

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
1385 EIGHTH STREET, SUITE 130
ARCATA, CA 95521
VOICE (707) 826-8950
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June 26, 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 Coastal Development Permit (CDP) No. 2017-0032 (Fritz)

Dear Ms. Cherry:

Thank you for sending us the County's new Memorandum for the Fritz project, dated June 27, 2019. Our office has provided written comments on the proposed project on multiple occasions, dating at least to October of 2018 (see Attachment Nos. 3, 5, and 6). While we appreciate that the applicant has proposed certain changes to the project in response to comments and that County staff has attempted to address some of our comments in the staff report and recommended CDP conditions, we remain concerned that at this time there appears to be insufficient legal and factual support for the County's findings that the proposed project is consistent with the certified LCP¹. The purpose of this letter is to identify for the County some of the unresolved issues related to both the unauthorized existing primary septic leach field and proposed replacement leach field and the alleged pre-Coastal driveway, as well as to remind the County of our previous comments, which in part have not been addressed or responded to by the County.

We understand that the applicant obtained approval for the existing primary leach field and replacement leach field location in July 1988 from the County's Department of Environmental Health (DEH). The County Memo, dated April 25, 2019, includes revisions of the original County staff report, dated March 28, 2019, where deleted portions are ~~struck through~~ and additions are underlined. Page 2 of the April 25 Memo states the following:

"After U-1988-47 and Septic Permit 1831-F were approved, the property owner constructed a ~~gravel 3,935-square-foot driveway~~, primary leach field, ~~replacement leach field~~, well and ~~100~~ 50-square-foot pump house, temporary trailer, 120-square-foot shed, and electric-utility box. The location for the replacement leach field was approved in 1988; the replacement leach field has not been installed. The sewage disposal system is primarily located within a septic easement and a portion of the wetland ESHA (see attached Revised Site Plan). The applicant proposes to continue use of the driveway,

¹ The applicable LCP policies related to the County's required findings include, but are not limited to, Mendocino Coastal Zoning Code Sections 20.532.095 and 20.532.100.

septic, well and pump house, and a relocated electric-utility box. The temporary trailer and shed would be removed. While local permits (e.g., (U-1988-47) were granted for the existing development, the property owner has not demonstrated that *coastal development* permits were issued to authorize the development. The 3,935-square-foot existing, unimproved driveway likely pre-dates adoption of the Coastal Act.

Considering the section quoted above, along with other findings provided in the County's Staff Report and subsequent Memos, we provide the following additional comments related to the septic system and driveway:

1. Septic System.

Permit History for the Septic System.

Septic Permit 1831-F referenced the boundaries of the septic easement, which delineated the location for the primary leach field and replacement leach field (identified as a Wisconsin mound design) (see Attachment No. 1). The file for U-1988-47 includes a copy of a site plan, which illustrates the location of an approved replacement leach field, set back from what was described as a "wet area" (see Attachment No. 2) The boundaries of the "wet area" do not intersect with the location of the proposed leach field, in contrast to the current Revised Site Plan (as provided in the County Memo, dated April 25, 2019), which demonstrates that the replacement leach field is located within wetland ESHA.

Commission staff comments

Septic systems are not allowable uses within ESHA, pursuant to Coastal Act Section 30240(a), which is implemented through the policies of the certified LCP, which include but are not limited to Mendocino County Coastal General Plan (MCCGP) Sections 3.1-2, 3.1-4, 3.1-7 and Mendocino County Coastal Zoning Code (MCCZC) Section 20.496.025. The County has completed a takings analysis, but that analysis did not address the location of the proposed septic system within ESHA. If the County must approve a septic system within a wetland to avoid a regulatory takings, the development still needs to be the least environmentally damaging alternative and consistent with the policies of the LCP as much as possible. The septic system being reviewed under the subject CDP should be analyzed to determine if it is feasible to locate the primary and secondary leach fields outside of all ESHA to provide for an approval that is as consistent as possible with the LCP, even if the leach fields must still be located within an ESHA buffer. If any part of the septic must be approved within wetlands, the analysis must also address why the system as designed is the least environmentally damaging alternative for LCP consistency (pursuant to MCCZC Sec. 20.496.020 (A)(4)). We note that the site plan shows the applicant owns a septic system easement that includes large areas not mapped as ESHA that should be evaluated as to whether those areas could be utilized for the septic system without encroachment, or as much encroachment into the ESHA.

We previously provided comments recommending that the County's analysis include all after-the-fact development related to septic, vegetation removal, and the driveway (see Attachment No. 3 and Attachment No. 6, pg. 2). The County Staff Report and subsequent Memos provide no analysis of whether the septic system as currently proposed under the subject CDP is the least

environmentally damaging alternative. We also believe that the issues related to the potentially unpermitted driveway and vegetation removal remain unaddressed in the County's recommendation.

Based on the information provided in Attachment Nos. 1 and 2, it appears that the DEH approval for the primary and replacement leach field in 1988 occurred without any knowledge of the full extent of the wetland. The 1988 site plan shows the location of the replacement leach field adjacent to "natural foliage and redwoods" and set back from the "wet area." However, it is unclear if the delineated "wet area" resulted from a formal wetland delineation that recognized Coastal Commission wetlands.

The County is currently recommending that the primary and replacement leach fields remain in the location previously approved by DEH, even though these areas are now delineated as including wetlands ESHA. It is unclear whether DEH determined that siting the leach fields within wetland ESHA would be consistent with DEH standards, considering that leach fields generally do not function in wetlands. Furthermore, as noted above, there are portions of the existing septic easement that are located outside of the delineated wetland ESHA, so it appears that there may be alternative sites for the primary and replacement leach fields. We believe the County has not addressed all feasible alternatives and has not made a determination on the least environmentally damaging alternative for the septic system.

2. Driveway.

Permit History for the Driveway.

As previously mentioned on page 1 of this comment letter, the County's Memo, dated April 25, 2019, includes revisions that remove the statement "the property owner constructed a gravel 3,935 square-foot driveway" and add the statement "The 3,935-square-foot existing, unimproved driveway *likely* pre-dates adoption of the Coastal Act" (emphasis added). This statement conflicts with pg. 16 of the April 25 Memo, which states: "The property owner also graded and maintained the driveway..." In addition, the applicant completed an Affidavit in 2016, which stated the following: "I subsequently completed the process of grading a road onto the property, obtaining electricity, and installing a well." The applicant is referencing development that followed the issuance of U-1988-47, although that local permit only allowed for the construction of a travel trailer while constructing a dwelling (see Attachment No. 7).

Commission staff comments

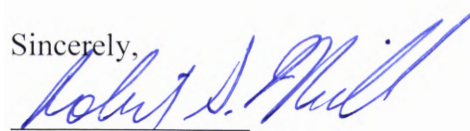
Commission staff previously informed County staff that the applicant never obtained the required CDP that was meant to follow U-1988-47, as referenced in Special Condition No. 6 of U-1988-47, which stated that "The applicant shall secure all necessary permits and clearances from the California Coastal Commission." Although the local permit only allowed for the construction of a travel trailer, the Affidavit references other unpermitted development, including driveway grading and the construction of a well. Based on the project description provided in the County Memo, dated June 27, 2019, we also know that a shed was built without the benefit of a CDP.

Conclusion

In summary, there is evidence suggesting that the following development was undertaken without the benefit of a CDP: (1) grading of a driveway; (2) construction/placement of a travel trailer, shed, and well pump house; and (3) construction/use of a primary leach field. It remains unclear whether unpermitted major vegetation removal also occurred to establish clearings for the driveway and area that supported the travel trailer, shed, and well pump house. The County's conclusion that the unimproved driveway pre-dates the adoption of the Coastal Act (pre-1977) lacks factual support, because other portions of that same Memo state that the applicant graded and maintained the driveway after 1988, which is also affirmed by the applicant's Affidavit². In addition, the County's findings do not acknowledge that the proposed septic system will be impermissibly sited within ESHA. These inconsistencies make it confusing to ascertain whether all after-the-fact development has been appropriately analyzed, which is necessary to make the determination that all newly proposed development is the least environmentally damaging alternative as required by LCP policy MCCZC Sec. 20.496.020 (A)(4)), in addition to other applicable policies. While the County has completed a takings analysis, the analysis does not address the proposed septic system. If the County must approve a septic system to avoid a regulatory takings, the development still needs to be the least environmentally damaging alternative and consistent with the policies of the LCP as much as possible. Without understanding the full scope of after-the-fact and newly proposed development, the County is unable to assure that adequate mitigation measures are required to address all disturbance (both after-the-fact and proposed future disturbance) associated with the development's encroachment within ESHA and ESHA buffers.

Thank you for your consideration of these additional comments. If you have any questions or would like to discuss the issues raised in this letter, please do not hesitate to call me at (707) 826-8950 or email me at Bob.Merrill@coastal.ca.gov.

Sincerely,



ROBERT S. MERRILL
North Coast District Manager

² It is important to note that if the driveway grading and maintenance activities met the definition of development (as indicated in Section 30106 of the Coastal Act), a CDP would have been required because of the likelihood that it did not qualify for repair and maintenance exemptions (see Attach. 6, pg. 4 for more information).

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Attachments:

- 1 – Septic Permit 1831-F
- 2 – U-1988-47 Site Plan
- 3 - CCC email comments, dated October 23, 2018
- 4 – County response to CCC comments raised in earlier telephone call, dated October 19, 2018
- 5 – CCC email comments, dated March 12, 2019
- 6 – CCC comment letter, dated April 23, 2019
- 7 – Applicant’s Affidavit, dated December 23, 2016

INDIVIDUAL SEWAGE DISPOSAL SYSTEM PERMIT

Application is hereby made to the Mendocino County Division of Environmental Health for a permit to construct or repair a sewage disposal system as described below in compliance with the code of Mendocino County or for clearance for other construction.

FEE \$175	<input checked="" type="checkbox"/> NEW <input type="checkbox"/> RENEWAL	<input type="checkbox"/> ADDITION <input type="checkbox"/> REPAIR	RECEIPT NUMBER 55629	PERMIT NUMBER No 1831-F
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SITE ADDRESS 43007 Little Lake Rd
 ASSESSOR'S PARCEL 119-430-20
 LOCATION _____

CITY Mendocino
 OWNER NAME Harold Robinson
 MAILING ADDRESS P.O. Box 706 Mendocino 95460

TYPE OF STRUCTURE
 Single Family Residence No. of Bedrooms 2
 Other _____
 Design Flow _____

WORKMENS COMPENSATION CERTIFICATE
 (ONE OF TWO MUST BE COMPLETED)
 1. A currently effective certificate of Workmen's Compensation Insurance coverage is on file with this office.
 Compensation Insurance _____ Policy # _____ is currently in force.
 2. I certify that in the performance of the work for which this permit will be issued I shall not employ any person in any manner so as to become subject to the workmen's compensation laws of California.
Harold Robinson
 APPLICANT

CONTRACTORS LICENSE LAW CERTIFICATE
 (COMPLETE EITHER A OR B)
 A. The Applicant is licensed under the provisions of the contractors license law under license # _____ which license is in full force and effect.
 B. The Applicant is exempt from the provisions of the contractors license law for the following reasons:
OWNER IS CONTRACTING
Subcontractor
4/11/88 DATE Joe Weidner SIGNATURE

IMPORTANT:
 I agree to obtain Environmental Health Officer's inspection of installation prior to covering.
 I agree to construct this disposal system in accordance with all the provisions of the code of Mendocino County and with the plan drawn hereon.
 It is understood that the issuance of a permit in no way indicates that a guarantee of perfect and indefinite operation of this system is made by the Mendocino County Division of Environmental Health, and that the homeowner is required to make any repairs necessary to confine sewage below the surface of the ground.
 SIGNATURE _____ Date _____
 OWNER OWNER'S AGENT

APPROVED
 MENDOCINO COUNTY PLANNING DEPARTMENT
 By Acosta Date 7-1-88

SEE REVERSE SIDE FOR AS-BUILT SKETCH

REQUIREMENTS & SPECIFICATIONS:
 GENERAL REQUIREMENTS

- Leach Trenches shall be covered with a minimum of 12 inches of backfill after Health Department approval.
- Septic tank and disposal field must be 10 feet from property lines and structures, 100 feet from any water well or surface drainage.
- When the sewage disposal system has been installed, and before top soil is placed over it, the INSTALLER SHALL NOTIFY the Health Department IN WRITING that a final inspection can be made. Allow five working days for the inspection.
- Trenches shall have a gradual fall of 1 inch to 30 feet.

TREATMENT TANK
 Septic Tank-size 1200 gals.
 Other describe _____

SUBSURFACE DISPOSAL AREA
 Trench Disposal
 Total linear feet of trench 300 ft.
 Number of trenches 3
 Length of each trench 100 ft.
 Total depth of trench 2 ft.
 Depth of gravel below line 1 ft.
 Leach Bed SERIALIZE
 Total Bed area _____ sq. ft.
 Number of beds _____
 Width _____ ft. | Length _____ ft.
 Total Depth of bed(s) _____ ft.
 Depth of gravel below line _____ ft.

Other Disposal Area
 Describe _____

SPECIAL REQUIREMENTS

- Install in _____ Area
 Special Design (Describe)

Waiver Required
 Describe _____

Remarks: 2 MAY 88
Ⓢ leach line installation
J Ehlers - OK

PERMIT ISSUED: <u>Ed B...</u>	DATE: <u>7-12-88</u>
INSTALLATION APPROVAL BY: <u>Ed B...</u>	DATE: <u>7-12-88</u>

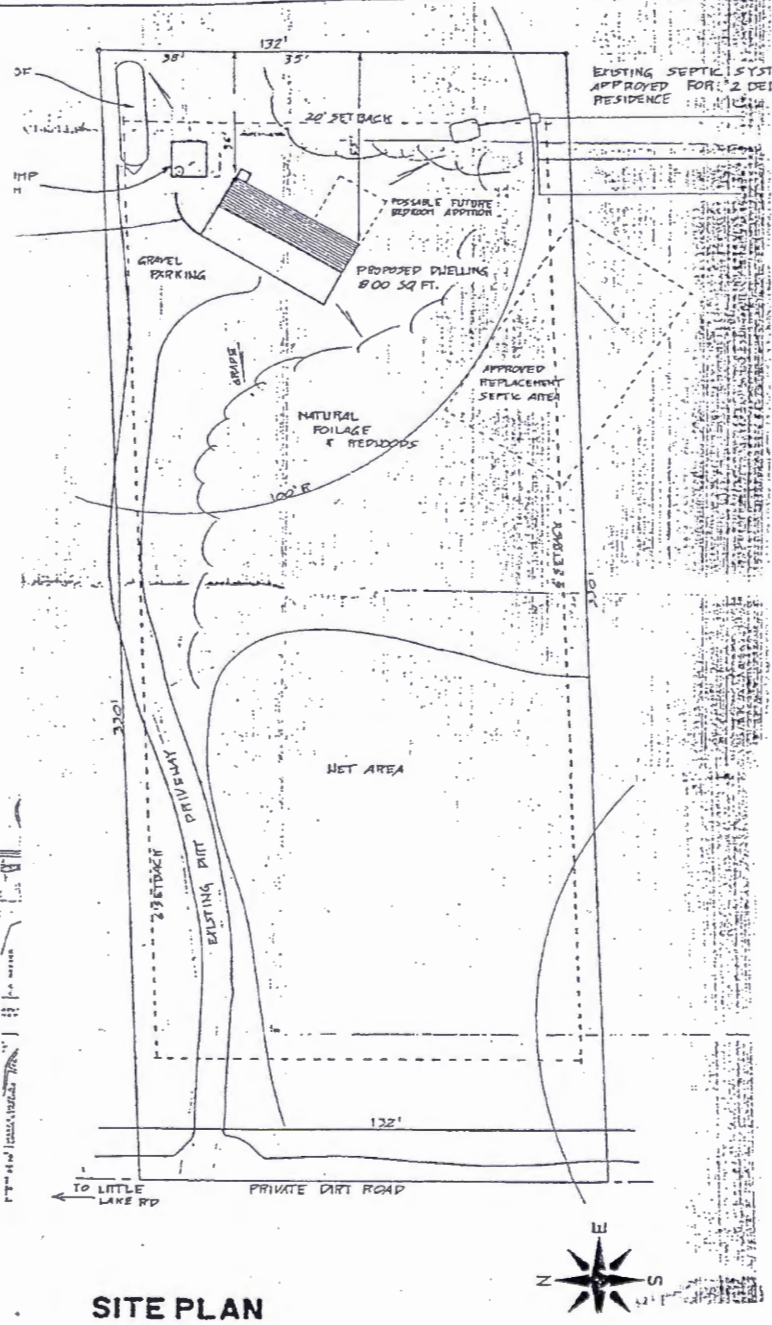
890 N. BUSH ST.
 UKIAH, CA 95482
 (707) 468-4466

DIVISION OF ENVIRONMENTAL HEALTH
 DEPARTMENT OF PUBLIC HEALTH
 COUNTY OF MENDOCINO

790A SO. FRANKLIN ST.
 FORT BRAGG, CA 95437
 (707) 964-4713

Attachment 1, page 1 of 1

6 BCP 6/27/88



SITE PLAN

SCALE	OWNER: GARDNER	AGENT:	P/C MEETING:	FILE NUMBER: U 47-88
	A/P NUMBER: 119-430-20		B/S ACTION:	AGENDA
			PAGE	ITEM

Attachment 3

Preston, Destiny@Coastal

From: Preston, Destiny@Coastal
Sent: Tuesday, October 23, 2018 3:07 PM
To: Juliana Cherry
Cc: Harrington, Daniel@Wildlife; Kraemer, Melissa@Coastal; 'spadenrc@gmail.com'
Subject: CDP_2018-0032 (Fritz) - comments

Hello Juliana,

Thank you for taking the time to speak with Melissa and me last Friday about the Fritz proposal for the construction a single-family home and garage. Since the parcel subdivision became legal in 1972 (prior to 1976 Coastal Act requirements), we would consider it to be legal. Commission staff has been unable to find a previously issued CDP for this parcel. Condition 6 of the 1988 County-issued use permit for the travel trailer says: "the Applicant shall secure all necessary permits and clearances from the California Coastal Commission." Since a CDP was never secured for the travel trailer and likely the construction of the driveway and septic system (and associated clearing/vegetation removal?), I would assume that the all existing development on the site is unpermitted. Therefore, after-the-fact permitting for the existing development, including the driveway, septic system and any other development on site, should be evaluated with the proposed single-family home and garage. Analysis of the driveway could include whether the width and alignment are appropriate, and whether any improvements are needed to better protect surrounding wetlands on both sides. Improvements may include narrowing the driveway, if applicable, installing appropriate drainage features and/or fencing as needed to better protect surrounding ESHA, and remediating/restoring disturbed areas on the property as mitigation measures for encroaching within ESHA buffers. We concur with CDFWs recommendation to keep adequate ESHA buffers for the construction staging areas to avoid having to disturb and later remediate ESHA. I can send you some example conditions/findings for your takings analysis, if that's helpful. I could provide some examples by sometime next week.

Best,
Destiny

Destiny M. Preston
Coastal Program Analyst
California Coastal Commission
North Coast District Office
1385 8th Street, Ste. 130
Arcata CA 95521
(707) 826-8950 ext. 3
destiny.preston@coastal.ca.gov



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Attachment 4

Preston, Destiny@Coastal

From: Juliana Cherry <cherryj@mendocinocounty.org>
Sent: Friday, October 19, 2018 3:24 PM
To: Preston, Destiny@Coastal
Cc: Teresa Spade
Subject: CDP_2018-0032 Fritz and U 47-88
Attachments: DOC101918.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hi, Destiny and Melissa

Thank you for your call this morning and thank you for the opportunity to have a solid discussion about the proposed single family home at 43007 Little Lake Road.

I am attaching a copy of the approved used permit for a temporary trailer.

On the last page of the attached PDF you will see a greensheet. The proposed use permit was routed to the CCC for their comment prior to the hearing that approved the temporary trailer.

The PDF also includes a site plan where the single-family home would be located; this 1988 location is similar to the proposed site for development w/ CDP_2018-0032.

The first page of the staff report for the use permit includes a description of other related applications on site and it describes that the conditions established per conditional Certificate of Compliance have been met.

I do not have a record of a coastal development permit for the temporary trailer or 1988 single-family home.

I can include this information in the analysis

Best -- J.

Juliana Cherry
Planning and Building Services
707-234-2888

Preston, Destiny@Coastal

From: Juliana Cherry <cherryj@mendocinocounty.org>
Sent: Friday, October 19, 2018 4:22 PM
To: Teresa Spade
Cc: Preston, Destiny@Coastal
Subject: CDP_2018-0032 Fritz and Coastal Staff comments

Follow Up Flag: Follow up
Flag Status: Completed

Hi, Teresa

I copied you on two messages that I sent to Destiny Preston, who called me this morning to discuss the proposed single-family home for Fritz.

I want to summarize for you the points raised by Melissa and Destiny regarding CDP_2018-0032.

1. Was the lot legally created? Was a CDP required at the time the lot was created? Please also review LUP Policy 3.9-2 (<https://www.mendocinocounty.org/home/showdocument?id=5398>) and Coastal Act Policy 30250. "... In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50% of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels."
2. Is there an approved CDP for the 1988 temporary trailer and construction of the driveway? If not, CDP_2018-0032 would need to include approval for the driveway. Staff's analysis of alternatives will examine alternatives for all the development, including the location of the driveway if it was not previously approved. I believe describing the constraints will support locating development as proposed.
3. What was the investment backed expectation when the Gardener's purchased the land? What were the adjacent and comparable developments at the time the property was acquired?

Coastal Commission staff encouraged consideration of a condition that would require an unobtrusive, permanent fence to delineate the wetland areas to be protected and listing in the staff report the allowed activities within the ESHA (e.g. habitat restoration, passive recreation). They encouraged clarifying fire safe standards and vegetation clearance within the ESHA.

I am available if you would like to discuss this further. Thank you for all of the information culled and submitted on behalf of this proposed project, including the September 17, 2018 submitted "Wetland and Rare Plant Avoidance and Mitigation Plan." I am actively working to complete staff's recommendations for the proposed single-family home, but will not be able to schedule the project for a hearing in November.

Best -- J.

Juliana Cherry
Planning and Building Services
707-234-2888

Preston, Destiny@Coastal

From: Preston, Destiny@Coastal
Sent: Tuesday, March 12, 2019 10:03 AM
To: Juliana Cherry
Cc: Harrington, Daniel@Wildlife; Kraemer, Melissa@Coastal
Subject: Fritz (CDP 2017-0032) - Staff Report Comments

Good morning Juliana,

I received a copy of the staff report that was prepared for the Fritz project (CDP 2017-0032). Overall it is very thorough and the special conditions are strong. However, I do have a few clarifying questions regarding the proposed development and the associated conditions.

1. The Applicant's Statement requests (in part) a "connection to existing primary septic system" as well as the "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." Page 11 of the staff report (Groundwater Resources) states that "An Individual sewage Disposal System Permit No. 1831-F is on file to locate the leach field on an adjoining residential lot to the south that has granted an easement, recorded May 23, 1988, for a right-of way to install, maintain, repair and replace a septic system...at the request of Environmental Health, staff recommends adopting a condition limiting vehicular access and development opportunities within the Septic Easement or the replacement leach field area (see Special Condition #21)."
 - a. I am somewhat confused by the description of the proposed and existing septic system. Does the applicant already have a primary and secondary system pursuant to No. 1831-F, recorded in 1988? If so, why is an additional primary and secondary system required? Also, is the recommended condition meant to restrict vehicular access and development opportunities within the Septic Easement or the replacement leach field area? It reads as if vehicular access would be limited to (i.e.: allowed only within) that area.
2. Special Condition #14(a)(viii) requires low-impact development design to address runoff, specifically stating "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." Page 8 of the staff report states: "Pursuant to MCC Section 20.496.020(A)(4)(j), proposed are low-impact development measures, e.g. proposed mitigation measure g, to direct stormwater runoff flows on this relatively flat site in a southwest direction to Big River, located about half a mile south of the project site. See recommended Conditions #14 and #18 for low-impact development requirements."
 - a. It is unclear to me how runoff will be adequately infiltrated on-site and what plans the applicant has to deal with this runoff considering the project's close proximity to wetlands. Was this included in one of the submitted reports? Could you point me to where I might be able to find the plans for stormwater runoff designs that will not impact water quality? It seems as if plans to "adequately infiltrate within the boundaries of the property" and "direct stormwater runoff flows... in a southwest direction to Big River" are contradictory.
3. Special Condition #19 states that the preparation of a Final Wetland Restoration Plan will be required prior to the issues of a building permit (SC #20). Could you clarify whether CDFW will have a chance to review the Final Restoration Plan prior to the Coastal Zoning Administrator determines whether this is adequate and consistent with the approved tentative plan?
4. Special Condition #21 states: "Prior to issuance of a Building Permit and pursuant with the MCCC 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 filed [typo?], water supply and transportation requirements..."

- a. Could you clarify whether the sentence “new development that requires the expansion or extension of public works or private facilities” is essentially referring to the development proposed under this permit and any possible future development (i.e.: private facilities)?

Thank you for taking the time to send us a copy of the staff report. I appreciate having the chance to review the report and provide comments prior to the public hearing.

Best,
Destiny

Destiny Preston | Coastal Program Analyst

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