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Coastal Permit Administrator
Mendocino County Planning and Building
120 West Fir Street
Fort Bragg, CA 95437

January 3, 2020

Re: Forsman CDP 2017-0043 Staff Report

Dear Coastal Permit Administrator:

Thank you for your staff's hard work in coordinating this project and writing the staff report. In response to reading the staff report, I offer the clarifications and recommendations for condition of approval changes.

Several conditions are recommended, and many do not appear warranted or based in regulatory requirement. My comments and recommendations regarding those conditions are as follows:

Planning staff recommends Condition 10, which reads:

10. 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.

There is no reference in Chapter 20.492 or in the building code that requires a building permit or grading permit exemption for any grading of more than 2 cubic yards of material. This special condition is not consistent with any known code requirement. Chapter 20.492 of the Mendocino County Coastal Zoning Code does not at all discuss minimum standards for when a grading permit is required. Title 18 – Mendocino County Code of Ordinances exempts grading permit requirements as follows:

Sec. 18.70.030 - Permits Required.

(A) Permits Required. Except as specified in Subsection (b) of this section, no person shall do any grading without first having obtained a grading permit from the building official.

(B) Exempted Work. A grading permit is not required for the following:

- (1) When approved by the building official, grading in an isolated, self-contained area if there is no danger to private or public property.
- (2) An excavation below finished grade for basements and footings of a building, retaining wall or other structures authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation or exempt any excavation having an unsupported height greater than five (5) feet after the completion of such structure.
- (3) Cemetery graves.
- (4) Refuse disposal sites controlled by other regulations.
- (5) Excavations for wells or tunnels or utilities.
- (6) Mining, quarrying, excavation, processing, stockpiling of rock, sand, gravel, aggregate or clay where established and provided for by law, provided such operations do not affect the lateral support or increase the stresses in or pressure upon any adjacent or contiguous property.
- (7) Exploratory excavations under the direction of soil engineers or engineering geologists.
- (8) An excavation which:
 - (1) Is less than two (2) feet in depth, or
 - (2) Which does not create a cut slope greater than five (5) feet in height and steeper than one and one-half (1½) horizontal to one (1) vertical.
- (9) A fill less than one (1) foot in depth and placed on natural terrain with a slope flatter than five (5) horizontal to one (1) vertical, or less than three (3) feet in depth, not intended to support structures, which does not exceed fifty (50) cubic yards on any one (1) lot and does not obstruct a drainage course.

Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this chapter or any other laws or ordinances of this jurisdiction. In particular, exemption from a grading permit does not relieve the requirements to comply with Chapter 16.30 of the Mendocino County Code (Stormwater Runoff Pollution Prevention Procedure), the requirement to comply with Chapter 22.12 of the Mendocino County Code (Archaeological Resources), the requirement to obtain a Coastal Development Permit for eligible activities within the County's Coastal Zone, or the requirement to obtain a construction general permit from the State for grading projects over one acre.

If there is a requirement in Chapter 20.492 that you believe should specifically apply as a special condition, it would be more clear to spell out that requirement as a condition of approval. In general, it appears that Condition 18a captures any concerns for the project relative to grading and erosion control, Condition 4 already spells out the need for securing all necessary permits, and planning review of building and grading permits for consistency with Coastal Act requirements does not need to be added as a condition of approval since your department is already in control of your policies regarding plan review. For these reasons, I recommend that Condition 10 is removed in its entirety and Condition 18a be amended as follows (~~strike through~~ indicates language to be deleted, and **bold** indicates language to be added):

~~10. 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.~~

18. The property owner shall provide for the following Mitigation Measures:

- a. **In accordance with MCC Chapter 20.492, ~~BMPs~~**. 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.

Planning staff's recommended Condition 11 reads:

11. In accordance with **MCC Section 20.496.015(A)**, environmentally sensitive habitat areas, or ESHA, include: (a) *Bishop Pine Forest ESHA*, (b) *Wax Myrtle Scrub ESHA*, (c) *Coastal Thimbleberry Brambles and Slough Sedge Swards ESHA*, and (d) *Hosackia gracilis*.

The referenced code section does not define ESHA, but rather outlines the application procedures. I believe given the context, it may be your intent to state that these areas are defined as ESHA in accordance with such and such section. If this is the case, it would seem more appropriate to use MCC Section 20.496.010 which states:

Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals.

Given this context, the following should then be listed as ESHA on the site: the riparian areas associated with the streams, and the area of *Hosackia gracilis*, as a potential rare butterfly habitat. Bishop Pine Forest does not qualify under this definition and instead qualifies as Other Resource Areas, which is defined under Section 20.496.050 as follows:

Sec. 20.496.050 - Other Resource Areas.

(A) General. Other designated resource areas as identified on Pages 39, 40 and 41 of the Coastal Element dated November 5, 1985 include: State parks and reserves, underwater parks and reserves, areas of special biological significance, natural areas, special treatment areas, fishing access points, areas of special biological importance, significant California ecosystems and coastal marine ecosystems.

(B) Development of Resource Areas.

Any development within designated resource areas shall be reviewed and established in accord with conditions which could allow some development under mitigating conditions but which assures the continued protection of the resource area.

Further, Condition 11 does not provide any directive, and there are several other ESHA protection conditions that would be better compiled into one or a short section of conditions. For example, your recommended ESHA protection conditions include Conditions 11, 12, 13, 15, 17e, 18a-m, 19, 20, and 21.

If there is a compelling reason that Condition 11 remain (I don't see any), I suggest it be rewritten as follows (or preferably deleted entirely or added to another condition):

11. In accordance with MCC Section 20.496.0105(A), environmentally sensitive habitat areas, or ESHA, include: ~~(a) Bishop Pine Forest ESHA,~~ **(ba) Wax Myrtle Scrub as riparian vegetation ESHA,** **(cb) Coastal Thimbleberry Brambles and Slough Sedge Swards as riparian vegetation ESHA,** and **(dc) Hosackia gracilis as potential rare butterfly habitat ESHA. Bishop Pine Forest is also protected as Other Resource Areas per MCC Section 20.496.050.**

Condition 12 is recommended in the staff report as follows:

12. In accordance with **MCC Section 20.496.020(A)(1)**, sensitive habitat area buffer widths shall be:
- a. *Bishop Pine Forest ESHA* buffer area shall be no less than 50 feet wide, excepting that leachfields may be constructed in the location depicted on the approved site plan.
 - b. *Wax Myrtle Scrub ESHA* buffer area shall be no less than 70 feet wide.
 - c. *Coastal Thimbleberry Brambles and Slough Sedge Swards ESHA* buffer area shall be no less than 100 feet wide, excepting limited areas as shown on the approved site plan where the driveway is within 100 feet of the ESHA. This limited area shall be excluded from the *Coastal Thimbleberry Brambles and Slough Sedge Swards ESHA* buffer area.
 - d. *Hosackia gracilis* shall be protected in place, as its location is sufficiently distant from development.

Since Bishop Pine Forest is an "Other Resource Area" in which some development is allowed with mitigating conditions, a minimum buffer area does not apply. Further, Condition 15 already addresses uses allowed in Bishop Pine Forest, and numerous other conditions include mitigation. For this reason, I recommend that Condition 12 be revised to read:

12. In accordance with MCC **Chapter 20.496** ~~Section 20.496.020(A)(1)~~, sensitive habitat area buffer widths shall be:
- ~~a. *Bishop Pine Forest ESHA* buffer area shall be no less than 50 feet wide, excepting that leachfields may be constructed in the location depicted on the approved site plan.~~
 - ba. *Wax Myrtle Scrub riparian ESHA* buffer area shall be no less than 70 feet wide.**
 - eb. *Coastal Thimbleberry Brambles and Slough Sedge Swards riparian ESHA* buffer area shall be no less than 100 feet wide, excepting limited areas as shown on the approved site plan where the driveway is within 100 feet of the ESHA. This limited area shall be excluded from the *Coastal Thimbleberry Brambles and Slough Sedge Swards ESHA* buffer area.**
 - ec. *Hosackia gracilis potential rare butterfly habitat* shall be protected in place, as its location is sufficiently distant from development.**

Condition 13 is shown as recommended in the staff report as follows:

13. Environmentally sensitive habitat areas and their specified buffer areas shall be protected by an open space deed restriction (e.g. Open Space boundaries shall be inclusive of the adopted ESHA buffer boundaries). Those activities authorized for Open Space Districts, including restoration of the environmentally sensitive habitat, shall be allowed within the designated Open Space area subject to MCC Chapter 20.532.

Additionally Condition 17e is recommended in the staff report as follows:

- e. An exhibit shall identify the boundaries of the Open Space area. The basis of the exhibit shall be the approved site plan. The exhibit shall include a scale and delineate (1) the locations of approved development, surveyed environmentally sensitive habitat areas, and the approved buffer boundary for each environmentally sensitive habitat area; and (2) a contiguous line identifying the boundary of the Open Space area. (The following maybe excluded from the exhibit: proposed minimum ESHA buffers, 50 foot and 100 foot well setbacks, CalFire yard setback, 6' yard setback, and 20' yard setback.) Prior to recording, the exhibit shall be reviewed and accepted by the Coastal Permit Administrator or their designee.

In the context of the proposed development, an open space deed restriction is not justified based on the proposed development, which is already mitigated by other conditions. Such a requirement would not meet the nexus requirement as embodied by [NOLLAN ET UX. v. CALIFORNIA COASTAL COMMISSION](#) nor the rough proportionality test as embodied by [FLORENCE DOLAN, PETITIONER v. CITY OF TIGARD](#).

The proposed development meets buffer areas to all ESHA, and the only development proposed within the Other Resource Area, Bishop Pine Forest, is the primary leach field to be installed as a part of the subject approval, and the designation of a secondary leachfield location which will by necessity need to be installed after a future Coastal Development Permit approval, and as such is not subject to this application. For the primary field to be established, the field was designed in such a way as to avoid impacts to all live bishop pine trees. Such development is allowable per the zoning code as this proposed development is only proposed in the forest because it has been proven that there is no other possible location for this development, and the leachfield installation will not result in harm to a single live bishop pine tree. With proposed measures recommended by the biologist, the forest will be healthier after installation than it is at this current time. The recommendation outlined in the 2017 Wynn Coastal Planning Botanical and Wildlife Survey Report for Bishop Pine restoration is included in the study as:

6.2.1 Bishop pine forest restoration of disturbed areas

To mitigate for the loss of the Bishop pine tree to be removed, the property owner shall facilitate natural regeneration of Bishop pine and other community-appropriate plant species within the areas that have been disturbed by the installation of the septic disposal system within the Bishop pine forest and 50-foot buffer area to the Bishop pine forest.

Topsoil from areas within the Bishop pine forest and its buffer area that are planned for disturbance shall be set aside during septic system installation, and shall be replaced after the system is installed. Pine duff at a thickness of no more than ¼ inch, shall be placed over approximately 50% of the disturbance area, leaving the other 50% of the area to bare soil. Bare soil areas will better facilitate the growth of pine seedlings. If after one year, a minimum of five new pine seedlings have not naturally regenerated within the septic system installation area, the property owner shall obtain assistance from the UC Forest Advisor or another forestry professional to obtain natural regeneration of Bishop pines within the septic system disturbance area at a ratio of 5:1 for the Bishop pine tree removed.

This condition has been reiterated as recommended Condition 18b, 18c and 18d in the staff report as follows:

18. The property owner shall provide for the following Mitigation Measures:

- b. *Bishop pine tree removal.* To mitigate for the loss of Bishop pine tree(s), the property owner shall facilitate natural regeneration of Bishop Pines, and other community appropriate plant

species, within areas disturbed by construction, e.g. septic disposal system installation.

- c. Topsoil from areas within the *Bishop Pine Forest ESHA* and its buffer area shall be set aside during ground disturbing activities, and shall be replaced after construction is completed. Pine duff, at a thickness of no more than 0.25 inch, shall be placed over fifty percent of disturbed areas. Thus, leaving the other fifty percent of the disturbed area to bare soil.
- d. During the year following finalization of the building permit, if a minimum of five new Bishop Pine seedlings have not naturally regenerated within areas disturbed by construction, e.g. the septic disposal system area, the property owner shall seek additional guidance from the UC Forest Advisor, or another qualified forestry professional, to achieve a 5:1 replacement ratio for the Bishop pine tree(s) removed during construction.

The stream on the west side of the property is not located on the property itself, but is entirely located on the neighboring property, where no such protective open space easement applies, and is not at all impacted by the proposed development, exceeding the recommended setback requirement recommended by the project biologist, and satisfactorily meeting setback requirements applied by staff and the California Department of Fish and Wildlife.

On the east side of the property is a drainage ditch that conveys water seasonally during the rainy season. This ditch is unnamed, is not shown on any formal maps, and was likely dug around the time of the establishment of the subdivision to convey stormwater. Again, the proposed development is well away from the drainage ditch, and the development as proposed with mitigation recommended by the biologist is highly unlikely to result in any detrimental impacts.

In *Nollan*, the Court held that a government could, without paying the compensation, demand the easement as a condition for granting a development permit the government was entitled to deny, provided that the exaction would substantially advance the same government interest that would furnish a valid ground for denial of the permit (Abbott and Kindermann, 2013). In this scenario, the government is not entitled to deny the project as it meets both the word and intent of the Coastal Zoning Code and other relevant regulatory requirements.

In *Dolan*, the Court held that an exaction must be roughly proportional in both nature and extent to the impact of the proposed development. As proposed, the impacts will be minimal, as one dead tree will be impacted. Numerous conditions in the staff report more than compensate for this minimal impact, including Conditions 12 (as recommended to be amended), and condition 18a through 18m (as recommended to be amended) and several other conditions which are recommended to be removed.

As the recommended Conditions 13 and 17e are in violation of the Unconstitutional Conditions Doctrine as exemplified by the *Nollan* and *Dolan* court cases, I recommend that Conditions 13 and 17e be deleted:

- ~~13. Environmentally sensitive habitat areas and their specified buffer areas shall be protected by an open space deed restriction (e.g. Open Space boundaries shall be inclusive of the adopted ESHA buffer boundaries). Those activities authorized for Open Space Districts, including restoration of the environmentally sensitive habitat, shall be allowed within the designated Open Space area subject to MCC Chapter 20.532.~~

~~17c. An exhibit shall identify the boundaries of the Open Space area. The basis of the exhibit shall be the approved site plan. The exhibit shall include a scale and delineate (1) the locations of approved development, surveyed environmentally sensitive habitat areas, and the approved buffer boundary for each environmentally sensitive habitat area; and (2) a contiguous line identifying the boundary of the Open Space area. (The following may be excluded from the exhibit: proposed minimum ESHA buffers, 50 foot and 100 foot well setbacks, CalFire yard setback, 6' yard setback, and 20' yard setback.) Prior to recording, the exhibit shall be reviewed and accepted by the Coastal Permit Administrator or their designee.~~

Condition 14 is recommended in the staff report as follows:

14. A Coastal Development Permit or its amendment shall be required for (a) any addition to or enlargement or expansion of the approved development including activities otherwise specified in Subchapter 7, Title 14 of the California Administrative Code; (b) any improvement to the single-family residence, including improvements specified in Subchapter 6, Title 14 of the California Administrative Code; or (c) vegetation removal within environmentally sensitive habitat areas or their buffers, excepting vegetation and tree removal authorized by this permit. Repair and maintenance of previously authorized development shall be exempt from MCC Chapter 20.532.

This condition is overly restrictive as it prevents the property owner from enjoying the same privileges that all other property owners in the Coastal Zone enjoy, specifically, the allowance of exempt additions to the residence as afforded by the California Administrative Code. The majority of the proposed development meets setbacks to ESHA and Other Resource Areas, and therefore is eligible for to exemptions from Coastal Permit requirements. This condition unfairly restricts the rights of this property owner by requiring a Coastal Development Permit for all future development when no such permit is warranted. This is a costly and unsubstantiated requirement with no legal basis.

For these reasons I recommend that Condition 14 be deleted:

- ~~14. A Coastal Development Permit or its amendment shall be required for (a) any addition to or enlargement or expansion of the approved development including activities otherwise specified in Subchapter 7, Title 14 of the California Administrative Code; (b) any improvement to the single-family residence, including improvements specified in Subchapter 6, Title 14 of the California Administrative Code; or (c) vegetation removal within environmentally sensitive habitat areas or their buffers, excepting vegetation and tree removal authorized by this permit. Repair and maintenance of previously authorized development shall be exempt from MCC Chapter 20.532.~~

Condition 15 is recommended as follows:

15. In accordance with **MCC Section 20.516.015(A) and (B)** and as no other feasible site is available, installing the primary and replacement leachfields and associated trenching shall be allowed within the *Bishop Pine Forest ESHA* in the locations shown on the approved site plan. The test well may be converted to a production well.

Condition 15 is not a directive, and does not belong in the conditions of approval. I therefore recommend that the condition be deleted:

- ~~15. In accordance with **MCC Section 20.516.015(A) and (B)** and as no other feasible site is available, installing the primary and replacement leachfields and associated trenching shall be allowed within the *Bishop Pine Forest ESHA* in the locations shown on the approved site plan. The test well may be converted to a production well.~~

Condition 18 is recommended in the staff report as follows:

18. The property owner shall provide for the following Mitigation Measures:

- a. *BMPs*. 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.
- b. *Bishop pine tree removal*. To mitigate for the loss of Bishop pine tree(s), the property owner shall facilitate natural regeneration of Bishop Pines, and other community appropriate plant species, within areas disturbed by construction, e.g. septic disposal system installation.
- c. Topsoil from areas within the *Bishop Pine Forest ESHA* and its buffer area shall be set aside during ground disturbing activities, and shall be replaced after construction is completed. Pine duff, at a thickness of no more than 0.25 inch, shall be placed over fifty percent of disturbed areas. Thus, leaving the other fifty percent of the disturbed area to bare soil.
- d. During the year following finalization of the building permit, if a minimum of five new Bishop Pine seedlings have not naturally regenerated within areas disturbed by construction, e.g. the septic disposal system area, the property owner shall seek additional guidance from the UC Forest Advisor, or another qualified forestry professional, to achieve a 5:1 replacement ratio for the Bishop pine tree(s) removed during construction.
- e. *Use of Heavy Equipment*. Heavy equipment shall be washed before entering the site, in order to remove any potential invasive plant seeds harbored in mud on wheels, undercarriage, or other areas of equipment.
- f. *Invasive Plant Seeds*. No invasive plant seeds shall be used on the property for soil stabilization.
- g. *Invasive Plants*. No invasive plants, as listed by the California Invasive Plant Council, shall be used for landscaping purposes.
- h. *Orange Construction Fence*. Prior to and during all ground disturbing construction activities, temporary orange construction fence shall be installed and maintained on-site at the buffer boundary for (a) *Bishop Pine Forest ESHA*, (b) *Wax Myrtle Scrub ESHA*, (c) *Coastal Thimbleberry Brambles and Slough Sedge Swards ESHA*, and (d) *Hosackia gracilis*.
- i. *Stockpiles & Construction storage*. Within the buffer boundary for *Bishop Pine Forest ESHA*, *Wax Myrtle Scrub ESHA*, *Coastal Thimbleberry Brambles and Slough Sedge Swards ESHA*, and *Hosackia gracilis*, no heavy equipment, stockpiles, storage or other construction related activity shall occur, except for the disturbances necessary to install the septic disposal system within the *Bishop Pine Forest ESHA*.
- j. *California red-legged frogs*. Within one-week prior to the onset of construction, a qualified biologist shall conduct a survey of the construction area for migrating California red-legged frogs, and shall conduct a training for the construction crew on identification of California red-legged frogs and the protocols to be followed, including: Prior to the onset of construction, and every morning before moving heavy equipment and, or stockpiles, the construction crew shall perform a visual search around all stacked or stored material, and under parked equipment to detect the presence of frogs. If a California red-legged frog is detected, construction crews will stop all ground disturbing work in the vicinity and contact

the United States Fish and Wildlife Service, or a qualified biologist, to address the issue and provide clearance to re-initiate work.

- k. Following a rain event during the construction period, all ground disturbing activities shall cease until at least 48 hours after the rain stops. Prior to resuming ground disturbing activities, trained construction crew shall examine the site for the presence of frogs. If no special status frogs are found, construction activities may resume.
- l. *Breeding bird* season. The bird breeding season extends from February to August. The clearing of vegetation and the initiation of construction shall be done during the non-breeding season, e.g. between September and January. If these activities cannot be performed during the non-breeding season, then a qualified biologist shall perform preconstruction breeding bird surveys within 14 days of the onset of construction or clearing of vegetation. If active breeding bird nests are observed, no ground disturbing activities shall occur within a 100-foot exclusion zone. The exclusion zone(s) may vary depending on species, habitat and level of disturbance upon the nest. A biologist shall monitor the nest site weekly during breeding season to ensure the buffer is sufficient to protect the nest site.
- m. *Bat roost sites.* Pre-construction surveys shall be completed to determine the presence or absence of bat roost sites. Pre-construction bat surveys do not need to be performed when construction or vegetation removal is completed between September 1 and October 31 and after young bats have matured and prior to bat hibernation. If it is necessary to disturb potential bat roost sites between November 1 and August 31, pre-construction surveys shall be conducted. When evidence of bats is found, then biologists shall conduct acoustic surveys to determine whether a site is occupied by bats. When bats are found, a minimum fifty-foot buffer should be implemented around the roost area or tree. Removal of roost trees shall occur in September or October, or after the bats have left their roost.

These conditions were originally derived from the recommendations in the 2017 WCPlan Botanical and Wildlife Survey Report, however staff has added wording to these conditions that is inaccurate. Specifically, staff has added “ESHA” in places it is inapplicable. Additionally, the rewording makes executing installation confusing, as the wording requires that orange construction fence be installed and maintained throughout construction, which does not at all provide for the necessity of the removal of the fence during septic leachfield installation. The staff interpretation also breaks five recommended conditions into a total of 13 sections, which adds confusion and makes the project seem more complicated than it is. For these reasons I recommend that the original language of the biologist be used instead of the staff interpretation of the biologist conditions:

~~18. The property owner shall provide for the following Mitigation Measures:~~

- ~~a. *BMPs.* 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.~~
- ~~b. *Bishop pine tree removal.* To mitigate for the loss of Bishop pine tree(s), the property owner shall facilitate natural regeneration of Bishop Pines, and other community appropriate plant species, within areas disturbed by construction, e.g. septic disposal system installation.~~
- ~~c. Topsoil from areas within the *Bishop Pine Forest ESHA* and its buffer area shall be set aside during ground disturbing activities, and shall be replaced after construction is completed. Pine duff, at a thickness of no more than 0.25 inch, shall be placed over fifty percent of disturbed areas. Thus, leaving the other fifty percent of the disturbed area to bare soil.~~

- d. ~~During the year following finalization of the building permit, if a minimum of five new Bishop Pine seedlings have not naturally regenerated within areas disturbed by construction, e.g. the septic disposal system area, the property owner shall seek additional guidance from the UC Forest Advisor, or another qualified forestry professional, to achieve a 5:1 replacement ratio for the Bishop pine tree(s) removed during construction.~~
- e. ~~*Use of Heavy Equipment.* Heavy equipment shall be washed before entering the site, in order to remove any potential invasive plant seeds harbored in mud on wheels, undercarriage, or other areas of equipment.~~
- f. ~~*Invasive Plant Seeds.* No invasive plant seeds shall be used on the property for soil stabilization.~~
- g. ~~*Invasive Plants.* No invasive plants, as listed by the California Invasive Plant Council, shall be used for landscaping purposes.~~
- h. ~~*Orange Construction Fence.* Prior to and during all ground disturbing construction activities, temporary orange construction fence shall be installed and maintained on-site at the buffer boundary for (a) *Bishop Pine Forest ESHA*, (b) *Wax Myrtle Scrub ESHA*, (c) *Coastal Thimbleberry Brambles and Slough Sedge Swards ESHA*, and (d) *Hosackia gracilis*.~~
- i. ~~*Stockpiles & Construction storage.* Within the buffer boundary for *Bishop Pine Forest ESHA*, *Wax Myrtle Scrub ESHA*, *Coastal Thimbleberry Brambles and Slough Sedge Swards ESHA*, and *Hosackia gracilis*, no heavy equipment, stockpiles, storage or other construction related activity shall occur, except for the disturbances necessary to install the septic disposal system within the *Bishop Pine Forest ESHA*.~~
- j. ~~*California red-legged frogs.* Within one week prior to the onset of construction, a qualified biologist shall conduct a survey of the construction area for migrating California red-legged frogs, and shall conduct a training for the construction crew on identification of California red-legged frogs and the protocols to be followed, including: Prior to the onset of construction, and every morning before moving heavy equipment and, or stockpiles, the construction crew shall perform a visual search around all stacked or stored material, and under parked equipment to detect the presence of frogs. If a California red-legged frog is detected, construction crews will stop all ground disturbing work in the vicinity and contact the United States Fish and Wildlife Service, or a qualified biologist, to address the issue and provide clearance to re-initiate work.~~
- k. ~~Following a rain event during the construction period, all ground disturbing activities shall cease until at least 48 hours after the rain stops. Prior to resuming ground disturbing activities, trained construction crew shall examine the site for the presence of frogs. If no special status frogs are found, construction activities may resume.~~
- l. ~~*Breeding bird season.* The bird breeding season extends from February to August. The clearing of vegetation and the initiation of construction shall be done during the non-breeding season, e.g. between September and January. If these activities cannot be performed during the non-breeding season, then a qualified biologist shall perform preconstruction breeding bird surveys within 14 days of the onset of construction or clearing of vegetation. If active breeding bird nests are observed, no ground disturbing activities shall occur within a 100-foot exclusion zone. The exclusion zone(s) may vary depending on species, habitat and level of disturbance upon the nest. A biologist shall monitor the nest site weekly during breeding season to ensure the buffer is sufficient to protect the nest site.~~
- m. ~~*Bat roost sites.* Pre-construction surveys shall be completed to determine the presence or absence of bat roost sites. Pre-construction bat surveys do not need to be performed~~

~~when construction or vegetation removal is completed between September 1 and October 31 and after young bats have matured and prior to bat hibernation. If it is necessary to disturb potential bat roost sites between November 1 and August 31, pre-construction surveys shall be conducted. When evidence of bats is found, then biologists shall conduct acoustic surveys to determine whether a site is occupied by bats. When bats are found, a minimum fifty-foot buffer should be implemented around the roost area or tree. Removal of roost trees shall occur in September or October, or after the bats have left their roost.~~

18. The property owner shall provide for the following natural resources Mitigation and Avoidance Measures:

- a. To mitigate for the loss of the Bishop pine tree to be removed, the property owner shall facilitate natural regeneration of Bishop pine and other community-appropriate plant species within the areas that have been disturbed by the installation of the septic disposal system within the Bishop pine forest and 50-foot buffer area to the Bishop pine forest. Topsoil from areas within the Bishop pine forest and its buffer area that are planned for disturbance shall be set aside during septic system installation, and shall be replaced after the system is installed. Pine duff at a thickness of no more than ¼ inch, shall be placed over approximately 50% of the disturbance area, leaving the other 50% of the area to bare soil. Bare soil areas will better facilitate the growth of pine seedlings. If after one year, a minimum of five new pine seedlings have not naturally regenerated within the septic system installation area, the property owner shall obtain assistance from the UC Forest Advisor or another forestry professional to obtain natural regeneration of Bishop pines within the septic system disturbance area at a ratio of 5:1 for the Bishop pine tree removed.
- b. Invasive plant species avoidance measures. Heavy equipment shall be washed before entering the site, in order to remove any potential invasive plant seed harbored in mud on wheels, undercarriage or other areas of equipment. No invasive plant seed shall be used on the property for post ground disturbance soil stabilization. No invasive plants (as listed by the California Invasive Plant Council) shall be used for landscaping purposes.
- c. Special status plant community avoidance during construction. Prior to and during all ground disturbing construction activities, temporary orange construction fence shall be installed and maintained on-site at the 50-foot buffer line to the streams, riparian areas and special status plant communities. No heavy equipment, stockpiles, storage or other construction related activity shall occur within 50 feet of these special status plant community and stream areas, except for minimal disturbances as necessary for the installation of the septic disposal system within the Bishop pine forest and its buffer area.
- d. Migrating California red-legged frog avoidance during construction. Within one week prior to the onset of construction, a qualified biologist shall conduct a survey of the construction area for migrating California red-legged frogs, and shall conduct a training for the construction crew on identification of California red-legged frogs, as well as the protocols they must follow per this condition:

Prior to the onset of construction, and every morning before moving heavy equipment and/or stockpiles, the construction crew shall perform a visual search around all stacked or stored material, and under parked equipment to detect the presence of frogs. If a California red-legged frog is detected, construction crews will stop all ground disturbing work in the vicinity and contact the United States Fish and Wildlife Service or a qualified biologist, to address the issue and provide clearance to re-initiate work. If a rain event occurs during the construction period, all ground disturbing construction-related activities will cease until at least 48 hours after the rain stops. Prior to resuming ground disturbing construction activities, trained construction crew-member will examine the site for the presence of frogs. If no special status frogs are found, construction activities may resume.

- e. Nesting bird and special status bat protection. The bird breeding season typically extends from February to August. Ideally, the clearing of vegetation and the initiation of construction can be

done in the non-breeding season between September and January. If these activities cannot be performed in the non-breeding season, a qualified biologist shall perform preconstruction breeding bird 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 should monitor the nest site weekly during the breeding season to ensure the buffer is sufficient to protect the nest site from potential disturbances. As with birds, 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 should be conducted. Pre-construction bat surveys 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 found, then biologists 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 should be implemented around the roost tree. Removal of roost trees should occur in September and October, or after the bats have left the roost. In summary, no impacts would be expected and therefore no preconstruction surveys would be required for the species above if vegetation removal (including standing dead trees) is scheduled for the months of September or October. The months of November through August would require a bird and/or bat survey dependent on the time of year.

Condition 19 is recommended by County of Mendocino Planning staff as follows:

19. Prior to the issuance of a Building Permit, a mitigation monitoring plan (MMP) shall be prepared and accepted by the Coastal Permit Administrator in consultation with the Department of Fish and Wildlife. The MMP shall include the adopted mitigation measures, criteria to assess survival of plantings after a five-year period, and identify cessation of watering after the third year.

The requirement for a mitigation monitoring plan, which is a multi-thousand dollar document, is not warranted to mitigate for the loss of one dead bishop pine tree. The requirement specified in recommended Condition 18b, 18c and 18d (or my proposed revised condition 18a) for restoration of the Bishop pine forest is straightforward and sufficient for this purpose. It is recommended that Condition 19 be deleted as it is excessive and unnecessary:

- ~~19. Prior to the issuance of a Building Permit, a mitigation monitoring plan (MMP) shall be prepared and accepted by the Coastal Permit Administrator in consultation with the Department of Fish and Wildlife. The MMP shall include the adopted mitigation measures, criteria to assess survival of plantings after a five-year period, and identify cessation of watering after the third year.~~

Condition 21 is recommended by County Planning staff as follows:

21. The property owner shall provide for enhancement plantings (e.g., additional wax myrtles and other appropriate riparian species) along or within the *Wax Myrtle Scrub ESHA*, the *Coastal Thimbleberry Brambles and Slough Sedge Swards ESHA*, or their associated buffers.

This condition is excessive and unwarranted. These areas are not being impacted by the proposed development, and no restoration is warranted. This condition was not recommended by the consulting biologist. For these reasons I recommend the condition be deleted:

- ~~21. The property owner shall provide for enhancement plantings (e.g., additional wax myrtles and other appropriate riparian species) along or within the *Wax Myrtle Scrub ESHA*, the *Coastal Thimbleberry Brambles and Slough Sedge Swards ESHA*, or their associated buffers.~~

In addition to the recommended condition changes, is one other clarification that may be helpful:

On page 5 of the staff report, staff writes regarding tree removal:

...on October 17, 2019, the applicant's agent clarified, "The application form had 8 trees to be removed for the fire safe area, residence and driveway, not for the septic system." Therefore, it is not anticipated that trees adjacent to the proposed pump chamber and septic tank would be removed (Cherry 2019).

As shown on the most current site plan (Attachment E), the septic tank and pump chamber are to be located near the residence and driveway, more than 100 feet from streams and more than 50 feet from the Bishop pine forest. In making my clarification in October of 2019 to Ms. Cherry, I was generally differentiating the "septic system" as areas that are by necessity in the bishop pine forest, from all the rest of the proposed development that meets all required setbacks. While one dead tree is being removed in the bishop pine forest for the septic system's leach field to be installed at this time, up to a total of 8 trees would be removed in total at this time, and these by necessity to accommodate the development in the vicinity of the driveway and residence (outside of sensitive areas). The pump chamber and septic tank are to be located near the driveway and residence, and while tree removal for these relatively small structures is unlikely, it is feasible that trees to be removed would be in the vicinity of the pump chamber and septic tank.

Thank you for your consideration. We look forward to the hearing.

Sincerely,



Teresa R Spade AICP for Franny Forsman