAMP that was submitted to the County on November 4, 2018 includes Figure 3, which depicts the proposed staging area within the development footprint, thereby maintaining the largest feasible buffer from the ESHA. It is important to ensure construction staging and materials storage maintains a buffer from the ESHA that is consistent with the proposed development envelope. As such, we do not recommend that the County adopt the agent's suggested revisions to **Special Condition No. 14(a)(vii)** to strike out ESHA buffers (see pg. 4 of Attachment A). We do recommend that the County keep **Special Condition No. 15(b)**, although the County could clarify the statement to illustrate that it relates to post-construction storage while the house is occupied. We also recommend no changes be made to **Special Condition No. 14(e)**.

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Low-impact Development

We appreciate the County's recommendation to include **Special Condition No. 14(a)(viii)** to ensure that low-impact development designs be incorporated into the project. However, it is unclear how the proposed development includes designs that are low-impact and sufficient to adequately infiltrate runoff in a way that protects water quality. We recommend providing clarity on how the proposed project has demonstrated adequate infiltration and the protection of water quality.

Thank you in advance for reviewing Commission staff comments regarding the development proposed under the subject CDP. If you have any questions, please don't hesitate to call me at (707) 826-8950 or email me at [Destiny.Preston@coastal.ca.gov](mailto:Destiny.Preston@coastal.ca.gov).

Sincerely,

A handwritten signature in cursive script that reads "Destiny Preston".

DESTINY PRESTON  
Coastal Program Analyst



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To: Juliana Cherry  
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120 West Fir Street  
Mendocino, CA 95437

Date: April 15, 2019

Re: Revised Coastal Development Permit Staff Report for CDP 2017-0032

Dear Juliana:

Thank you for your revisions to the Fritz staff report. In reading through the revised conditions, I believe some further clarification may be helpful in keeping the language clear, in order to avoid any misunderstandings after approval. The clarifications I would like to request are described below.

The current wording regarding the open space easement may cause confusion regarding the residence and its building envelope, which should be separate from the open space easement. In order to clarify this, I suggest the following changes:

The language of Condition 12(e) is recommended to be revised as follows (~~strikethrough~~ indicates language to be deleted, and **Bold** indicates language to be added):

- e. An Open Space Easement shall be established for ~~the entire site, with development allowed in the locations~~ **as** shown on the Revised Site Plan dated March 22, 2018.

The language of Condition 14(g)(i) is recommended to be revised as follows:

- g. ~~Permanent open space and wetland restoration shall be implemented as mitigation measures for development adjacent to environmentally sensitive habitats, including Wetlands and Bishop pine forests.~~

- i. To assure the protection of resources and to assure that development is compatible with the continuance of the mapped habitat areas, a Deed Restriction shall establish an Open Space Easement on the property. The boundaries of the easement shall ~~be the property boundaries.~~ **be the boundaries as shown on Exhibit A Open Space Easement Boundaries, submitted with the March 15, 2019 Fritz Staff Report Response, which shall be included to memorialize the boundaries of the required Open Space Easement.**

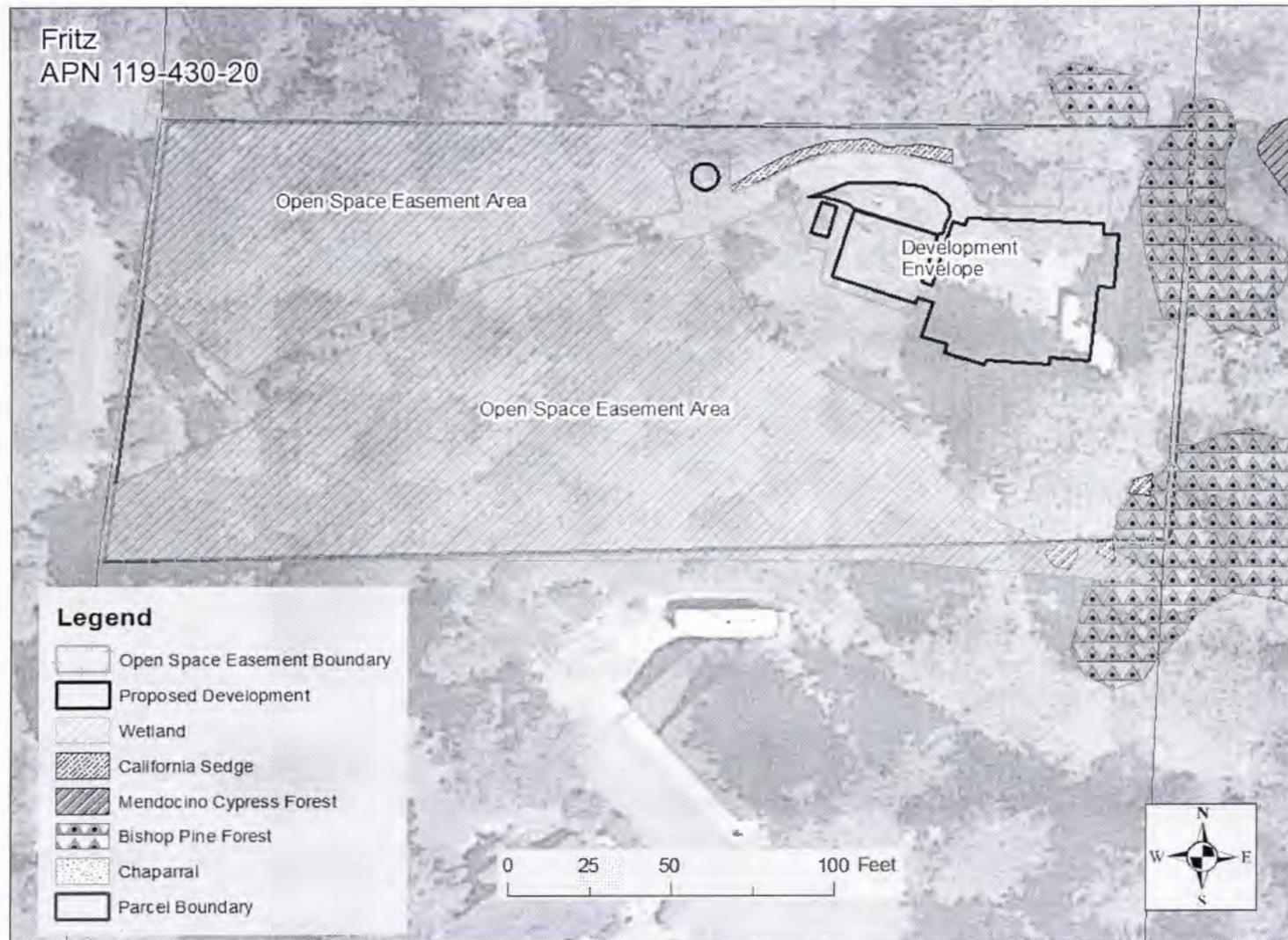


Figure 1. Open space easement boundaries.

**Special Condition #13**

Special Condition #13 has been changed, changing the buffer area for the ESHA from the 50 feet recommended in the Biological Report to a width of 100 feet. You indicated that DFW requested this change, but I have not been able to find that request – if DFW has requested a 100 foot buffer, can you please forward that documentation and the supporting reasons? Otherwise, can we please change it back to 50 feet? While it does not substantially impact this project, I believe it is important to be consistent.

The following is a requested change to the language of Special Condition #13:

13. Pursuant with MCC Section 20.496.020(A)(1) *et seq.*, a buffer area shall be established adjacent to all environmentally sensitive habitat areas. ~~A 100-foot buffer width shall be established for all on-site environmentally sensitive habitat areas (ESHA), including Bishop Pine Forest and Wetland ESHAs. A 50-foot reduced buffer width shall be established between the off-site Sphagnum bog and Mendocino cypress trees as described in the Biological Scoping Survey, Botanical Survey and Wetland Delineation Report dated May 23, 2018.~~

**Special Conditions 14 (a)(i), #14(g)(ii), #19 and #20**

Special conditions #14(a)(i), #14(g)(ii), #19 and #20 require a wetland restoration plan. The owners are agreeable to the final wetland restoration plan, to be deferred to when the secondary leach field is constructed. While your amendment to the conditions does refer to timing of wetland impacts, I am hoping the conditions can be further clarified to make it as clear as possible that the wetland restoration plan is required to be submitted prior to the issuance of the permit for the installation of the secondary leach field. There is already language in the report which specifies that a wetland restoration plan is warranted should wetlands be accidentally impacted during construction, so I think that is also already covered.

We request that Special Condition #14(a)(i) be amended as follows:

i. **Invasive Plants** - Invasive plants present on the site, including bull thistle (*Cirsium vulgare*), shall be removed to improve habitat value. Prior to use on the site, heavy equipment shall be washed down off-site to prevent accidental contamination with invasive plant seeds. Special care shall be taken to wash tires and undercarriages, where invasive seeds might be present. Invasive plants as listed by the California Invasive Plant Council (Cal-IPC) (<https://www.calipc.org/plants/inventory/>) shall not be used as landscaping species. Landscaping shall consist of native plants compatible with the onsite plant communities. **Landscaping shall not occur in wetlands and invasive plant removal shall only occur by hand in wetlands, with no use of machinery.** ~~The work shall comply with the Final Wetland Restoration Plan.~~

We request that Special Condition #14(g)(ii) be amended as follows:

14(g)(ii) Wetland Restoration Plan Procedures shall be implemented pursuant with MCC Section 20.532.065 **should wetlands be impacted.** The Final Wetland Restoration Plan shall be followed, **should one be warranted due to proposed or accidental wetland impacts.**

We request that Special Condition #19 be amended:

19. **Prior to issuance of the permit for installation of the secondary leachfield, and prior to any repairs to the existing leach field that may result in impacts to wetlands**, pursuant with MCC Section **20.532.065** *Wetland Restoration Plan Procedures*, a Final Wetland Restoration Plan shall be prepared by the property owner based on the approving authority approved or conditionally approved tentative restoration plan (i.e., Wetland and Rare Plant Avoidance and Mitigation Plan dated September 17, 2018 with a November 14, 2018 revised Figure 3). In addition, the final plan shall include all of the following:

- A complete statement of the restoration objectives; and
- A complete description of the restoration site including a map of the project site, at a mapping scale no smaller than 1" = 200' ; and
- A complete restoration description including scaled, detailed diagrams, and including: (a) A grading plan depicting any alterations to topography, natural landforms, and drainage channels and areas where existing fill and debris will be removed; (b) A vegetation plan including a list of plant species to be eliminated and a list of plant species to be introduced on the restoration site, and describing the methods and proposing a schedule for eliminating and establishing vegetation; (c) A clear statement of when restoration work will commence and be completed; (d) Provisions of public access, where appropriate, for public recreation, scientific, and educational use; and (e) Other measures necessary to achieve restoration objectives and to protect the restoration site from adverse impacts of adjacent development and use. (f) Provisions for mosquito and vector control; and
- Provision for Long-Term Management of the Restoration Site. The final plan shall describe the property owner's responsibilities in assuring that the project will be successful, including monitoring and evaluation, and that the restored area is maintained consistent with the plan's restoration objectives. The plan shall include provisions for making repairs or modification to the restoration site necessary to meet the project objectives. The final plan shall provide either that the restoration site shall be owned in fee by an agency or non-profit organization having among its principal purposes the conservation and management of fish and wildlife, or other habitat resources, or shall provide for dedication of an open space or conservation easement over the restoration area to such an agency or organization.

We request that Special Condition #20 be amended:

20. Prior to commencing ground disturbing activities within a Wetland ESHA and pursuant with MCC Section **20.532.065(H)**, the Coastal Permit Administrator shall **require submittal of a Final Restoration Plan** and determine whether the Final Restoration Plan is in substantial conformance with the approved tentative plan.

Special Condition 14(a)(vii)

Since the entire project area is within ESHA buffers, adding language to prohibit staging and materials within the buffer, and requiring conformance with a final restoration plan for development in the buffer does not apply well to this project. There are already many conditions that limit and guide construction in the buffer, including those outlined in the avoidance plan. As we agreed the final wetland restoration plan will be deferred till a time when the leach field is repaired or secondary leach field is constructed.

We recommend that Special Condition **14(a)(vii) is amended as follows:**

**Wetland and Rare Plant Impacts** – No direct impacts are to occur to onsite wetlands or rare plants from construction or related activities. All staging and materials storage, and other project components must occur outside of ~~ESHA buffers~~, wetlands, and rare plant areas. Staging and materials storage and other project components may be located

within the authorized development areas. If any work should occur within wetland areas or their buffer, it shall comply with the Final Wetland Restoration Plan.

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#### **Special Condition 14(b)**

Special condition 14(b) states that Development shall be limited to the areas identified on the March 22, 2018 Revised Site Plan. This condition is confusing and may cause future problems. Future repairs and maintenance may be needed to utility lines that would normally be exempt from CDP requirements. The condition is unnecessary, as clearly the CDP only approves the new development as described. The condition, however, may constrain future repair and maintenance. We request that this condition be deleted:

~~b. Development shall be limited to the areas identified on the March 22, 2018 Revised Site Plan.~~

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#### **Special Condition 14e**

Special Condition 14e indicates that no structures shall be allowed inside the buffer area except the authorized building envelope. This is in conflict with the project as existing utility lines and the existing septic system are not shown on that plan. The second sentence is also confusing, since the entirety of Special Condition 14 is comprised of said mitigation measures, and no riparian is proposed to be impacted. It would be helpful to remove this to avoid misunderstandings:

~~No structures shall be allowed within the buffer area except the authorized development envelope shown on the Revised Plan dated March 22, 2018. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel.~~

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#### **Special Condition 14f**

Special Condition 14f includes conditions to limit impacts, including a requirement that a portion of the existing driveway be discontinued. The condition additionally requires construction of a permanent fence directly adjacent to wetlands and rare plants along both sides of the existing driveway. Grading for the project is limited by the condition to the estimated five cubic yards and this condition additionally requires a grading plan with contours for said grading, to limit runoff, dust, and disturbing soil. Impacts are already limited by required setbacks to sensitive areas.

Driveway - The driveway, including the portion that closure is recommended for, is existing, not proposed. No changes are requested for this driveway at this time, and the project is well under lot coverage limits, therefore it is not appropriate to recommend alterations to the existing driveway. Additionally, closing off a portion of the driveway may make access to the property for larger vehicles, such as RVs, less feasible. Since it is existing, no alterations are needed at present to approve the project, however if an alteration such as a partial closure is being required, such an alteration may impact emergency access, and may need engineering and new development in the wetlands to make the remaining portion of the driveway accessible. This requirement does not

appear to have been reviewed or approved by an engineer or by CalFire. We request that the driveway remain as is.

Grading permits and building permits should be required for this project in the same manner that they are required for neighboring residential properties, and should not be required in situations where the building code does not call for these types of permits. As proposed, grading for this project is minimal, and limited to only that necessary to accommodate the structures and vehicle access from the existing driveway to the garage. Additionally, many other conditions are in place to protect the resources, and this additional requirement would simply add more cost to the project with no reasonable purpose.

Construction of a fence on both sides of the driveway would be expensive and intrusive, and is not warranted. This is an existing driveway that has been used to access the property for years. The directly adjacent wetland has not suffered. Constructing a fence on both sides of the driveway has a high potential of direct impact to the rare plants and wetlands present right where the fence is proposed. Additionally, the existing wetland is vegetated by brushy species that create a natural barrier.

It is requested that this condition be removed in its entirety:

- f. ~~Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.~~
- i. ~~To minimize impervious surfaces, the existing u-shaped driveway that intersects with Canterbury Road shall be reduced. Use of one leg of the u-shaped portion of the driveway shall discontinue.~~
- ii. ~~To minimize removal of vegetation, limit the development footprint to the area identified in the Revised Site Plan dated March 22, 2018, and require a coastal development permit for any future development at this site.~~
- iii. ~~To minimize the amount of bare soil disturbed, noise, dust, nutrient runoff, and air pollution, identified avoidance measures shall be implemented.~~
- iv. ~~To minimize human intrusion into the wetland and other habitat areas, requiring low-stature fencing be installed along both sides of the driveway between the garage and the driveway's intersection with Canterbury Lane. The fence location shall obstruct future use of the u-shaped portion of the existing driveway access from Canterbury Lane. Access gates may be installed adjacent to the fuel tank, water storage tank, and along Canterbury Lane. The low-stature fence would establish a physical barrier between the sensitive habitat areas and development.~~
- v. ~~To minimize alteration of natural land forms, grading shall be limited to the five (5) cubic yards proposed and require an approved grading plan with contours that would limit runoff, dust, and disturbing soil. In accordance with MCC Chapter 20.492, a building permit, or grading permit exemption, shall be required for any grading, including but not limited to, any excavation or filling or combination thereof involving transfer of more than two (2) cubic yards of material. The Coastal Permit Administrator, or their designee, shall review and approve grading permits to determine their consistency with MCC Chapters 20.492, 20.496, and 20.500 regulations. Grading activities, including the maintaining driveway and parking areas, and any work associated with an Encroachment Permit, shall comply with MCC Chapters 20.492, 20.496, and 20.500 regulations.~~

Special Condition 15b limits the storage of goods, materials and refuse containers to the interior of buildings. It is unclear whether the intent of this is during construction or after, but in either case, it does not appear feasible. A staging area has been identified for the project in the Wetland and Rare Plant Avoidance and Mitigation Plan, and goods, materials and refuse containers would be appropriate within that staging area. The spill prevention section (Section 3.3 Spill Prevention Plan) of the Wetland and Rare Plant Avoidance and Mitigation Plan discusses the storage of materials that may spill, recommending that they are stored inside sheds or where a tarp or similar device is placed, preventing absorption into the soil if accidentally spilled. Since adherence to the Wetland and Rare Plant Avoidance and Mitigation Plan is already recommended as a condition of approval, and Special Condition #18 it is unnecessary to add more language in the Conditions of Approval to specifically address accidental spills. Regarding storage during residential use of the property, outside storage should be limited to areas within the building envelope, and outside of the open space easement. This should be clear per the open space easement condition. We would like to see this condition deleted, as it does not allow for reasonable use of the residential property.

~~b. Storage of goods, materials, and refuse containers shall be limited to the interior of the buildings.~~

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#### Special Condition 15d

Further, we request that this condition be reworded to allow the property owners to enjoy a defined passive recreation use, maintain the existing septic infrastructure, which is within the Open Space Easement, and also allow them the ability to responsibly manage the open space area. This would include the ability to repair and replace septic lines, remove by hand any invasive plants, to remove by hand (chainsaw) any trees that threaten the development (with written recommendation from a professional forester or arborist), and to manage areas for fire safety per the CalFire clearance requirements:

~~d. The property owner shall avoid use of areas outside of the approved development envelope. Passive Recreation activities are allowed within the Open Space Easement.~~ **Only Passive Recreation and restoration and maintenance activities shall be allowed by the property owner and their guests within the open space easement, as described below. Passive recreation is defined as "Leisure activities that do not require permits nor constitute 'development' and that involve only minor supplementary equipment. Examples include but are not limited to sight-seeing, hiking, sunbathing, jogging, bird watching, picnicking, bicycling, horseback riding, photography, nature study and painting."** Property owners shall also be permitted to repair and maintain the existing septic infrastructure or any other existing utility lines located within the Open Space Easement, and manage the open space area, including hand removal of refuse and invasive plant species, dangerous and diseased tree removal as recommended by a professional forester or arborist, and vegetation maintenance as needed to adhere to CalFire safety clearance requirements.

Thank you for your consideration of these recommendations – please let me know when we can discuss these condition change recommendations and any concerns you may have.

Sincerely,

  
Teresa R Spade AICP for Gary and Ann Fritz

## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE  
1385 EIGHTH STREET, SUITE 130  
ARCATA, CA 95521  
VOICE (707) 826-8950  
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Attachment B – Sample Language for Open Space Restricted Area**3. Open Space Restrictions.**

- A. No development, as defined in Section 30106 of the Coastal Act, shall occur in the open space area generally depicted on **Exhibit No. X**, which includes all designated areas of the subject parcel within the Grand Fir Forest ESHA and a 100-foot ESHA buffer adjacent to the Grand Fir Forest ESHA, except for:
- (i) The development of the southeast corner of the garage/workshop/guest cottage building and a portion of the septic system leachfield in areas no closer than 50 feet from the Grand Fir Forest ESHA in the configuration and locations approved by the Commission herein under Coastal Development Permit No. A-1-MEN-XX-XXX.
  - (ii) Removal of non-native vegetation; and
  - (iii) The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: vegetation clearance if required by the California Department of Forestry and Fire Protection (CDF) to meet fire safety standards; planting of native vegetation to improve the habitat value of the open space area generally, and removal of debris and unauthorized structures.
- B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-XX-XXX, the applicants shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal metes and bounds legal description and graphic depiction drawn to scale and prepared by a licensed surveyor of the portion of the subject property affected by this condition, as generally described above and shown on **Exhibit No. X** attached to this staff report.



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To: Destiny Preston  
California Coastal Commission  
North Coast District Office  
1385 Eighth Street  
Arcata, CA 95521

Date: May 20, 2019

Dear Ms. Preston:

Thank you for taking the time to express your concerns regarding the Fritz residence, CDP 2017-0032. The following is in response to your letter, dated April 23, 2019, entitled Additional Commission staff comments regarding CDP 2017-0032 (Fritz).

Regarding your outlined concerns, I offer the following:

**1. Clarification on project description.**

The project description in the County staff report dated April 25, 2019, is relatively accurate. As documented by the project file and my correspondences with the County project coordinator, the project description had been revised since the August 29, 2018 application form you describe. We determined that the pump house does not conflict with the residence location, and can remain in place. While “future repairs of the septic system” was originally an item on the application request, this was because I worked at Wynn Coastal Planning at the time of original submittal, and it was, at that time, Wynn Coastal Planning’s protocol to ask for permission for any potential future septic repairs at the time of initial project request. Since I no longer work with Wynn Coastal Planning, that is no longer part of the request. The project description is therefore accurate regarding the changes relative to the septic system, for which no development is proposed at this time, and well shed, which is to remain in place. This is a substantial clarification, and one that should be noted, as it impacts much of the assumptions outlined in your letter of concern. Most importantly, you assume that wetlands are proposed to be impacted by the project, and this is not the case.

The one item that lacks complete accuracy in the staff report project description is that the applicant seeks after the fact authorization for the existing leach field – this is something the project coordinator at the County added, not the applicant. A more accurate sentence might state “the County of Mendocino believes that after the fact Coastal Development Permit authorization is warranted for the existing leach field.” The septic tank and leach field were permitted by the County, and were installed over 30 years ago, and we are not requesting any changes to the existing septic system, other than that it will serve the proposed residence. There was no indication on the approved septic permit that a separate permit was required at that time from Coastal Commission, and it does not appear reasonable to assume such permission was required and not granted, just because the records, 30 years later, are not clear. It is

possible that a complete records search of septic approvals at that time would show the subject approval to be consistent with those existing protocols. We are not asking for any new septic system development at this time, and plan to use the existing system. Any future repairs or replacements of the septic infrastructure will require a CDP at that time per the already existing regulatory requirements, so we do not believe there is any need for concern regarding the septic system relative to this application. We are agreeable to leaving the request for after the fact authorization for the existing septic system in the project description only if this is necessary to prevent delays, but to be clear, this was not our request.

Regarding the proposed driveway, only 394 square feet are proposed, as shown on the site plan, in order to connect the existing driveway to the garage. The 3,495 square foot figure you found in the body of the staff report is a typo.

Regarding the relocation of the utility pole, this is something that is necessary because the least impacting garage location is where the utility pole now exists. A proposed location is not shown because this will require coordination with PG&E and will be limited to areas where feasible based on PG&E requirements. This relocation is permissible as an exemption under the Coastal Commission's Repair, Maintenance and Utility Hook-Up Exclusions from Permit Requirements (Adopted September 5, 1978). While this relocation is allowable without the CDP so long as it does not result in substantial impacts to ESHA (this type of development does occur in ESHA buffers under this exemption), it is also reasonable to just add the relocation to the staff report project description, and add a condition to the CDP requiring that the relocation occur within the Building Envelope (I am proposing a building envelope as outlined in my previous response letters).

The applicant does not request a new septic tank at this time, as is reflected in the project description provided in the staff report. There is already a septic tank, which was installed 30 years ago, per the approved septic permit from the County.

## **2. Conditions of approval (in the order they appear in your letter).**

### **Condition #15d.**

Condition 15d is provided in the revised staff report as follows:

**Condition 15.** Pursuant with MCC Sections 20.496.025(A), to protect environmentally sensitive habitat areas, such as wetlands, riparian corridors, and other environmentally sensitive habitat, the property owner shall immediately prior to, during, and immediately following construction-related activities:

- d. The property owner shall avoid use of areas outside of the approved development envelope. Passive Recreation activities are allowed within the Open Space Easement.

This condition is already confusing since no development envelope has been established (although I believe it is a good idea), and County planning staff appears to be currently interpreting "development envelope" to mean the inside of any approved structures. This would therefore mean that the property owners would not be allowed to enjoy any outdoor uses on their rural one-acre property. The condition states that the property owners refrain from use of areas outside the approved development envelope – since no development envelope applies, this means the entire property is off limits to use by the owners. The condition then states that passive recreation activities are allowed within the Open Space Easement, but does not specify who is allowed these activities. Clearly not the property owners, as they are prohibited from use of the outside areas of the property per the previous sentence. The County project

coordinator goes so far as to require in other recommended conditions in the report, that the property owners cannot place garbage cans outside of their garage, but that all storage must be inside buildings.

We maintain that Condition #15d should be revised to allow the property owners and their guests reasonable passive uses, and also include necessary maintenance activities which would normally be addressed in an Open Space stewardship agreement as would otherwise occur in situations where a land trust manages (in this case it is unrealistic to expect a land trust to manage such a small property, so the owners should be responsible for and allowed to maintain the property), and repairs to existing infrastructure, since it is likely that such repairs will be needed in the future. We believe that it goes without saying that such repairs will require a new CDP if they do not meet any exemption requirements, since such repairs are not being expressly proposed with the subject CDP. The restrictive language changes that Coastal Commission staff suggest are not consistent with any portion of the LCP or Coastal Act.

An Open Space easement with passive recreation allowed, is recommended by the project coordinator for this project per the staff report. Every open space easement approved through the CDP process I was involved with during my 6 years as a planner for the County of Mendocino in the Coast Office, allowed Passive Recreation within the Open Space easement area. That allowance has been based upon allowable uses within the Open Space zoning district, which includes Passive Recreation as a principally permitted use.

The County LCP includes "Open Space" as a zoning district, the intent of that district is outlined in Section 20.372.005 of the Mendocino County Coastal Zoning Code as follows: "This district is intended to be applied to lands within the Coastal Zone which are not suited for development or are more valuable in their undeveloped natural state and to public park lands." The Coastal Element lists the intent of the Open Space land use classification as:

*The Open Space classification is intended to be applied to lands not suited for development or to lands most valuable in their undeveloped natural state. Factors limiting the development potential of land would include such constraints as unstable soils, high fire hazard, remote location, poor access, scenic qualities, and susceptibility to flooding. Valuable natural areas could include rare and endangered species and habitat, riparian vegetation zones, or wild and scenic rivers. (Mendocino County Coastal Element)*

Principally permitted uses in Open Space include "Passive Recreation," for which there is a definition in the Mendocino County LCP:

*"Recreation, Passive" means leisure activities that do not require permits pursuant to this Division nor constitute "development" as defined in Section 20.308.035(D), and that involve only minor supplementary equipment. Examples include sightseeing, hiking, scuba diving, swimming, sunbathing, jogging, surfing, fishing, bird watching, picnicking, bicycling, horseback riding, boating, photography, nature study and painting. (Mendocino Coastal Zoning Code)*

While the LCP expressly permits passive recreation in Open Space districts, the Coastal Commission suggests the property owner should not be able to enjoy the same rights within an Open Space easement to be established on their property. The reasoning behind this Coastal Commission assertion is that the property contains special habitats that could be detrimentally impacted by some Passive Recreation uses.

Of particular concern to the Coastal Commission are the wetlands which dominate the site. A very small portion of these wetlands are actual Army Corps three parameter wetlands with hydrology, and most of the wetlands are Coastal Commission one or two parameter wetlands, which lack wetland hydrology – they are not covered permanently or periodically with water. Additionally, much of the value being placed on these wetlands is coming from an inaccurate assumption that the wetlands are hydrologically connected to the off-site cypress forest. The off-site cypress forest is upslope from the onsite wetlands, there are upland areas of redwood forest in between the cypress forest and the wetlands, and the cypress forest areas near the site are not hydric, but are upland habitats, as evidenced by the attached data sheets.

Per the definitions of “wetlands” as found in the Mendocino County LCP, the habitat value of the majority of the onsite Open Space easement area is not a relatively high quality habitat.

Wetlands are defined in the Mendocino County Coastal Element as follows:

*Wetlands. Lands which may be covered periodically or permanently with shallow water, including saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens. Wetlands are extremely fertile and productive environments. Tidal flushing from the ocean and/or nutrient-rich freshwater runoff mix to form a delicate balance responsible for their productivity. They function as nurseries for many aquatic species and serve as feeding and nesting areas for waterfowl, shorebirds and wading birds, as well as a few rare and endangered species.*

The edge or upland limit of wetlands is designated by the Coastal Element and Coastal Commission guidelines on wetlands as:

*(a) the boundary between land with predominantly hydrophytic (adapted to wet conditions) cover and land with predominantly mesophytic (adapted to average conditions) or xerophytic (adapted to dry conditions) cover; (b) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or, in the case of wetlands without vegetation or soils; (c) the boundary between land that is flooded or saturated at some time during years of normal precipitation and land that is not. Areas with drained hydric soils that are no longer capable of supporting hydrophytes (species adapted to wet conditions) are not considered wetland. (Mendocino County Coastal Element)*

The Coastal Commission and LCP definition of wetlands comes from the US Fish and Wildlife wetlands definition that can be found here:

<https://www.fws.gov/wetlands/documents/classwet/wetlands.htm>

Note that the US Fish and Wildlife Service definition of wetlands starts out with a disclaimer and a statement of what wetlands generally are:

Marshes, swamps, and bogs have been well-known terms for centuries, but only relatively recently have attempts been made to group these landscape units under the single term "wetlands." This general term has grown out of a need to understand and describe the characteristics and values of all types of land, and to wisely and effectively manage wetland ecosystems. There is no single, correct, indisputable, ecologically sound definition for wetlands, primarily because of the diversity of wetlands and because the demarcation between dry and wet environments lies along a continuum. Because reasons or needs for defining wetlands also vary, a great proliferation of definitions has arisen. The primary objective of this classification is to impose boundaries on natural ecosystems for the purposes of inventory, evaluation,

and management.

#### Wetlands

In general terms, wetlands are lands where saturation with water is the dominant factor determining the nature of soil development and the types of plant and animal communities living in the soil and on its surface. The single feature that most wetlands share is soil or substrate that is at least periodically saturated with or covered by water. The water creates severe physiological problems for all plants and animals except those that are adapted for life in water or in saturated soil (US Fish and Wildlife Service Classification of Wetlands and Deepwater Habitats of the United States).

While the two main wetland definitions the Coastal Commission uses have been taken directly from this document, the Commission has lost sight of the overarching determinant for wetlands, which is saturation with water as the dominant factor. Most of the areas on the subject property constitute "Coastal Act" wetlands in that at least one of the three wetland parameters are met, however for much of the subject site, saturation with water is not a factor. In this way, while I agree the area delineated as wetland on the site is in fact a "Coastal Act" wetland, I would not categorize it as a high quality wetland due to the lack of wetland hydrology for the majority of the mapped wetland.

You suggest that, based on an agency comment, there is hydrological connectivity between the on-site wetlands and the offsite Mendocino Cypress Woodland, and for this reason the County keep Condition 13 and not adopt my proposed changes. There is no hydrological connectivity, however. The mapped Mendocino Cypress Woodlands are upslope from the on-site wetlands, and areas of non-wetland redwood and bishop pine forest lie between the offsite mapped Mendocino Cypress Woodland and the on-site wetland. Additionally, the recent mapped effort DFW refers to, indicates the Alliance mapped is an upland alliance, not a wetland alliance. There are some areas with the County that were mapped as hydric during that mapping effort, but this is not one of them. In response to your assertion, I recently surveyed the Mendocino Cypress Woodland areas near the property, to the extent that they were on public lands, and documented with Rapid Assessment, that they are not, in fact hydric. The Rapid Assessment data is attached. It is therefore not supported to assert that there is hydrological connectivity between the upslope non-hydric Mendocino Cypress Woodland alliances, and the downslope, disconnected wetland.

You express concern that certain types of passive recreation, such as horseback riding and bicycling may have detrimental impacts on ESHA. We agree with you to a limited extent. Firstly, we believe your main issue is with the existing language of Passive Recreation, which should be addressed across the board for all Local Coastal Programs where Passive Recreation is allowable in ESHA and is defined similarly. Secondly, for this site, we believe that some of the resources on the site could in fact be detrimentally impacted by some of the uses the LCP allows within the definition of Passive Recreation. We believe the portion of wetlands on the site that have wetland hydrology (surface water or soil saturation), and special status plants, should not be subjected to bicycling or horseback riding directly through these areas. Common sense and human decency should be enough to assume these areas would be avoided by such activities, however we additionally propose the following language change to the condition, to allay any concerns by your staff regarding this site:

**Condition 15d.** ~~The property owner shall avoid use of areas outside of the approved development envelope. Passive Recreation activities are allowed within the Open Space Easement.~~ **Only Passive Recreation and restoration and maintenance activities shall be allowed by the property owner and their guests within the open space easement, as described below. Passive recreation is defined in the LCP as "Leisure activities that do not require permits nor constitute 'development' and that involve only minor supplementary equipment. Examples include but are not limited to sight-seeing, hiking, sunbathing,**

**jogging, bird watching, picnicking, bicycling, horseback riding, photography, nature study and painting.” To the extent that these uses do not detrimentally impact ESHA, these uses shall be allowable within the Open Space easement and other areas of the property. Areas of rare plants and wetlands areas where the soil is saturated or inundated shall be avoided by passive recreation activities that could degrade these areas. Property owners, upon obtaining necessary permits, including but not limited to Coastal Development permits where such are required, shall also be permitted to repair and maintain the existing septic infrastructure or any other existing utility lines located within the Open Space Easement, as necessary, and manage the open space area, as necessary, including hand removal of refuse and invasive plant species, dangerous and diseased tree removal as recommended by a professional forester or arborist, and vegetation maintenance as needed to adhere to CalFire safety clearance requirements.**

**Condition #14b.**

In the revised staff report, Condition of Approval 14(b) states that “Development shall be limited to the areas identified on the March 22, 2018 Revised Site Plan.”

In her April 25 memo, Juliana again recommends changes to this condition, requiring:

**Condition 14 b.** Development shall be limited to the areas identified on the March 22, 2018 revised site plan. Any Future development shall require an amendment to CDP 2017-0032 or a new Coastal Development Permit.

This type of language was included as Condition 18h in the March staff report, and I requested it be removed in my March 15, 2019 letter to the Coastal Permit Administrator. Adding this condition does not weaken or strengthen any existing policies regarding when a Coastal Development Permit is warranted, but simply adds a new stand-alone requirement that acts independently to unfairly restrict development on the subject property beyond the Coastal Act’s current reach.

We maintain that **Condition #14(b)** should be deleted. The only reason to keep it in there is if it is the intent of the recommending agency staff members to regulate this property owner to a greater degree than the exemptions already provide, which is unfair, and an inconsistent application. Adding restrictions above and beyond those that already exist cannot be justified by quoting the exemptions you intend to prevent the property owner from utilizing. This is a taking of property rights and is in no way justified by existing codes or case law.

This condition imposition is inconsistent with the way LCP requirements are imposed on neighboring residential properties, and will result in an unwarranted financial hardship for the property owners, who should be able to repair and maintain their property with the same rights as neighbors, and should be able to make minor improvements, which encroach no closer to ESHA than portions of the approved structure, should such improvements be needed in the future. With this condition, replacing a broken window or repairing a leaky roof would require a CDP, which does not seem reasonable, given that the timeline for processing is approaching a minimum of two to three years at the County at this current time, and permit costs have tripled over the past 5 years. Additionally, small improvements should be allowed, as they are for neighboring properties. For example, if a bathroom needs to be expanded outward in footprint in order to accommodate new ADA needs, or a similar small improvement is needed, that should be exempt from the CDP process if a CDP exemption would apply and the development is located in an approved Development Envelope. We request that Juliana’s recommended

revision to 14b in her April 25 memo be rejected, and 14 b as written in the revised staff report be modified as follows:

Condition 14 b. ~~Development shall be limited to the areas identified on the March 22, 2018 revised site plan.~~ **Future residential improvements shall be limited to those allowable under the repair and maintenance exemptions, and to any other improvements, within the development envelope as shown in Exhibit A, that meet residential CDP exemption requirements.**

**Condition 14(a)(i)**

In the revised report, Condition 14(a)(i) states:

**Condition 14 (a)(i).** Invasive Plants - Invasive plants present on the site, including bull thistle (*Cirsium vulgare*), shall be removed to improve habitat value. Prior to use on the site, heavy equipment shall be washed down off-site to prevent accidental contamination with invasive plant seeds. Special care shall be taken to wash tires and undercarriages, where invasive seeds might be present. Invasive plants as listed by the California Invasive Plant Council (Cal-IPC) (<https://www.calipc.org/plants/inventory/>) shall not be used as landscaping species. Landscaping shall consist of native plants compatible with the on- site plant communities. The work shall comply with the Final Wetland Restoration Plan.

The Coastal Commission suggests that this language be changed to include that: 1. Only wetland restoration activities that comply with the Final Wetland Restoration Plan shall be allowed in the wetland ESHA and its buffers; and 2. Landscaping outside the Open Space Easement Area and within the development footprint shall consist of native plants compatible with the onsite plant communities.

To justify your landscaping restrictions you cite code that states that development allowed in the buffer should generally be the same as allowed in ESHA, but fail to observe that the Mendocino County LCP already has a code section that specifically addresses landscaping in an ESHA buffer:

*Sec. 20.492.015 - Erosion Standards.*

*(A) The erosion rate shall not exceed the natural or existing level before development.*

*(B) Existing vegetation shall be maintained on the construction site to the maximum extent feasible. Trees shall be protected from damage by proper grading techniques.*

*(C) Areas of disturbed soil shall be reseeded and covered with vegetation as soon as possible after disturbance, but no less than one hundred (100) percent coverage in ninety (90) days after seeding; mulches may be used to cover ground areas temporarily. In environmentally sensitive habitat areas, the revegetation shall be achieved with native vegetation. In buffer areas adjacent to environmentally sensitive habitats, non-native vegetation may be used provided that it is non-invasive and would not adversely affect the environmentally sensitive habitat area.*

The recommendation for native plants only in the buffer, which came from my botanical report, already is more protective than the LCP requires. Since there is very specific language in the LCP regarding landscaping in a buffer, your more general interpretation is not valid.

The requirement for a wetland restoration plan is unwarranted. No wetlands are being impacted by the proposed project, therefore no wetland restoration is needed. In addition to that, we already provided a plan for wetland and rare plant avoidance and mitigation. Wetland and Rare Plant Avoidance and Mitigation Plan dated September 17, 2018 was provided in advance of the project approval in order to allow Department of Fish and Wildlife the opportunity to review it. This plan outlines how wetlands

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and rare plants will be specifically avoided during construction, and what steps need to be taken if any wetlands or rare plants are accidentally impacted.

Special conditions #14(a)(i), #14(g)(ii), #19 and #20 require a wetland restoration plan. Please note that the project does not include impacts to wetlands. Juliana changed the conditions when she re-wrote her staff report after the first hearing by adding that development IN THE BUFFER AREA warrants a wetland restoration plan. Nowhere in the code is this justified. She additionally adds a new issue to her revised staff report, regarding the existing septic system, which was permitted by the County and built over 30 years ago – she claims it is unpermitted – this I have already discussed in detail.

Section 20.496.020(A)(4) discusses development allowed in the buffer area, and requires that: Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.

Note it only requires mitigation planting where protective values are lost as a result of the development. In this case, the development is occurring in an area with no protective values – there is no riparian zone being cut down here to accommodate the development. If you recall, the upper limits of the wetland would be those one parameter areas – if anything the one parameter portions of the wetlands should be considered the buffer, not the upland areas beyond that where development has been present for over 30 years, and no protective values are present.

Section 20.532.065 outlines guidance for Wetland Restoration Plans, and the language states that a wetland restoration plan is warranted “whenever wetland restoration is required.” Juliana’s conditions in her March staff report recommend that a “Final Wetland Restoration Plan” be required for this project, even though no impacts to wetlands are proposed. When I argued against the need for a “Final Wetland Restoration Plan” she re-wrote the staff report, adding a new issue, that the septic system was in a wetland, and that, according to the Coastal Commission, they were unable to find a Coastal Permit for the septic system, so therefore the system was built in violation. The County issued a septic permit over 30 years ago, and the septic system was built over 30 years ago, reliant upon that issued permit, which in no way indicates that an additional approval was needed from the Coastal Commission. Further, the applicant is not seeking approval of any new septic infrastructure at this time, and should a replacement field or tank be needed in the future, it will likely require a new CDP at that time since most of the property is in or within 50 feet of Coastal Act wetlands.

We request that changes to this condition in Juliana’s April 25 memo be rejected and Special Condition #14(a)(i) of the revised staff report be amended as follows:

Condition 14 (a)(i). Invasive Plants - Invasive plants present on the site, including bull thistle (*Cirsium vulgare*), shall be removed to improve habitat value. Prior to use on the site, heavy equipment shall be washed down off-site to prevent accidental contamination with invasive plant seeds. Special care shall be taken to wash tires and undercarriages, where invasive seeds might be present. Invasive plants as listed by the California Invasive Plant Council (Cal-IPC) (<https://www.calipc.org/plants/inventory/>) shall not be used as landscaping species. Landscaping shall consist of native plants compatible with the onsite plant communities. **Landscaping shall not occur in wetlands and invasive plant removal shall only occur by hand in wetlands, with no use of machinery.** ~~The work shall comply with the Final Wetland Restoration Plan.~~

Regarding the submitted Wetland and Rare Plant Avoidance and Mitigation plan, it was never meant to

be a Wetland Restoration Plan, either tentative or final. It was a recommendation of my botanical and wetland survey report in order to provide guidance on how to avoid these areas during construction, and what to do should these areas be impacted despite avoidance measures. You suggest that Department of Fish and Wildlife finds it insufficient (you wrote in your letter “CDFW has found the Tentative Wetland Restoration Plan to be inadequate because it “does not identify impacts and propose mitigations, nor propose specific success criteria and monitoring” per April 18, 2019 email). It is important to clarify that the project would not directly impact any wetlands, rare plants, or other resource areas, as proposed. Since the project does not propose to directly impact wetlands, there is no mitigation warranted. Wetland mitigation is defined by Ducks Unlimited as follows:

Wetland Mitigation is wetland enhancement, restoration, creation and/or preservation project that serves to offset unavoidable wetland impacts. It may also be referred to as compensatory mitigation. Mitigation is required as a condition of many permits issued under state and federal law (Ducks Unlimited).

There are no unavoidable wetland impacts – there are no wetland impacts at all. The project proposes wetland avoidance, which is preferable to and superior to a project with wetland impacts that require mitigation. We have already gone above and beyond what is warranted for the project by providing the Wetland and Rare Plant Avoidance and Mitigation Plan dated September 17, 2018. The project already more than complies with wetland protection requirements, and the additional restoration plan you request is unwarranted and would not accomplish anything beyond an unnecessary added expense. Avoidance, and that the majority of this property is being placed in an open space easement, should be mitigation enough for the proposed impacts<sup>1</sup>.

#### **Condition 14f.**

The Coastal Commission suggests that Condition 14f supports development in buffer areas. There is no nexus between the requirements suggested within Condition 14f and the reduction of the buffer, and further, mitigation measures have already been added in Condition 14a which were developed by the project biologist, utilizing this very same section of code, for what is called a “Reduced Buffer Analysis.” Planning Staff and Coastal Commission Staff do not justify how the addition of these superfluous conditions which are not supported by any professional studies or regulatory requirements, are warranted. Keep in mind that most of this one-acre property is being placed in an open space easement as mitigation, in addition to many well-considered avoidance measures.

Condition 14f is currently written as follows in the revised staff report:

f. Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.

<sup>1</sup> It is to be noted there are distinct differences between restoration, mitigation, and avoidance. Restoration generally refers to the act of restoring sensitive areas that have been temporarily or permanently impacted. For this project, there are no temporary or permanent impacts proposed to sensitive areas. Mitigation is compensation for impacts on a more general basis. For this project, several mitigation measures are proposed which compensate for the development proposed in the buffer of sensitive areas. These mitigation measures include placing sensitive areas, as well as some areas of buffer, in a restrictive open space easement, and invasive plant removal. Additionally, many avoidance measures are proposed to prevent impacts to sensitive resources. These avoidance measures include but are not limited to placement of temporary fencing during construction, limiting staging and storage impacts to areas as far as feasible from sensitive areas, pre-construction education and surveys, and requiring a low impact development design.

- i. To minimize impervious surfaces, the existing u-shaped driveway that intersects with Canterbury Road shall be reduced. Use of one leg of the u-shaped portion of the driveway shall discontinue.
- ii. To minimize removal of vegetation, limit the development footprint to the area identified in the Revised Site Plan dated March 22, 2018, and require a coastal development permit for any future development at this site.
- iii. To minimize the amount of bare soil disturbed, noise, dust, nutrient runoff, and air pollution, identified avoidance measures shall be implemented.
- iv. To minimize human intrusion into the wetland and other habitat areas, requiring low-stature fencing be installed along both sides of the driveway between the garage and the driveway's intersection with Canterbury Lane. The fence location shall obstruct future use of the u-shaped portion of the existing driveway access from Canterbury Lane. Access gates may be installed adjacent to the fuel tank, water storage tank, and along Canterbury Lane. The low-stature fence would establish a physical barrier between the sensitive habitat areas and development.
- v. To minimize alteration of natural land forms, grading shall be limited to the five (5) cubic yards proposed and require an approved grading plan with contours that would limit runoff, dust, and disturbing soil. In accordance with MCC Chapter 20.492, a building permit, or grading permit exemption, shall be required for any grading, including but not two (2) cubic yards of material. The Coastal Permit Administrator, or their designee, shall review and approve grading permits to determine their consistency with MCC Chapters 20.492, 20.496, and 20.500 regulations. Grading activities, including the maintaining driveway and parking areas, and any work associated with an Encroachment Permit, shall comply with MCC Chapters 20.492, 20.496, and 20.500 regulations.

Condition 14f includes conditions to limit impacts, including a requirement that a portion of the existing driveway be discontinued. The condition additionally requires construction of a permanent fence directly adjacent to wetlands and rare plants along both sides of the existing driveway. Grading for the project is limited by the condition to the estimated five cubic yards and this condition additionally requires a grading plan with contours for said grading, to limit runoff, dust, and disturbing soil. Impacts are already limited by required setbacks to sensitive areas.

Driveway - The driveway, including the portion that closure is recommended for, is existing, not proposed. No changes are requested for this driveway at this time, and the project is well under lot coverage limits, therefore it is not appropriate to recommend alterations to the existing driveway. Additionally, closing off a portion of the driveway may make access to the property for larger vehicles, such as RVs, less feasible. Since it is existing, no alterations are needed at present to approve the project, however if an alteration such as a partial closure is being required, such an alteration may impact emergency access, and may need engineering and new development in the wetlands to make the remaining portion of the driveway accessible. This requirement does not appear to have been reviewed or approved by an engineer or by CalFire. We request that the driveway remain as is.

Grading permits and building permits should be required for this project in the same manner that they are required for neighboring residential properties, and should not be required in situations where the building code does not call for these types of permits. As proposed, grading for this project is minimal, and is largely limited to only that necessary to accommodate the structures and vehicle access from the existing driveway to the garage. Additionally, many other conditions are in place to protect the resources, and this additional requirement would simply add more cost to the project with no reasonable purpose.

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Construction of a fence on both sides of the driveway would be expensive and intrusive, and would result in direct detrimental impacts to wetlands and rare plants. This is an existing driveway that has been used to access the property for more than 30 years. Additionally, the existing wetland is predominantly vegetated by brushy species that create a natural barrier. Where the driveway is adjacent to actual three parameter wetlands, the wetlands are below the grade of the driveway and any vehicle would avoid this area in order to prevent their car from getting stuck, off and below the roadway, and in a swamp – a fence here would still serve no functional purpose since any vehicular encroachment into the wetland would clearly be accidental and such an accident would not be prevented by a low lying fence. In the history of use of this driveway which has been here for over 30 years, this has not been an issue. The section of code that was inserted into the conditions of approval for Condition 14f comes from the Reduced Buffer Analysis portion (Section 20.496.020) of the Mendocino County Coastal Zoning Code. The Reduced Buffer Analysis is a tool that was and is commonly used by the professional biologist as a part of the botanical report, to support a reduced buffer. In this case, a Reduced Buffer Analysis was performed by the professional biologist for this project, as provided in the botanical survey and wetland delineation report. Also, as provided in the botanical survey and wetland delineation report, mitigating conditions were already added, in good part to address the requirements of the reduced buffer analysis. Those conditions have already been included as a recommended condition of approval of the staff report. County staff has additionally added a recommended a substantial mitigation measure consisting of an open space easement that covers most of the one-acre property.

Placing portions of this code section in the recommended conditions of approval, followed by additional unrelated and superfluous requirements developed by the County project coordinator does not appear to be backed by any professional biologist opinion, and is a misuse of this section of code.

Further, the conditions the project coordinator suggests are not well considered and have a greater potential for damage than mitigation. Closing off part of a driveway that has been used for years by the neighbors to get large vehicles (boats, RVs) in and out of their adjoining driveway may result in said large vehicles getting stuck in the brush, or coastal act wetland, due to a lack of adequate turn around space. It may also result in emergency vehicles having a hard time turning around or accessing this or neighboring properties in the case of an emergency. Installing a permanent fence on both sides of the driveway is more likely than any of the proposed development to detrimentally and directly impact both the wetlands and rare plants, which are located exactly where the fence would go. Requiring a CDP for any future development is an overreach and may have serious legal consequences. What happens if a tree is leaning, threatening to fall on the house? While there may otherwise be an exemption allowance for this, this overly restricting condition will require a paperwork process that will surely result in significant damage to the house. What if a window gets broken? A fix that would otherwise be exempt from both the CDP and building permit process is now going to require a CDP, meanwhile, who is going to pay the heating bill?

There is no nexus between development in a buffer and superfluous permit requirements. If a grading permit is required by the building department, one should be applied for. A grading permit should not be added purely as a new hoop to jump through if it is actually not otherwise warranted. It is requested that this condition be removed in its entirety.

~~Condition 14(f). Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.~~

~~i. To minimize impervious surfaces, the existing u-shaped driveway that intersects with Canterbury Road shall be reduced. Use of one leg of the u-shaped portion of the driveway shall~~

~~discontinue.~~

~~ii. To minimize removal of vegetation, limit the development footprint to the area identified in the Revised Site Plan dated March 22, 2018, and require a coastal development permit for any future development at this site.~~

~~iii. To minimize the amount of bare soil disturbed, noise, dust, nutrient runoff, and air pollution, identified avoidance measures shall be implemented.~~

~~iv. To minimize human intrusion into the wetland and other habitat areas, requiring low stature fencing be installed along both sides of the driveway between the garage and the driveway's intersection with Canterbury Lane. The fence location shall obstruct future use of the u-shaped portion of the existing driveway access from Canterbury Lane. Access gates may be installed adjacent to the fuel tank, water storage tank, and along Canterbury Lane. The low stature fence would establish a physical barrier between the sensitive habitat areas and development.~~

~~v. To minimize alteration of natural land forms, grading shall be limited to the five (5) cubic yards proposed and require an approved grading plan with contours that would limit runoff, dust, and disturbing soil. In accordance with MCC Chapter 20.492, a building permit, or grading permit exemption, shall be required for any grading, including but not two (2) cubic yards of material. The Coastal Permit Administrator, or their designee, shall review and approve grading permits to determine their consistency with MCC Chapters 20.492, 20.496, and 20.500 regulations. Grading activities, including the maintaining driveway and parking areas, and any work associated with an Encroachment Permit, shall comply with MCC Chapters 20.492, 20.496, and 20.500 regulations.~~

### Condition 13

In the revised staff report, the County project coordinator changed Special Condition #13 by changing the previously agreed upon 50-foot buffer to a width of 100 feet. The 50-foot reduced buffer was supported up to the time of the hearing in March, and was backed by a Reduced Buffer Analysis per Section 20.532.020 of the Coastal Zoning Code (found in the biological report). Section 20.532.020 of the Coastal Zoning Code includes an analysis to determine the appropriate buffer width and a process upon which that buffer width is agreed upon. The change in the staff report from a 50 foot width to a 100 foot buffer width is not supported by any required analysis or process, and appears to be arbitrary. While this recommendation does not substantially change the project, it sets a poor precedent. Buffer widths should be agreed upon by agencies early in the project, and that determination should be applied equally to all projects, using the same criteria.

You suggest that, based on an agency comment that there is hydrological connectivity between the on-site wetlands and the offsite Mendocino Cypress Woodland, the County keep Condition 13 and not adopt my proposed changes. There is no hydrological connectivity between the on-site wetlands and the off-site Mendocino Cypress Woodlands.

In my botanical survey report, I made the most protective presumption regarding the off-site chaparral area, which was not ground truth surveyed at that time (as I have already indicated, the site is very brushy, and access is limited), but was only mapped based on remote sensing aerial photo interpretation:

#### 5.2.1 Sphagnum bog

Sphagnum bog habitat may be present in chaparral to the northeast of the property. Sphagnum bog is a California Department of Fish and Wildlife G3 S1.2 ranked plant community and also the habitat type associated with the last known occurrence of the Federally Endangered Lotis blue butterfly, located

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approximately 2 miles from the project area. The chaparral vegetation where chaparral habitat may be present was mapped based on observations made from the property and aerial photo interpretation.

5.2.2 Mendocino cypress (*Hesperocyparis pygmaea*)

Areas with a predominant overstory of tall Mendocino cypress (*Hesperocyparis pygmaea*, G3 S1.2), were observed to the east of the property. These areas were mapped relative to the property boundary based on aerial photography interpretation. Understory species included Labrador tea but are not fully described because this area was not accessible due to being fenced private property. Observations of Pygmy cypress were made from the subject property (SpadeNRC survey report for the project).

Department of Fish and Wildlife also did not survey the off-site area, but made a reasonable and most protective call based on the information I had provided. California Department of Fish and Wildlife staff member Daniel Harrington and the project biologists were all involved in the recent Cypress Forest mapping efforts, and are aware that certain Cypress Forest habitat types can be hydric. Upon review of CDFW mapping data that came out of this recent community effort, and follow up ground truthing for this project, it turns out the Cypress Forest, including both the presumed Sphagnum Bog and Cypress Forest within 100 feet of the project area, are not hydric, but are upland areas.

The site is upslope from the on-site wetlands, and areas of non-wetland redwood and bishop pine forest lie between the offsite mapped Mendocino Cypress Woodland and the on-site wetland. Additionally, the recent mapped effort DFW refers to, indicates the Alliance mapped is an upland alliance, not a wetland alliance. There are some areas (far away from the subject property, within the County of Mendocino) that were mapped as hydric during that mapping effort, but this is not one of them. In response to your assertion, I recently surveyed the Mendocino Cypress Woodland areas near the property, to the extent that they were on public lands, and documented with Rapid Assessment that they are not hydric. The Rapid Assessment data is attached, and has been submitted to Department of Fish and Wildlife. It is therefore not supported to assert that there is hydrological connectivity between the upslope non-hydric Mendocino Cypress Woodland alliances, and the downslope, disconnected wetland.

The following is a requested change to the language of Special Condition #13:

**Condition 13.** Pursuant with MCC Section 20.496.020(A)(1) et seq., a buffer area shall be established adjacent to all environmentally sensitive habitat areas. ~~A 100-foot buffer width shall be established for all on-site environmentally sensitive habitat areas (ESHA), including Bishop Pine Forest and Wetland ESHAs. A 50-foot reduced buffer width shall be established between the off-site Sphagnum bog and Mendocino cypress trees as described in the Biological Scoping Survey, Botanical Survey and Wetland Delineation Report dated May 23, 2018.~~

**Condition 19**

The Coastal Commission states that the changes to Condition 19 are unclear, and believes that the CDP includes the request for a secondary leachfield. It does not. The primary leach field is already installed, and a future CDP will be needed for installation of a secondary leach field. If the Commission is suggesting that we provide a restoration plan for wetlands that were impacted 30 years ago (when the permitted septic system was constructed), and have since fully restored, this requirement would not result in anything except an unnecessary cost to the property owners, as no restoration is warranted at this time.

At this time, the entire project would avoid impacts to wetlands. There is nothing being requested that would impact wetlands today. Based on this clarification, it should be clear that no wetland restoration or tentative or final wetland restoration plan is warranted. I have already discussed at length how there

is no regulatory requirement for wetland restoration for development in a buffer, and how there is no loss of riparian vegetation or any other protective values, since the areas within the buffer have already been graded and compacted, and have contained permitted structures and residential uses in the past.

~~**Condition 19.** Pursuant with MCC Section 20.532.065 *Wetland Restoration Plan Procedures*, a Final Wetland Restoration Plan shall be prepared by the property owner based on the approving authority approved or conditionally approved tentative restoration plan (i.e., Wetland and Rare Plant Avoidance and Mitigation Plan dated September 17, 2018 with a November 14, 2018 revised Figure 3). In addition, the final plan shall include all of the following:~~

- ~~a. A complete statement of the restoration objectives; and~~
- ~~b. A complete description of the restoration site including a map of the project site, at a mapping scale no smaller than 1" = 200'; and~~
- ~~c. A complete restoration description including scaled, detailed diagrams, and including: (a) A grading plan depicting any alterations to topography, natural landforms, and drainage channels and areas where existing fill and debris will be removed; (b) A vegetation plan including a list of plant species to be eliminated and a list of plant species to be introduced on the restoration site, and describing the methods and proposing a schedule for eliminating and establishing vegetation;~~
- ~~(c) A clear statement of when restoration work will commence and be completed; (d) Provisions of public access, where appropriate, for public recreation, scientific, and educational use; and~~
- ~~(e) Other measures necessary to achieve restoration objectives and to protect the restoration site from adverse impacts of adjacent development and use. (f) Provisions for mosquito and vector control; and~~
- ~~d. Provision for Long Term Management of the Restoration Site. The final plan shall describe the property owner's responsibilities in assuring that the project will be successful, including monitoring and evaluation, and that the restored area is maintained consistent with the plan's restoration objectives. The plan shall include provisions for making repairs or modification to the restoration site necessary to meet the project objectives. The final plan shall provide either that the restoration site shall be owned in fee by an agency or non profit organization having among its principal purposes the conservation and management of fish and wildlife, or other habitat resources, or shall provide for dedication of an open space or conservation easement over the restoration area to such an agency or organization.~~

#### **Condition 14(a)(vii)**

You suggest that the County keep the recently added "ESHA buffers" as a part of recommended condition 14(a)(vii) which currently reads:

**Condition 14(a)(vii).** Wetland and Rare Plant Impacts – No direct impacts are to occur to onsite wetlands or rare plants from construction or related activities. All staging and materials storage, and other project components must occur outside of ESHA buffers, wetlands, and rare plant areas. Staging and materials storage and other project components may be located within the authorized development areas. If any work should occur within wetland areas or their buffer, it shall comply with the Final Wetland Restoration Plan.

By adding the requirement that all staging and materials storage occur outside of ESHA Buffers, the project coordinator is requiring that during construction, no staging or materials storage can occur on the property at all, since the entire property is within ESHA buffers. This is not only unreasonable as it makes the project unbuildable, but is also in direct conflict with Special Condition 15c., which states

that “Staging and Stockpiling of construction materials shall be located as identified on the November 14, 2018 revised Figure 3 in the Wetland and Rare Plant Avoidance and Mitigation Plan.” The last sentence added to the condition refers to a final wetland restoration plan, that again, is not warranted as no wetlands are being impacted by the project proposed for construction at this time.

We recommend that Special Condition 14(a)(vii) is amended as follows:

**Condition 14(a)(vii).** Wetland and Rare Plant Impacts – No direct impacts are to occur to onsite wetlands or rare plants from construction or related activities. All staging and materials storage, and other project components must occur outside of ESHA buffers, wetlands, and rare plant areas. Staging and materials storage and other project components may be located within the authorized development areas. ~~If any work should occur within wetland areas or their buffer, it shall comply with the Final Wetland Restoration Plan.~~

### Condition 15b

Recommended Condition 15b limits the storage of goods, materials and refuse containers to the interior of buildings. It is unclear whether the intent of this is during construction or after, but in either case, it does not appear feasible. A staging area has been identified for the project in the Wetland and Rare Plant Avoidance and Mitigation Plan, and goods, materials and refuse containers would be appropriate within that staging area. The spill prevention section (Section 3.3 Spill Prevention Plan) of the Wetland and Rare Plant Avoidance and Mitigation Plan discusses the storage of materials that may spill, recommending that they are stored inside sheds or where a tarp or similar device is placed, preventing absorption into the soil if accidentally spilled. Since adherence to the Wetland and Rare Plant Avoidance and Mitigation Plan is already recommended as a condition of approval, and Special Condition #18 it is unnecessary to add more language in the Conditions of Approval to specifically address accidental spills.

~~**Condition 15b.** Storage of goods, materials, and refuse containers shall be limited to the interior of the buildings.~~

### Condition 14e

Recommended Condition 14e indicates that no structures shall be allowed inside the buffer area except the authorized building envelope. This is confusing since no building envelope is proposed by the County project coordinator – due to this fact, the application of this condition as written, with no approved building envelope, negates the entire project approval. This is also in conflict with the project as existing utility lines and the existing septic system are not shown on that plan. The second sentence is also confusing, since the entirety of Special Condition 14 is comprised of said mitigation measures and no riparian is proposed to be impacted. It would be helpful to remove this to avoid misunderstandings:

~~**Condition 14e.** No structures shall be allowed within the buffer area except the authorized development envelope shown on the Revised Plan dated March 22, 2018. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel.~~

### Condition 14(a)(viii).

Condition 14(a)(viii) currently reads:

**Condition 14 (a)(viii).** Low Impact Development – Creation of new impervious surfaces shall be minimized. A low-impact development design shall be incorporated into the development to address runoff from new impervious surfaces, assuring runoff from the site is adequately infiltrated within the boundaries of the property, and runoff patterns for wetland and sensitive plant areas are maintained or improved.

We are agreeable with this condition as it comes directly from the recommended measures outlined in the professional botanical survey and wetland delineation report. We believe it is important to leave this open ended and allow for discretion on the part of the County planner reviewing the building permit to determine whether the plan meets the intent of the condition. The final engineered design of the project will best be suited to the site that way.

Sincerely,



Teresa R Spade AICP for Gary and Ann Fritz

Attachments: CDFW Rapid Assessment Data Sheets  
Approved Septic Permit

Cc: Juliana Cherry, County of Mendocino Planning Division  
Julia Acker, Chief Planner, County of Mendocino Planning Division  
Brent Schultz, Director, County of Mendocino Planning and Building Department  
Gary and Ann Fritz, Property Owners  
Bob Merrill, California Coastal Commission  
Melissa Kraemer, California Coastal Commission