

APR 30 2020

James Feenan - RE: Regarding the Schaffer CDP and further documentation from Wynn Coastal Planning

Planning & Building Services

From: "Kraemer, Melissa@Coastal" <Melissa.Kraemer@coastal.ca.gov>
To: Keith Gronendyke <gronendykek@mendocinocounty.org>, "pbscommissions@men...
Date: 4/29/2020 4:47 PM
Subject: RE: Regarding the Schaffer CDP and further documentation from Wynn Coastal Planning
Cc: "Harrington, Daniel@Wildlife" <Daniel.Harrington@Wildlife.ca.gov>, "Wynn..."

Coastal Commission staff offers the following comments and recommendations on the subject CDP. In short, we recommend that the County not take action on the application until certain additional information is obtained and evaluated, as explained below, to ensure the proposed development is consistent with the LCP policies protecting ESHA, public access, visual resources, and other coastal resources.

1. **ESHA:** Were follow-up grassland ESHA surveys/analysis completed for the site in accordance with CDFW recommendations (per the below from Daniel Harrington). There's no discussion of the native grassland ESHA issue in the posted staff report or the follow-up analysis recommended by CDFW. If the full extent of potential ESHA that may be present on site hasn't yet been evaluated, how can the County make the necessary findings that the development will be sited outside of ESHA and that all ESHA on site is appropriately buffered from impacts?
2. **ESHA Buffers:** While we understand the buffer constraints with respect to the driveway and shore pine forest ESHA, it's less clear why buffers that are less than 100 feet should be granted for the other ESHA types on the 35+ acre property. It would seem on such a large parcel there would be alternatives that would allow for the minimum 100-foot ESHA buffers while still allowing ample use and enjoyment of the property for its principal use. Policy 3.1-7 requires the ESHA buffer to be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with CDFW and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. It appears the County is recommending the buffer reduction proposed by the applicant's biological consultants, but it's unclear from the staff report materials whether CDFW concurred with the proposed buffer reductions for all the ESHA types. Please clarify.
3. **Public Access:** The staff report points out that the certified LUP Map 18 designates a proposed shoreline access trail extending from Highway 1 along the southerly and westerly property boundaries along the coastal bluffs, and refers to a 2000 prescriptive rights analysis conducted by the County for a parcel to the north that concludes potential prescriptive right of access may exist both on the parcel to the north and the subject parcel. The permit granted for the property to the north required that fencing on the property be

set back 25 feet from the bluff edge to avoid any interference with the potential prescriptive rights of public access. We note that the project description of the current project includes a fence that would block all access to the site from Highway 1. The County staff report for the current project does not address consistency of the proposed development with the public access policies of the Coastal Act which are part of the standard of review for the project, as it is located between the first through public road and the sea. Section 30211 of the Coastal Act states that "development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization." Such access acquired through use cannot be interfered with by new development, regardless of whether (a) other public access is located in the vicinity, (b) the access is located near a coastal bluff (as many accessways are), and (c) that the possible (but not required), future development of an inn may provide an opportunity to provide other public access at the site, three reasons cited in the staff report for not requiring public access with the current project.

As there is evidence that prescriptive rights of public access to the shoreline exist on the parcel, the County should not act on the project until a prescriptive rights analysis consistent with published guidance from the Attorney General's office is conducted and the results are used to inform a determination of whether the project is consistent with Section 30211 of the Coastal Act. To the extent that prescriptive rights of access would be interfered with by the development, the County should require changes to the development to avoid such interference and require that an access easement be dedicated as a condition of approval.

4. Visual Resources: The staff report notes that the property is within a designated highly scenic area (HSA) and rightly considers the potential visual impacts of the development. Use of topography and existing vegetation may help render the development subordinate to the character of its setting as required by the HSA policies of the LCP, but no specific visual analysis appears to have been performed. We recommend that the County not act on the project until such an analysis is conducted, showing renderings or photographs of the anticipated views of the proposed development from all significant public vantage points. We note that there is no discussion of story poles demarcating the location, height, and bulk of the development having been installed to help in such an analysis. The County has commonly required the installation of story poles in many projects raising visual concerns in the past. The analysis should also take into account whether the identified future inn site could also be developed at that location in a manner that would make it subordinate to the character of its setting consistent with the highly scenic policies of the LCP. The currently proposed development will severely limit options for location of the future inn in a manner that would make it subordinate to the character of its setting.
5. Family Care Unit/ADU: The application requests that the FCU be converted to an ADU once ADU regulations in the coastal zone are certified. Since ADU regulations are not yet part of the County's certified LCP, future CDP authorization will be required for the conversion of the FCU to an ADU. We recommend adding a condition to make clear that the FCU shall not be converted without separate CDP authorization.

6. **Deed Restriction Condition:** We appreciate inclusion of recommended special condition 8 related to the required recording of a deed restriction alerting future property owners of the geologic hazards of the site, prohibiting the construction of future shoreline armoring to protect any of the permitted development, and the required removal of the house and foundation when future bluff retreat reaches the point where the structure is threatened. We suggest modifying subsection (e) slightly to align it better with subsection (d), which pertains to multiple structures/development - not just the house and house foundation. In other words, if any of the permitted development becomes threatened due to bluff retreat in the future, the removal requirement should apply to all such threatened development and not just to the house as subsection (e) currently reads. We also suggest broadening the scope of the recordation requirements so that they include not just geologic hazard issues, but so all long-term restrictions for the property that future owners should be aware of are required to be included in the recorded document (e.g., special condition 27 - use of native landscaping, various conditions related to exterior lighting restrictions, etc.).

Thank you for considering these comments and feel free to contact us with any questions.

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From: Harrington, Daniel@Wildlife
Sent: Tuesday, June 25, 2019 11:00 AM
To: 'Keith Gronendyke' <gronendykek@mendocinocounty.org>; 'Amy@WCPlan.com' <Amy@WCPlan.com>
Subject: Regarding the Schaffer CDP and further documentation from Wynn Coastal Planning

Hello Keith and Amy,

Thanks for your continuing efforts on this project and your attention to what is best for natural resources in this complicated situation.

Thanks as well for the opportunity for CDFW to further comment on CDP 2018-0018 (Schaffer). We offer the following informal comments and recommendations on this Project in our role as a Trustee and Responsible Agency under the California Environmental Quality Act (CEQA; California Public Resource Code section 21000 et seq.). These comments are intended to help the Lead Agency in making informed decisions early in the review process.

The reports of compliance are well-researched, and I appreciate the discussion and photographs regarding the *Calystegia* species. At this time, and not being an expert on the species, the discussion of methodology of identification seems sound. I hope that future applications to the County with *Calystegia* species likely to be impacted will contain this level of detail at the start of the process.

Unfortunately, I don't think the Lead Agency should yet be comfortable with the classification of non-native grassland alliances on the parcel. This is important, since the definition and delineation of these alliances is critical to considering the construction of a new driveway as an alternative to the existing, the impacts of the house footprint, and the impacts of the solar array that was recently added to the application package. I still feel that there are potential ESHA on the property (grassland ESHA), and therefore the Initial Study that informs the CEQA document for this project should wait for further information.

Some background for non-botanists - grasslands on the coast have historically been named using the Holland Classification as Coastal Prairie or Coastal Terrace Prairie. CDFW has moved to *A Manual of California Vegetation* (MCV) as a preferred classification system, however in some cases it is difficult for botanists to translate what they are seeing on the ground into the Alliances provided by MCV. Using the "Classification Conversion" available on the MCV website, there are eight potential MCV Alliances that would have formerly been classified as Coastal Prairie or Coastal Terrace Prairie. **Four of these Alliances have state rarity rankings that would qualify them as ESHA.** Hopefully this helps illustrate why I feel that the Lead Agency should feel sure about the grassland classification before proceeding under the assumption that no ESHA would be impacted by the project.

I do appreciate the time, detail, and number of botanists that have been to the site and used their expertise to assign MCV classification to the vegetation types to the best of their ability. However, to this point, there has been no data provided to support the grassland classification, even after it was questioned. While I do trust the professional opinion of Wynn Coastal Planning botanists, I feel it would be prudent for the Lead Agency to review data that supports the classification before moving forward with the Initial Study. As Wynn Coastal Planning botanists are aware, CDFW does provide protocols and data sheets that would be useful in diagnosing difficult cases such as this one, in "Rapid Assessment and Relevé Protocol" located here: <https://www.wildlife.ca.gov/Data/VegCAMP/Publications-and-Protocols>. This includes data sheets that could be provided to the Lead Agency and CDFW for review.

Furthermore, CDFW provides additional guidance regarding grassland classification under "Addressing Grasslands and Flower Fields" here: <https://www.wildlife.ca.gov/Data/VegCAMP/Natural-Communities>. This guidance states "California's grasslands and flower fields vegetation types are among the most difficult to analyze and study. The greatest challenge comes from the variation in species composition and abundance from early to late season and between years. **Researchers and consultants have tended to underestimate the significance of native herbaceous plants** because they are frequently at their highest cover either very early or very late in the season and may have very low cover during the spring and summer, when non-native grasses dominate and when field work is often performed. Additionally, in some years, a given area may be characterized by an abundance of non-native forbs and grasses, while in other years native herbs may dominate. This inter- seasonal and inter-annual variance of cover between the diagnostic species and the less diagnostic species leads us to conclude **that rules for an herbaceous vegetation type's identification should be more broadly inclusive for nativity, with relative cover as low as 10% natives determining a native stand.**" (emphasis added)

In this same section, CDFW provides further guidance, "Vegetation scientists at NatureServe, the California Native Plant Society, and CDFW determine non-native stands based on a rule of at least 90% cover of non-native species without evenly distributed or diverse native forbs and grasses at any time in the growing season. Conversely, **a stand is considered native if 10% or more relative cover consists of native taxa that are evenly distributed in the stand and present at any time during growing season.**" (emphasis added)

In reading this, you may appreciate the difficulty of correctly classifying these stands, since the botanist must consider relative cover both in space and in time, and I hope this helps illustrate my concerns with the methodology used to classify this difficult habitat.

At this point, Keith, I would recommend that the Lead Agency ask for written documentation of the grassland classification in a format that matches the relevé forms mentioned above. I do recognize that, if the botanists did not keep accurate records, this might require them to return to the parcel and potentially conduct several more surveys. If this is the case, and the Lead Agency feels that further surveys are too much of a burden on the landowner, the Lead Agency might ask for Wynn Coastal Planning to provide a written statement that specifically addresses the nativity standards outlined in "Addressing Grasslands and Flower Fields," and states that nowhere and at no time in the area mapped as "non-native grassland" did the botanists find a relative cover of native species that would qualify it as a native stand according to the guidance in "Addressing Grasslands and Flower Fields."

Apologies for the long email, and please let me know how I can be of further assistance in reviewing this Coastal Development Permit.

Thanks,

Daniel

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