

Jessie Waldman - further comments on Boothe (CDP_2020-0024)

From: "Kraemer, Melissa@Coastal" <Melissa.Kraemer@coastal.ca.gov>
To: Jessie Waldman <waldmanj@mendocinocounty.org>
Date: 5/25/2021 1:30 PM
Subject: further comments on Boothe (CDP_2020-0024)
Cc: "Targ, Sylvia@Coastal" <sylvia.targ@coastal.ca.gov>, "Garrison, Jennifer@..."

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Hello Jessie

We reviewed the staff report for the subject CDP application and offer the following additional comments. Initial agency comments from Commission and CDFW staff are below this email for reference. We recommend strengthening CDP conditions to fully incorporate previous agency recommendations. We also offer additional recommendations and conditions that we believe are necessary to maximize the project's LCP consistency while recognizing that the project is inconsistent with the LCP but presumably must be approved to avoid a regulatory takings.

1. Special Conditions 11 and 23 require the applicant/landowner to execute and record a deed restriction(s) that prohibits future shoreline armoring (among other restrictions related to geologic hazards), restricts and requires certain landscaping, directs certain restoration activities, and requires minimum setbacks from the bluff. The purpose of the deed restriction recordation requirements is to memorialize and notify current and future owners of the property of the restrictions imposed to minimize risk and protect resources, which are conditions of allowed development on the lot that run with the land and bind all successors and assigns.
 - a. We agree with the deed restriction recordation requirements of Special Condition 11 but suggest strengthening 11-e to specify that future removal when necessary shall include not just structures and septic infrastructure, but also drilled piers and other sub-surface infrastructure associated with the house foundation.
 - b. We agree that the landscaping restrictions specified in Special Condition 23-a-i should be required to be recorded in the deed restriction document as a limitation on the use and enjoyment of the property necessary to maximize LCP conformity with respect to protecting ESHA/minimizing ESHA impacts.
 - c. We suggest adding provisions that the executed/recorded deed restriction include language similar to language that's currently listed in Special Condition 20-c directing that (suggested changes to 20-a recommended to be amended and to be included in the deed restriction contents are underlined) a low wooded or row mitigation fence shall be installed and maintained, set back a minimum of 46 feet from the bluff top edge and consistent with the geotechnical report prepared by Brunsing Associates, Inc., dated July 24, 2019, where no development shall be permitted within 46 feet of the bluff top edge, including any proposed mitigation fencing, which is intended both to denote sensitive natural habitat seaward (north) of the fencing and to discourage entry into this area and to minimize erosion hazards associated with the area. The proposed location of the permanent mitigation fence should be placed to maximize exclusion of human impacts to the restoration area. This location is which

will be converted to native habit supporting Headland Wallflower. All areas seaward of the permanent mitigation fence shall be maintained as native habitat where no development other than habitat restoration may occur, including no accessory structures, landscaping, or other improvements. Planting for habitat enhancement purposes may be allowed pursuant to a landscaping plan approved by the County and the California Department of Fish and Wildlife provided such plantings are comprised only of species that are native, appropriate for coastal bluff habitats of the region, and serve to enhance Headland Wallflower habitat.

[We note that Special Condition 22-b requires submittal of a landscaping plan to CDFW for review and approval, and we think there also should to be further specifications in 22-b to clarify landscaping restrictions both in terms of the above recommendations on landscaping restrictions in the open space bluff area and to reflect the restrictions specified in 23-a-1.]

- d. We suggest requiring that the recorded deed restriction(s) include an attached exhibit of an updated site plan and open space area map (to be reviewed and approved by the County prior to recordation) that clearly shows the authorized building footprint areas and the deed-restricted open space areas where no future development shall be allowed. Restricted areas shall include the minimum 46-foot geologic setback area from the top of bluff as well as other areas of delineated ESHA and ESHA buffers on the property. The exhibit also should depict the correct placement of the permanent mitigation fencing shown at least 46 feet back from the top of bluff. The exhibit should label the deed restricted areas to indicate "open space" and "no accessory structures, landscaping, or other improvements allowed" in deed-restricted open space areas.
2. Special Condition 20-a mentions the recommendation for a Mitigation and Monitoring Plan (MMP). We suggest expanding on this condition or adding a new condition that requires the preparation and submittal of an MMP to the County for review and approval prior to permit issuance. The condition should specify the minimum plan requirements for mitigation, monitoring mitigation success, reporting, and, if necessary, remediation so that the County, in its findings for CDP approval, can demonstrate that the approved development will maximize LCP consistency for ESHA protection by ensuring that successful mitigation will be achieved. Some of the necessary MMP specifications are currently specified in Special Condition 23 (e.g., 23-a-ii through vi). However, instead of having MMP requirements specified in relation to the contents of the deed restriction that's required to be recorded pursuant to Special Condition 23-a, instead we recommend that MMP requirements be specified in relation to a condition that is focused on the MMP preparation and submittal requirements. See CDFW comments below for suggestions on the MMP contents. In addition to the details specified in 23-a-ii through vi, the MMP condition also should include criteria to understand how success will be measured, details on the timing, frequency, and duration of monitoring and reporting (e.g., 5 years is typical), and what to do if the mitigation is unsuccessful.

Thanks again for the opportunity to comment and let us know if you have any questions.

Melissa

From: Korhummel, Rhiannon@Wildlife <Rhiannon.Korhummel@Wildlife.ca.gov>
Sent: Thursday, November 12, 2020 9:36 PM
To: Jessie Waldman <waldmanj@mendocinocounty.org>
Cc: Targ, Sylvia@Coastal <sylvia.targ@coastal.ca.gov>; Garrison, Jennifer@Wildlife <jennifer.garrison@wildlife.ca.gov>; Kraemer, Melissa@Coastal <Melissa.Kraemer@coastal.ca.gov>
Subject: RE: initial comments on Boothe (CDP_2020-0024)

Hello Jessie,

Thank you for the referral and the opportunity for CDFW to comment on CDP 2020-0024. 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.

Headland Wallflower Impacts

The proposed Habitat and Mitigation Monitoring Plan (HMMP) needs to fully address compensatory mitigation to be conducted for loss of habitat and individuals of headland wallflower. The HMMP should be drafted such that mitigation measures/activities are clearly described, and success should be clearly defined, to demonstrate full compensation for project impacts. Based on conversations with the project biologist, in addition to collection of seeds, collection of soil around the headlands wallflower should be considered to capture any potential seed bank which may be present. Compensatory mitigation includes removal of an area of iceplant (*Carpobrotus edulis*) along the bluff edge. Based on site observations, relative cover of native species present within the area of ice plant is high. Restoration activities should avoid removal of native species to the greatest extent feasible; use of hand tools is recommended and use of herbicide is discouraged for removal of iceplant. If herbicide is to be used, the HMMP should provide specifications on application. Compensatory mitigation success should include full eradication of iceplant above break in slope of the headlands (i.e. not along bluff face) as a goal. The proposed location of the permanent symbolic fencing should be placed to maximize exclusion of human impacts to the restoration area.

As mitigation activities includes the propagation of headland wallflower by scattering seeds in cleared area, the HMMP needs to address and identify potential contingency measures if no individuals germinate.

Wetlands

The proposed location of the driveway and additional development is stated to be the least environmentally damaging alternative. This alternative locates the driveway within 10-feet of the northern edge of the wetland. Site visit observations indicate the buffer between the edge of wetland and proposed driveway consists of low growing Monterey cypress woodland with a very dense duff understory and other tree detritus. The Monterey cypress woodland is not native and has likely displaced native wetland plants, or minimally native vegetation, through shading and thatch accumulation. Native beach pine (*Pinus contorta* var. *contorta*) and Bishop pine (*Pinus muricata*) are present along the edge of the Monterey cypress woodland. The wetland delineation report indicates the edge of slough sedge (*Carex obnupta*) to correspond to the edge of the wetland.

The biological report states proposed mitigation measure to plant wax myrtle (*Morella californica*) along the northern edge of the wetland for "enhancement of functionality of wetland as habitat," however no discussion is provided as to the enhancement which is to be expected. Further, the location of the proposed mitigation is not indicated; the areas north of the wetland, within the parcel, are wooded. The proposed enhancement activities should be described to a level sufficient to determine goals of enhancement activities, methods of enhancement activities, and success of enhancement activities. Alternative and/or additional enhancement activities should also be considered. Any restrictions within the buffer between the wetland and driveway, which may prevent a reduction in buffer function, should also be discussed.

Proposed mitigation measure includes the use of orange construction fencing along the wetland as a means of erosion control (and identification of sensitive areas boundary). If erosion control is desired, beyond what silt wattles provide, then silt fencing, not orange construction fencing, should be used.

ESHA setbacks

Mitigation Measure 7.4.1 in the biology report states staging of building materials and construction vehicles in uplands greater than 50-feet from mapped ESHA; this measure is also included in 7.6.1 (50-foot buffer of ESHA). Based on existing ESHA and buffer depicted on Figure 2 of the biology report, this leaves one small area to meet this criterion which is located along the proposed driveway. Least environmentally damaging alternative staging areas should be analyzed and identified to ensure that construction activities do not significantly impact ESHA. Excavated soil should be included as a building material. Parking of construction crew vehicles should also be included in this avoidance measure.

The proposed 50-foot buffer of northern coastal bluff scrub and rare plants within that habitat is acceptable to protect sensitive resources, with proposed avoidance measures as described in the report and in the above recommendations (identification of construction staging).

I am available to answer any questions or clarify any recommendations you may have.

Thanks,

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From: Kraemer, Melissa@Coastal <Melissa.Kraemer@coastal.ca.gov>
Sent: Monday, November 9, 2020 6:40 PM
To: Jessie Waldman <waldmanj@mendocinocounty.org>
Cc: Targ, Sylvia@Coastal <sylvia.targ@coastal.ca.gov>; Korhummel, Rhiannon@Wildlife <Rhiannon.Korhummel@Wildlife.ca.gov>
Subject: initial comments on Boothe (CDP_2020-0024)

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Hello Jessie

Coastal Commission staff offers the following initial comments on the subject CDP application (reference link: <https://www.mendocinocounty.org/home/showdocument?id=38482>):

1. **Takings Analysis:** Based on the presence of rare plant ESHA and other types of ESHA on the property, it appears there is no way to approve a residential development on the site consistent with the ESHA protection/ESHA buffer policies of the LCP. Accordingly, the County must evaluate whether

denial of the development as required by the LCP would result in a regulatory takings situation. If so, the County must evaluate project alternatives, including alternative designs and configurations, in order to provide for a reasonable use of the property that will avoid an unconstitutional taking of private property for public use while at the same time maximizing LCP consistency.

2. Alternatives: Should the County find, through its takings evaluation, that development must be approved to avoid a regulatory takings situation, the County should require an evaluation of alternatives. The proposed project represents one alternative to providing for a reasonable use of the property that would avoid a regulatory takings (if applicable). The County should require an evaluation of other alternatives that may be available that would provide for a reasonable use of the property while at the same time maximizing LCP consistency. For example, there may be an alternative that involves locating the house closer to but 50 feet from the slough sedge ESHA and locating the septic fields further west (in the location where the current site plan shows the proposed residence to be located). Such an alternative configuration may provide an opportunity to better protect and increase the buffer around rare plant ESHA (which is scattered in the nonnative grassland area), because there may be flexibility with the shape/orientation of leach fields to avoid rare plant ESHA and maximize LCP consistency. This alternative could have the benefit of maintaining a minimum 50-foot buffer from slough sedge ESHA, as recommended in the biology report, while increasing protection of rare plants and maximizing potential rare plant ESHA buffers. Such an alternative might also necessitate a redesign/reconfiguring the house and driveway. There may also be other alternatives for consideration as well. The County should require such an alternatives analysis as a filing requirement of the subject application.

3. Geologic Hazards and ESHA protection: Should the County find, through its takings evaluation, that development must be approved to avoid a regulatory takings situation, and if, after requiring an alternatives analysis and finding that there is no feasible less environmentally damaging alternative to allowing residential development on the property in a manner that maximizes LCP consistency, the County should condition any CDP approval to require recordation of an open space deed restriction over all portions of the property seaward of the geologic setback line. Given that the geologic setback area also includes ESHA and ESHA buffers where no future development (other than resource-dependent uses) can be permitted consistent with the LCP, it's important to memorialize the restrictions on the geologic setback area in a way that alerts future owners of the property as to restrictions on the use and enjoyment of the property. The County should prohibit future development within the open space deed restricted area other than resource-dependent uses such as nature study. To ensure that property owners understand on the ground where the deed restricted area is located, the County should require that the proposed "mitigation fencing" (permanent symbolic fencing) be located at the geologic setback line rather than at the bluff edge as proposed.

4. Mitigation. To achieve consistency with the LCP's ESHA policies in light of constitutional takings issues, the project must be mitigated to the maximum extent feasible to best avoid the significant disruption to sensitive habitat that would accompany any development of this property. In addition to the suggestion to place "mitigation fencing" at the geologic setback line as recommended above, which will maximize ESHA protection and ESHA buffer protection, the CDP should require, as conditions of approval, the headland wallflower mitigation measures suggested in section 7.8 of the biology report and any other feasible mitigation that may be recommended by CDFW and/or CNPS to compensate for the project's ESHA impacts.

Thank you for the opportunity to provide initial comments. Let us know if you have any questions.

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