



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

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MEMORANDUM

DATE: JUNE 25, 2020

TO: BRENT SCHULTZ, COASTAL PERMIT ADMINISTRATOR

FROM: JULIANA CHERRY, PLANNER III

SUBJECT: CDP\_2018-0004 AND REVISIONS TO CONDITION #11

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On March 26 and May 28, consideration of the referenced application was continued. Staff conferred with the applicant regarding the suggested Condition #11 in the May 28, 2020 Staff Report. Staff supports revisions to their initial recommendation. If adopted, the revised condition would read:

11. Within one year of the effective date associated with CDP 2018-0004, 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 understands that the site may be subject to extraordinary geologic and erosion hazards and the landowner assumes the risk from such hazards; and
  - b. 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. The permitted project is inclusive of the following permits: EM 2017-0006 and CDP 2018-0004. 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
  - c. The landowner agrees that any adverse impacts to the property caused by the permitted projects, as shown on the Site Plan (see June 25, 2020 Staff Report Attachment E) shall be fully the responsibility of the property owner; and
  - d. The landowner shall not construct any bluff or shoreline protective devices to protect the structures shown on the Site Plan or other improvements in the event that these structures are subject to damage, or other erosional hazards in the future, unless approved by a Coastal Development Permit or permit amendment; and
  - e. The landowner shall remove the structures shown on the Site Plan when bluff retreat reaches the point where the structures are threatened. In the event that portions of the structures shown on the Site Plan, or other improvements, fall to the beach or ocean before they can be removed from the blufftop, the landowner shall remove all recoverable debris associated with these structures from the beach and ocean and lawfully dispose of the material in an approved disposal site. The landowners shall bear all costs associated with such removal; and
  - f. 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.
  - g. The adopted findings and conditions approving CDP 2018-0004 shall be attached as exhibits to

the Deed Restriction and the conditions of Permit CDP 2018-0004 are imposed as covenants, conditions and restrictions on the use and enjoyment of the property. The Site Plan, included in the June 25, 2020 Staff Report as Attachment E, will be an exhibit to the Deed Restriction.

## ATTACHMENT A – JUNE 25, 2020 REVISED CONDITIONS OF APPROVAL

**JUNE 25, 2020 REVISED CONDITIONS OF APPROVAL AND MITIGATION MEASURES (as indicated by “\*\*\*)”):**

1. This action shall become final on the 11<sup>th</sup> day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Coastal Code. CDP 2018-0004 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 2018-0004 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 2018-0004 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 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. In accordance with MCC Section 20.496.020, a buffer area shall be established adjacent to all environmentally sensitive habitat areas, including the *Bishop Pine Forest ESHA*. The width of the buffer area shall be a minimum one hundred feet.

10. In accordance with MCC Section 20.500.020(E)(3), all grading specifications and techniques will follow the recommendations cited in the Uniform Building Code, the geotechnical engineer's report (for example, Brunsing Associates Geotechnical Investigation of August 3, 2017), or MCC Chapter 20.492.
11. Within one year of the effective date associated with CDP 2018-0004, 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 understands that the site may be subject to extraordinary geologic and erosion hazards and the landowner assumes the risk from such hazards; and
  - b. 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. The permitted project is inclusive of the following permits: EM 2017-0006 and CDP 2018-0004. 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
  - c. The landowner agrees that any adverse impacts to the property caused by the permitted projects, as shown on the Site Plan (see June 25, 2020 Staff Report Attachment E) shall be fully the responsibility of the property owner; and
  - d. The landowner shall not construct any bluff or shoreline protective devices to protect the structures shown on the Site Plan or other improvements in the event that these structures are subject to damage, or other erosional hazards in the future, unless approved by a Coastal Development Permit or permit amendment; and
  - e. The landowner shall remove the structures shown on the Site Plan when bluff retreat reaches the point where the structures are threatened. In the event that portions of the structures shown on the Site Plan, or other improvements, fall to the beach or ocean before they can be removed from the blufftop, the landowner shall remove all recoverable debris associated with these structures from the beach and ocean and lawfully dispose of the material in an approved disposal site. The landowners shall bear all costs associated with such removal; and
  - f. 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.
  - g. The adopted findings and conditions approving CDP 2018-0004 shall be attached as exhibits to the Deed Restriction and the conditions of Permit CDP 2018-0004 are imposed as covenants, conditions and restrictions on the use and enjoyment of the property. The Site Plan, included in the June 25, 2020 Staff Report as Attachment E, will be an exhibit to the Deed Restriction.
12. In accordance with MCC Section 20.504.015(C)(9), the project site is designated on the Land Use Map for tree thinning or removal. Planting additional trees is prohibited. Bishop pine trees shall be maintained.
13. \*\* The property owner shall provide for the following Mitigation Measures:
  - a. Bishop pine seedlings shall be identified and encouraged to establish. The location of Bishop pine trees shall be marked. The trees and seedlings shall be protected and avoided during yard work.
  - b. Future planted vegetation, including understory planting, shall be limited to native plants, e.g. plants local to the watershed or genetically sourced from the Mendocino coast.

- c. On-site vegetation may include shrubs, grass, and perennial herbs. Appropriate plants include *Ceanothus thyrsiflorus ssp. griseus*, *Gaultheria shallon*, *Frangula purshiana*, *Arctostaphylos uva-ursi*, *Vaccinium ovatum*, *Ribes sanguineum*, *Morella californica*, *Calamagrostis nutkaensis*, *Polystichum munitum*, *Carex harfordii*, *Lonicera hispidula*, *Monardella villosa*, *Stachys ridida*, *Diplacus aurantiacus*, *Maianthemum dilatatum*, *Piperia elongata*, *Scrophularia californica*, and *Clinopodium douglasii*.
  - d. Planting nonnative vegetation shall be avoided. Introduced horticultural plantings of Monterey pines shall be removed from site.
14. When the residence is relocated or removed, then the residential stabilization structures previously authorized shall also be removed.
  15. When the residential stabilization structures are exposed, the property owner shall (a) within 60-days, submit photographs to Planning and Building Services and (b) within 90-days, file a Coastal Development Permit, or permit amendment, proposing methods to obscure exposed portions of the residential stabilization structure.
  16. The property owner shall regularly monitor the residential stabilization structure for (a) damage that could adversely impact the performance of the structure, (b) for evidence of undermining, and (c) assess the potential for the residential stabilization structure to become visible.
  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.