



Teresa R Spade, AICP
Land Use Planner,
Botanist and Biologist
Spade Natural Resources Consulting
PO Box 1503
Mendocino, CA 95460
phone: 707-397-1802
spadenrc@gmail.com

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

January 21, 2020

Re: Forsman CDP 2017-0043 Staff Report Memorandum Draft Jan 13, 2020

Dear Coastal Permit Administrator:

In response to my January 3, 2020 letter to you regarding recommended conditions, staff has drafted some revisions, which are outlined in the Staff Report Memorandum Draft dated January 13, 2020. I appreciate staff's work on these conditions. I have the following additional recommendations in response to staff's January 20, 2020 draft:

Staff now recommends conditions of approval as follows. My comments regarding these conditions are outlined below in **bold**, following each condition or subsection of concern:

REVISED RECOMMENDED 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 Coastal Code. CDP_2017-0043 shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. CDP_2017-0043 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. 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.
4. This permit shall be subject to the securing all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required Building Permits for the proposed project as required by the Building Division of the Department of Planning and Building Services.

6. 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.
7. CDP_2017-0043 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.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (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 Coastal Code.
9. Conditions approving CDP_2017-0043 shall be attached to any building permit application and shall be a part of on-site construction drawings.
10. In accordance with **MCC Chapter 20.496**, 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.
11. Future development may be exempt from Chapter 20.532, provided development is outside adopted buffer and resource areas and adopted conditions are satisfied. Future development located within adopted buffer or resource areas requires a coastal development permit or permit amendment. Prior to issuance of a building permit, an exhibit showing the location of the resource areas and buffer boundaries shall be provided and accepted by the approving authority.

The wording of this condition appears to only allow exempt future development after all adopted conditions have been satisfied. This may be confusing since some of the conditions will not be determined to be satisfied until after period of 5 years or longer, due to the timelines it would take to satisfy the conditions. To avoid this confusion, I recommend the condition be reworded to:

11. Future development **beyond that approved by the subject Coastal Development Permit** may be exempt from **the requirement of a new Coastal Development Permit Chapter 20.532**, provided development **meets the exemption requirements outlined in MCCZC Section**

20.532.020, and is outside adopted **Environmentally Sensitive Habitat Area (ESHA)** buffer and **ESHA** resource areas ~~and adopted conditions are satisfied~~. Future development located within adopted **ESHA** buffer or **ESHA** resource areas requires a coastal development permit or permit amendment. Prior to issuance of a building permit, an exhibit showing the location of the **ESHA** resource areas and **ESHA** buffer boundaries shall be provided and accepted by the approving authority.

12. In accordance with **MCC Section 20.516.015(C)** and prior to the issuance of a Building Permit or Grading Permit, the property owner shall secure an encroachment permit from California Department of Transportation for constructing an asphalt or concrete driveway approach to State Route 1 and grading adjacent to the roadway to improve sight-lines from the driveway approach.

13. Prior to the issuance of a Building Permit, 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 Permit CDP_2017-0043 are imposed as covenants, conditions and restrictions on the use and enjoyment of the property.

d. The adopted findings and conditions approving CDP_2017-0043 and the approved site plan shall be attached as exhibits to the Deed Restriction.

e. 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.

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

a. In accordance with MCC Chapter 20.492, 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. 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. 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. 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.

c. 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. No invasive plant seeds shall be

used on the property for soil stabilization. No invasive plants, as listed by the California Invasive Plant Council, shall be used for landscaping purposes.

d. 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*. 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*.

This condition 14d should be revised to read:

d. 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*. 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* **and its buffer area**.

Disturbances will occur within the Bishop pine forest ESHA and within its buffer in order to install the septic leach fields and line.

e. *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.

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.

f. 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.

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.

Condition 15 relates to mitigation needed for installation of the septic system within the Bishop Pine Forest ESHA, and reporting for that mitigation. For clarification, two septic leach fields are proposed in the Bishop Pine Forest. One is proposed to be constructed with the residence, and the second is a replacement field, the location of which is to be approved at this time and which is to be constructed at such time that the primary field fails, years down the line.

To best protect resources in this case, allowing that future installation to occur as soon as possible at the time of failure will minimize detrimental environmental impacts – this is why it is best to approve the secondary field construction in advance as opposed to requiring a new CDP at the time of failure.

Since the known ESHA resource is the Bishop Pine Forest, mitigation at this time, and then again at a future time for the replacement field, will need to consist of restoration of the impacted area, with understory species appropriate to the Bishop Pine Forest, and an assurance that new Bishop Pine tree recruitment will occur at a ratio of at least 5:1 for Bishop Pine trees lost to septic installation. That tree recruitment is expected to ideally happen within the Bishop Pine Forest ESHA itself, but can occur within the buffer area if such recruitment is not successful within a 5 year timeline.

Such things that would prevent this type of recruitment may include the presence of a thriving overstory of bishop pines within the Bishop Pine Forest ESHA to such an extent that planting at a 5:1 ratio in that area is infeasible due to overstory cover. The mitigation monitoring plan condition has been written with this in mind – accounting for mitigation that will be needed now and will also be beneficial in the future, at such time that the secondary field is constructed.

When we discussed the condition listed as condition 15 below, I was informed that what was being asked for was a very limited effort, as opposed to a multi-thousand dollar plan. I asked, that given this, we could clarify in the condition the limitations of what was being requested, so we were all clear this was not to be an extensive plan. I believe staff has worked in this direction but more clarification is warranted. The revised condition currently reads:

15. 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.

I request the condition be changed to read:

15. Prior to the issuance of any Septic Permit for a leach field in the Bishop Pine Forest ESHA, a limited Bishop pine forest mitigation monitoring plan (MMP) shall be prepared and accepted by the Coastal Permit Administrator in consultation with the California Department of Fish and Wildlife. The MMP shall be limited to the following:

1. The site address and parcel number
2. The name and contact information of the person responsible for overseeing mitigation and monitoring.
3. An accounting taken in advance of development, of the number of Bishop Pine trees to be removed, their location, DBH, and general health condition.
4. When and where summary reports will be provided, and what they will consist of. The reports will need to be provided yearly, until mitigation has been met. The reports will be provided to the Fort Bragg County Planning Office. They will need to consist of all information required per this condition, photos and a short summary of what has been done to achieve mitigation results.
5. The following condition measures:
 - A. 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 boundary for (a) *Bishop Pine Forest ESHA*. Within the Bishop pine forest ESHA and buffer boundary for the *Bishop Pine Forest ESHA*, 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 and its buffer area*.
 - B. To mitigate for the loss of Bishop pine tree(s) within the Bishop Pine Forest during septic leachfield installation, the property owner shall facilitate natural regeneration of Bishop Pines, and other community appropriate plant species, within Bishop Pine ESHA areas disturbed by construction, e.g. septic disposal system installation. 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. 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, within a one year period, 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 in the Bishop Pine Forest during construction.
 - C. If the Bishop pine trees do not regenerate within the disturbed *Bishop Pine Forest ESHA* within a 5 year period, then the property owner shall provide compensatory Bishop pine forest mitigation at a minimum ratio of 2:1 (habitat restored: habitat impacted). Bishop pine habitat restoration areas may include surveyed non-native grassland or Monterey pine areas adjacent to the existing *Bishop Pine Forest ESHA* on the property. Restoration shall include planting trees and restoring understory habitat. Restoration may include removal of Monterey pine trees adjacent to the *Bishop Pine Forest ESHA* and subsequent plantings of new Bishop pine trees in the area previously occupied by the Monterey pine trees. Restoration is an allowed use within sensitive habitat areas and their buffer areas.
 - D. If watering of newly established pine trees is needed during dry periods, that watering shall occur only during the first three years of establishment, after which point watering will cease.

16. If the Bishop pine trees do not regenerate within the disturbed *Bishop Pine Forest ESHA*, then the property owner shall provide compensatory Bishop pine forest mitigation at a minimum ratio of 2:1 (habitat restored: habitat impacted). Bishop pine habitat restoration areas may include surveyed non-native grassland or Monterey pine areas adjacent to the existing *Bishop Pine Forest ESHA* on the property. Restoration shall include planting trees and restoring understory habitat. Restoration may include removal of Monterey pine trees adjacent to the *Bishop Pine Forest ESHA* and subsequent plantings of new Bishop pine trees in the area previously occupied by the Monterey pine trees. Restoration is an allowed use within sensitive habitat areas and their buffer areas.

17. 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 \$2,456.75 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 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.

Thank you for your consideration of the project and the requested condition changes.



Teresa R Spade, AICP

Spade Natural Resources Consulting

For Franny Forsman