



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

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MEMORANDUM

DATE AUGUST 12, 2021

TO: COASTAL PERMIT ADMINISTRATOR

FROM: PLANNER JULIANA CHERRY

SUBJECT: REVISED AND CLARIFIED RECOMMENDATIONS TO APPROVE CDP 2018-0012

Please note that as proposed, the project is located more than 100-feet from riparian vegetation; therefore, the project is not classified as appealable to the Coastal Commission.

On August 3, 2021, Planning Staff met with applicant Noah Sheppard and his agent Teresa Spade, of Spade Natural Resources Consulting (SNRC). We discussed the July 29, 2021, correspondence from SNRC requesting revisions to the recommended conditions published in the August 12, 2021 staff report. Much was agreed upon during the meeting, but differences remain regarding reducing the buffer width and construction within the ESHA buffer.

Attachment B lists revised recommended conditions and the previously published findings.

1. Requested reduction in the width of the ESHA buffer. MCC Sec. 20.719.020(A) ESHA Development Criteria states in part:

"The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Wildlife, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. ..."

On page 7 of the Staff Report are listed five reports describing the vegetation characteristic of the site. The project was referred to agencies twice: October 9, 2018 and March 16, 2020. On November 7, 2019, staff from CDFW, PBS, and California Coastal Commission met the applicant and their agent at the site. After consultation with CDFW and PBS staff, the applicant has not demonstrated that a reduced buffer would protect the *Grand Fir Forest ESHA*. CDFW has not responded to the most recent referral despite numerous requests. Based on my conversations with CDFW staff, I believe the *Grand Fir Forest ESHA* was significantly disrupted between 2010 and 2012 when vegetation was removed without prior authorization (as described on page 9 of the staff report). The request to reduce the buffer width does not have concurrence from CDFW nor does it have my support. Staff recommends maintaining a 100-foot buffer width from the *Grand Fir Forest ESHA*.

2. Request to locate development within the buffer. MCC Sec. 20.719.020 states development permitted within the buffer area shall comply with eleven standards, including:

"(D) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of one (1) to one (1), which are lost as a result of development under this solution."

On pages 9 and 10 of the staff report, an analysis of alternative sites was prepared and staff supports the

revised site plan. As there is no other feasible site available on the parcel, staff recommends allowing development within the buffer area, as shown on the August 4, 2020 submitted Site Plan revision. Further, development is located in close proximity to the proposed driveway realignment which is supported by comments received on October 17, 2019 from CDFW staff.

Attached are revised recommendations to approve the proposed. Attachment A lists the conditions as originally published and includes staff's recommended clarifications following the August 3rd consultation with the applicant and their agent. Attachment B is the revised copy for the Coastal Permit Administrator's consideration, including recommended findings and conditions for project approval.

ATTACHMENTS:

- A. Edited conditions from the Staff Report with ~~strikeout~~ and underlined copy
- B. Clarified and corrected conditions

EDITED CONDITIONS FROM THE STAFF REPORT
WITH STRIKEOUT AND UNDERLINED COPY

The following lists the August 12, 2021 published conditions. Additional text is underlined. Strikeouts indicate where text would be deleted.

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 20.720.015 of the Mendocino Town Zoning Code County Coastal Code. ~~CDP_2018-0002 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_2018-0002~~ 2018-0012 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.

[SNRC Requested] To remain valid, progress towards completion of the project must be continuous. The Applicants have sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.

2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of ~~Division II~~ Division III 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_2018-0002~~ 2018-0012 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. ~~Conditions approving CDP_2018-0002 shall be printed on any building plans and shall be a part of on-site construction drawings.~~ **Any Building Permit request shall include all conditions of approval of CDP-2018-0012 (attached to or printed on the plans submitted).**
10. ~~As authorized by CDP_2018-0012, the Building Permit site plan shall depict authorized locations of building foundations, well heads, septic tank and sewer lateral, staging areas, construction fencing, restoration planting areas, and other details as requested:~~
 - a. ~~The residence, garage, and construction staging may be located fifty feet or more from the 2019 surveyed outward extent of Grand Fir Forest ESHA.~~
 - b. Prior to final occupancy for any building permit, restoration planting shall be completed within 50 feet of the 2019 surveyed *Grand Fir Forest ESHA*. (The property owner shall furnish a statement that restoration planting is completed.)
11. ~~A coastal development permit or permit amendment shall be required for any future development.~~
 - a. ~~Pursuant with MCC Section 20.720.020(A)(1), repair and maintenance activities that do not result in an addition to, or enlargement or expansion of the development authorized by CDP_2018-0012 shall be exempt from MCC Chapter 20.720.~~
 - b. ~~Within the adopted buffer areas, and Riparian and Grand Fir Forest ESHAs, CDP_2018-0012 authorizes and limits the following activities: Open Space, Passive Recreation, and Active Recreation. Accessory uses are not allowed. Other activities, Future development within the adopted buffer areas and Riparian and Grand Fir Forest ESHAs, shall require a coastal development permit or permit amendment., except exemptions allowed by MCC Section 20.720.020(A)(1) for repair and maintenance.~~
 - c. CDP_2018-0012 authorizes a sewer connection to Mendocino City Community Services District. ~~An and an~~ on-site septic tank intended to connect to a sewer lateral ~~shall be located outside of the authorized buffers and ESHAs.~~ Any future on-site solid waste treatment system shall obtain a coastal development permit or permit amendment.
12. ~~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, 20.500 and 20.718 regulations. Grading activities, including maintaining road, driveway approach, and parking areas, and any work associated with an Encroachment Permit, shall comply with MCC Chapters 20.492, 20.496, 20.500 and 20.718 regulations.~~
13. ~~In compliance with MCC Section 20.504.035, exterior~~**Exterior** lighting shall be kept to the minimum necessary for safety and security purposes and shall be downcast and shielded, and shall be positioned in a manner that will not shine light or allow light glare to extend beyond the boundaries of the parcel. Prior to issuance of a Building Permit, the property owner shall furnish exterior lighting details to the satisfaction of the Director **or authorized designee.**
14. In accordance with MCC Section 20.719.020(A), a buffer area shall be established adjacent to all environmentally sensitive habitat areas. ~~The width of the buffer area shall be a minimum 100 feet.~~
 - a. A minimum 100 foot buffer shall be maintained from the upland edge of riparian vegetation along all watercourses to the edge of any development activity, including grading, paving, trenching or other.

- b. A minimum 100 foot buffer shall be memorialized and measured from the ~~2019 surveyed outward extent of Grand Fir Forest ESHA.~~
15. ~~In accordance with MCC Sections 20.719.025(A) and 20.719.035(A), to protect environmentally sensitive habitat areas, such as wetlands, riparian corridors, streams, and environmentally sensitive habitat situated near the access road immediately prior to, during, and immediately following construction-related activities, the property owner shall:~~
 - a. ~~Erect high-visibility fencing with a sediment curtain at the footing to ensure that vehicles and heavy equipment do not incidentally enter the wetland; ensure that equipment and materials are not incidentally, nor intentionally, laid down in the wetland; and ensure that sediment does not migrate into the wetland.~~
 - b. ~~Conduct all work during the dry season, generally regarded as April 15 through October 15, but dependent upon in season weather conditions, to ensure that wet, loosened sediment does not migrate into the wetland.~~
 - c. ~~Within the Road and Utility Easement, which is a disturbed area adjacent to an ESHA, one time trenching and backfilling to underground overhead utilities is permitted. When the ground is disturbed, a biologist shall be on-site and make recommendations to ensure the protection of the ESHA from trenching and backfilling. Areas trenched shall be backfilled and restored with seed, gravel paving, or at the biologist's recommendation to protect the ESHA.~~
 16. Prior to the issuance of a Building Permit associated with CDP_2018-0002 **2018-0012**, the property owner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator and County Counsel, which shall provide that:
 - a. ~~The landowner understands that the parcel may be subject to flooding 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. 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 project shall be fully the responsibility of the applicant; and~~
 - d. The conditions of Permit CDP_2018-0012 are imposed as covenants, conditions and restrictions on the use and enjoyment of the property; and
 - e. The adopted findings and conditions approving CDP_2018-0012 shall be attached as exhibits to the Deed Restriction.
 - f. An exhibit shall identify the property boundaries, all easements, the wells, and the ~~2019 surveyed outward extent of the Grand Fir Forrest ESHA, Riparian ESHA, and their buffers, the 50 foot wide restoration planting area, and the exhibit shall include a legend and standard scale. The exhibit shall be prepared to the satisfaction of the Coastal Permit Administrator or their designee.~~
 - g. 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.

17. The property owner shall protect *Riparian ESHA*, *Grand Fir Forest ESHA*, and other environmentally sensitive habitat areas including California and northern red-legged frogs, special status plants, and nesting birds, by the following avoidance measures identified by Spade Natural Resources Consulting in the August 27, 2019, update letter to Botanical Survey Report and the March 26, 2020, Report of Compliance:
- a. ~~**Invasive Plants**~~ (i) Removal of invasive plants present on the site, including bull thistle (*Cirsium vulgare*), Scotch broom (*Cytisus scoparius*), French broom (*Genista monspessulana*), and English holly (*Ilex aquifolium*) ~~shall be completed prior to final occupancy of the Building Permit.~~ (ii) Prior to use on the site, heavy equipment should be washed down off site to prevent accidental contamination with invasive plant seed. (iii) ~~Invasive plants as listed by CallPC should not be used as landscaping species and landscaping shall consist of plants native to the Mendocino coast.~~
 - b. ~~**Erosion Control**~~ Standard Best Management Practices shall be employed to assure minimization of erosion resulting from construction. Ground disturbance shall be limited to the minimum necessary and disturbed soil areas shall be stabilized as soon as feasible. Any soil stockpiles will need to be covered or otherwise stabilized to prevent dust impacts.
 - c. **Birds and Bats** – No preconstruction surveys would be required for birds or bats if vegetation removal (including standing dead trees) is scheduled during September or October. The months of November through August would require a bird and/or bat survey dependent on the time of year.
 - i. **Birds.** 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 done 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.
 - ii. **Bats.** 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 shall 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 shall occur in September and October, or after the bats have left the roost.
 - d. **Northern Red-Legged Frog** – Project contractors shall be trained by a qualified biologist in the identification of the northern red-legged frog (*Rana aurora*). A survey for Northern red-legged frog shall occur within two weeks prior to construction. Construction crews will begin each day with a visual search around all stacked or stored materials, as well as along any silt fences to detect the presence of frogs. When a special status frog is detected, construction crews will contact California Department of Fish and Wildlife or a qualified biologist to relocate northern red-legged frogs prior to re-initiating work. If a rain event occurs during the construction period, all ground disturbing construction-related activities will cease for a period of 48 hours after the rain stops. Prior to resuming ground disturbing construction activities, trained construction crew member(s) will

examine the site for the presence of frogs. If no special status frogs are found, construction activities may resume.

- e. **Sonoma Tree Vole** – If trees are to be removed to accommodate the development, a Sonoma tree vole survey shall occur within two weeks of tree removal activities. Protocols per the California Department of Fish and Wildlife shall be followed should Sonoma tree vole nests be identified in trees to be removed. Similarly, surveys for Mendocino Leptonetid Spider shall occur if trees are to be removed or vegetation cleared from the forest.
 - f. **Grand Fir Forest and Riparian Vegetation Habitat Avoidance** – No direct impacts are to occur to onsite or nearby streams, riparian areas, or special status vegetation alliances, from construction or related activities. All staging and materials storage, and other project components must occur more than 50 feet from Grand Fir Forest ESHA and 100 feet from Riparian ESHA ~~outside of established buffer streams, riparian areas, and special status vegetation alliances areas.~~ Prior to ground disturbance with heavy equipment for road relocation, construction fence with straw wattles along the base shall be installed at the northernmost boundary of the Road and Utility Easement on the property. If ground disturbance with heavy equipment is to occur southward of the road easement, construction fence with straw wattles shall also be installed along the dripline of the grand fir forest. All staging, storage, and equipment use shall occur within the existing non-native grassland and roadway, and shall not occur within established buffer areas, including the forested areas of the property.
 - ~~g. **Special status Plants.** To protect the special status plants, landscape plantings shall consist of locally native species (or ornamental plants without the potential to become invasive) and any erosional control methods deploying vegetative material will be from certified weed free sources.~~
18. The property owner shall provide for Mitigation Monitoring and Reporting Procedures, including those measures described in Sections 3 Impact Avoidance Plan & 4 Restoration Plan of the Special Status Community Avoidance and Replanting Plan dated July 28, 2020, as listed below:

Impact Avoidance Plan with the following modified procedures:

- a. **Staging and Fencing.** Prior to any construction related ground disturbing activities, orange plastic construction fence will be erected 50 feet from the outward extent of the *Grand Fir Forest ESHA* and 100 feet from *Riparian ESHA*. This construction fence will be maintained in good working order until all ground disturbance, staging, storage, and heavy equipment use associated with the project is complete. Fencing will be staked with an approximately 6 foot metal t-posts at 4 to 6 foot intervals, and secured to the t-posts with zip ties. During the rainy season (between October 31 and May 1 of any year), silt fencing will be installed and maintained in place on the outer (side away from ESHA) side of the construction fence. Staging and stockpiling will be limited to areas at least 50 feet from *Grand Fir Forest ESHA* and 100 feet from *Riparian ESHA*. No equipment or materials will enter sensitive areas, and all contractors will be made aware of the purpose of the construction fence, and where to store materials. (Supplanting report Section 3.1)
- b. **Erosion, Sedimentation and Dust Control.** (1) Ground disturbance will be minimized, and limited to that which is necessary for the project. (2) Any soil stockpiles will be covered or otherwise stabilized to reduce dust impacts. (3) Areas of disturbed soil will be planted or otherwise stabilized as soon as possible after disturbance.
- c. **Invasive Plant Contamination Avoidance.** (1) Heavy equipment will be washed off-site, prior to use at the site. Special care will be taken to wash tires and undercarriages, where invasive seeds might be present. (2) Soil stabilizing seed will not include invasive seed. (3) Landscaping will be limited to regionally native plants and will not include species found on the CalIPC Invasive inventory. (Supplanting report Section 3.2.2)

- d. **Spill Prevention Plan.** (1) All heavy equipment maintenance, such as filling with oil and lubricants, will occur off-property. Fuel, oils, and lubricants used for heavy equipment will not be stored at the site. Paints, stains, cement, and other construction materials that may spill will be stored inside sheds or other storage structures if feasible, or in a dedicated portion of the staging area where a tarp or similar device is placed, preventing absorption into the soil if accidentally spilled. Brushes, pans, and other equipment to be rinsed will be wrapped in a plastic bag and rinsed off site. Wash water will not be thrown into the bushes. (2) An accidental spill kit will be kept on site, which will include a shovel, heavy duty plastic bags, absorbent pads, and personal protective devices (gloves, goggles etc.) necessary for the types of materials kept on the site. (3) The Caltrans Spill Prevention and Control manual (WM-4) included as Appendix A (or a more current version if available), should be followed for spill prevention and control procedures.
- e. **Contractor Education.** Prior to the onset of ground disturbing activities, an onsite contractor training will occur. Contractors and subcontractors will be trained by a qualified biologist or ecologist, to recognize on-site special status habitats, including special status vegetation alliances. The contractors will be made aware of the purpose of the construction fence, how it will need to be maintained in place in good working order throughout project implementation, how equipment and materials will need to stay out of sensitive areas, and where staging is to occur. A copy of the final Special Status Community Avoidance and Mitigation Plan will be provided to contractors, and kept on site. (Supplanting report Section 3.4)

Restoration Plan with the following modified procedures:

- f. Restoration planting shall be completed prior to final occupancy. (Supplanting report Section 4).
- g. **Replacement Goal 1/ Replanting of clearing and replanting within 50 feet of the Grand Fir Forest.** Prior to the conclusion of the initial effective period of this permit and prior to final occupancy permit, restoration planting will occur as shown in Report Figure 2. Should adjustments to the planting plan be needed, an alternative planting plan shall be reviewed by the Coastal Permit Administrator, or their designee, and in consultation with California Department of Fish and Wildlife staff. (Supplanting report Section 4.1.1)
- h. Plants used will be purchased in a minimum 5 gallon size container, and will be irrigated or hand watered daily to twice a week as needed for at least the first dry season. Plants will be protected from deer browse, and dead plants will be replaced as needed. (Supplanting report Section 4.1.1)
- i. Quantity and variety of regionally native plants: minimum 2 Grand Fir, minimum 1 Douglas Fir, minimum 15 Sword Ferns, and minimum 11 Wax Myrtles. See Figure 2.
- j. **Report to California Department of Fish and Wildlife.** As soon as it is discovered that Grand fir forest, or areas mapped as such have been detrimentally impacted during project implementation, the head contractor on site will be responsible to contact the California Department of Fish and Wildlife (CDFW), who will be allowed on-site as soon as possible in order to assess and record the extent of the disturbance. California Department of Fish and Wildlife contacts include Jennifer Garrison at 707-964-1476.
- k. **Cease Disturbance.** As soon as it is discovered that accidental disturbance has taken place, all disturbances to the sensitive area will stop. Any equipment or materials will be removed from the area as carefully as possible. Protective fencing and/or flagging will be immediately placed around the disturbed area to prevent further impacts.
- l. **Soil Restoration.** After permission is granted by CDFW, any disturbed soils will be replaced to previous conditions to the extent feasible. Care will be taken to avoid impacts to any undisturbed areas or special status plants still present.

- m. **Replacement Goal 2/ Grand Fir Forest Restoration of Existing Areas Disturbed.** When areas of *Grand Fir Forest ESHA* is impacted, the Coastal Permit Administrator, or their designee, in consultation with the Department of Fish and Wildlife staff, shall require a Grand Fir Forest Restoration Plan. Restoration efforts will result in restoration of plants lost at a ratio of at least 2:1 or as required by the Coastal Permit Administrator.
- n. **Monitoring.** Monitoring will occur until replacement goals are achieved. The minimum monitoring period is ten years. (Supplanting report Section 5)
- o. **Reporting.** Reports shall be received by the California Department of Fish and Wildlife by December 1 of each year until replacement goals have been met and CDFW signs off on the restoration effort. Reports shall be sent by US Mail to:

Jennifer Garrison
California Department of Fish and Wildlife
32330 North Harbor Drive
Fort Bragg, CA 95437

Reports shall include the following information:

- Name and contact information of person in charge of monitoring activities, and name and contact information of reporting party.
 - Color photos of the active management areas at the beginning and end of the reporting period.
 - A summary of any issues encountered and management steps taken during the reporting period.
 - Methods used during that monitoring period to eradicate weeds, improve ecosystem health, and encourage appropriate vegetative growth.
 - Any new invasive plant species observed or evidence of pathogen presence will be described.
19. Prior to the issuance of a Building Permit, a mitigation monitoring and reporting plan (MMRP) shall be prepared and accepted by the Coastal Permit Administer in consultation with the Department of Fish and Wildlife. The MMRP shall include the adopted mitigation measures, criteria to assess survival of plantings after a ten-year period, and identify cessation of water after the third year.
20. 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 fess 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 \$2,530.25 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.
21. ~~The road shall be constructed from pervious materials to the satisfaction of Mendocino County Department of Transportation.~~

22. The code violation, storing an unassembled residence on the site, shall be resolved prior to the expiration of CDP 2018-0012. The structure shall either (1) be removed from the property or (2) a residential building permit final inspection shall be completed prior to the expiration of CDP 2018-0012.

The following lists findings and conditions, as revised in Attachment A, for the Coastal Permit Administrator's consideration. The revised, recommended conditions are sequentially renumbered.

PROJECT FINDINGS AND CONDITIONS

Pursuant to the provisions of Chapter 20.720 of the Mendocino Town Zoning Code, the Coastal Permit Administrator adopt the Mitigated Negative Declaration and approves the residence, garage, and adopts the following findings, conditions, and special status community avoidance and replanting plan.

RECOMMENDED FINDINGS:

1. Pursuant with MCC Section 20.720.035(A)(1), the proposed residential development is in conformity with the certified Mendocino Town Local Coastal Program as it proposes the construction of a permitted land use on Rural Residential lands, including a single family residence, garage, pump house and connection to sewer lateral with on-site collection and delivery system. The RR classification is intended for lands suited to single family residential land uses; and
2. Pursuant with MCC Section 20.720.035(A)(2), as conditioned the proposed residential land use has access to a sewer lateral, adequate utilities, pervious access roads, drainage and other necessary facilities, like on-site ground water extraction; and
3. Pursuant with MCC Section 20.720.035(A)(3), as conditioned the residential use is consistent with the purpose and intent of the Mendocino Rural Residential District, satisfies the development requirements of the MRR District, and satisfies the specified requirements of the MCC Chapter 20.717 *Water quality protection*, and all other provisions of Division III; and
4. Pursuant with MCC Section 20.720.035(A)(4), the proposed development will not have any significant adverse impacts on the environment and a Mitigated Negative Declaration for the construction of a single family home has been prepared pursuant to the California Environmental Quality Act; and
5. Pursuant with MCC Section 20.720.035(A)(5), the proposed development will not have any adverse impacts on any known archaeological or paleontological resource. A condition advises the applicant of the County's "discovery clause" which establishes procedures to follow in the event that archaeological or cultural materials are unearthed during site preparation or construction activities; and
6. Pursuant with MCC Section 20.720.035(A)(6), other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development. Well water will be supplied to the project and connecting to MCCSD sewer lateral is required; and
7. Pursuant with MCC Section 20.720.035(A)(7), the proposed development satisfies the requirements of MCC Chapter 20.760, as the site is located in Historical Zone B and is not visible from public areas; and
8. Pursuant with MCC Section 20.720.035(D)(1), the proposed development conforms to Chapter 20.712 *Environmentally Sensitive Habitat and Other Resource Areas* regulations as it establishes a 100 foot buffer from the edge of surveyed and mapped environmentally sensitive habitat areas, including *Riparian ESHA* and *Grand Fir Forest ESHA* and California Department of Fish and Wildlife have not stated their support to reduce the buffer width; and
9. Pursuant with MCC Section 20.720.035(D)(2), the riparian and Grand Fir Forest ESHA shall be protected against any significant disruption of habitat values, because of replanting and monitoring requirements, the approved development will be off-set 50 feet from the ~~2049 surveyed outward extent~~ of *Grand Fir Forest ESHA*, and future development will require a coastal development permit or permit

amendment; and

10. Pursuant with MCC Sections 20.720.035(D)(3) and 20.532.100(A)(1)(a), the riparian and *Grand Fir Forest ESHA* will not be significantly degraded by the residential development, as buffers, staging, erosion control, and fencing will be used to protect the sensitive and rare resources; and
11. Pursuant with MCC Sections 20.720.035(D)(4) and 20.532.100(A)(1)(b), the proposed location for the residential foundation and garage are located close to the (private) road and a minimum 50 feet from the 2019 surveyed environmentally sensitive habitat areas and there is no feasible, less environmentally damaging alternative location; and
12. Pursuant with MCC Sections 20.720.035(D)(5) and 20.532.100(A)(1)(c), the Report of Compliance and the Special Status Community Avoidance and Replanting Plan for 10770 Calypso Lane prepared by Spade Natural Resources Consulting (dated July 28, 2020) provides feasible mitigation measures capable of reducing project related impacts are, as modified, conditions of project approval; and

REVISED RECOMMENDED CONDITIONS:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.720.015 of the Mendocino Town Zoning Code. CDP 2018-0012 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. To remain valid, progress towards completion of the project must be continuous. The Applicants have sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.
2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division III 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 2018-0012 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. Any Building Permit request shall include all conditions of approval of CDP-2018-0012 (attached to or printed on the plans submitted).
10. Prior to final occupancy for any building permit, restoration planting shall be completed within 50 feet of the *Grand Fir Forest ESHA*. (The property owner shall furnish a statement that restoration planting is completed.)
11. Future development within the adopted buffer areas and *Riparian* and *Grand Fir Forest ESHAs*, shall require a coastal development permit or permit amendment, except exemptions allowed by MCC Section 20.720.020(A)(1) for repair and maintenance.
12. CDP_2018-0012 authorizes a sewer connection to Mendocino City Community Services District and an on-site septic tank intended to connect to a sewer lateral. Any future on-site solid waste treatment system shall obtain a coastal development permit or permit amendment.
13. Exterior lighting shall be kept to the minimum necessary for safety and security purposes and shall be downcast and shielded, and shall be positioned in a manner that will not shine light or allow light glare to extend beyond the boundaries of the parcel. Prior to issuance of a Building Permit, the property owner shall furnish exterior lighting details to the satisfaction of the Director or authorized designee.
14. In accordance with MCC Section 20.719.020(A), a buffer area shall be established adjacent to all environmentally sensitive habitat areas.
 - a. A minimum 100 foot buffer shall be maintained from the upland edge of riparian vegetation along all watercourses to the edge of any development activity, including grading, paving, trenching or other.
 - b. A minimum 100 foot buffer shall be memorialized and measured from the *Grand Fir Forest ESHA*.
15. Prior to the issuance of a Building Permit associated with CDP 2018-0012, the property owner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator and County Counsel, which shall provide that:
 - a. The conditions of Permit CDP 2018-0012 are imposed as covenants, conditions and restrictions on the use and enjoyment of the property.
 - b. The adopted findings and conditions approving CDP 2018-0012 shall be attached as exhibits to the Deed Restriction.
 - c. An exhibit shall be attached to the Deed Restricting identifying the property boundaries, all easements, the wells, and the *Grand Fir Forrest ESHA*, *Riparian ESHA*, their buffers, and the 50-foot wide restoration planting area. The exhibit shall include a legend and standard scale. The exhibit shall be prepared to the satisfaction of the Coastal Permit Administrator or their designee.
 - d. 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.

16. The property owner shall protect *Riparian ESHA*, *Grand Fir Forest ESHA*, and other environmentally sensitive habitat areas including California and northern red-legged frogs, special status plants, and nesting birds, by the following avoidance measures identified by Spade Natural Resources Consulting in the August 27, 2019, update letter to Botanical Survey Report and the March 26, 2020, Report of Compliance:
- a. **Birds and Bats** – No preconstruction surveys would be required for birds or bats if vegetation removal (including standing dead trees) is scheduled during September or October. The months of November through August would require a bird and/or bat survey dependent on the time of year.
 - i. **Birds.** 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 done 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.
 - ii. **Bats.** 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 shall 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 shall occur in September and October, or after the bats have left the roost.
 - b. **Northern Red-Legged Frog** – Project contractors shall be trained by a qualified biologist in the identification of the northern red-legged frog (*Rana aurora*). A survey for Northern red-legged frog shall occur within two weeks prior to construction. Construction crews will begin each day with a visual search around all stacked or stored materials, as well as along any silt fences to detect the presence of frogs. When a special status frog is detected, construction crews will contact California Department of Fish and Wildlife or a qualified biologist to relocate northern red-legged frogs prior to re-initiating work. If a rain event occurs during the construction period, all ground disturbing construction-related activities will cease for a period of 48 hours after the rain stops. Prior to resuming ground disturbing construction activities, trained construction crew member(s) will examine the site for the presence of frogs. If no special status frogs are found, construction activities may resume.
 - c. **Sonoma Tree Vole** – If trees are to be removed to accommodate the development, a Sonoma tree vole survey shall occur within two weeks of tree removal activities. Protocols per the California Department of Fish and Wildlife shall be followed should Sonoma tree vole nests be identified in trees to be removed. Similarly, survey's for Mendocino Leptonetid Spider shall occur if trees are to be removed or vegetation cleared from the forest.
 - d. **Grand Fir Forest and Riparian Vegetation Habitat Avoidance** – No direct impacts are to occur to onsite or nearby streams, riparian areas, or special status vegetation alliances, from construction or related activities. All staging and materials storage, and other project components must occur

more than 50 feet from *Grand Fir Forest ESHA* and 100 feet from *Riparian ESHA*. Prior to ground disturbance with heavy equipment for road relocation, construction fence with straw wattles along the base shall be installed at the northernmost boundary of the Road and Utility Easement on the property. If ground disturbance with heavy equipment is to occur southward of the road easement, construction fence with straw wattles shall also be installed along the dripline of the grand fir forest. All staging, storage, and equipment use shall occur within the existing non-native grassland and roadway, and shall not occur within established buffer areas, including the forested areas of the property.

17. The property owner shall provide for Mitigation Monitoring and Reporting Procedures, including those measures described in Sections 3 Impact Avoidance Plan & 4 Restoration Plan of the Special Status Community Avoidance and Replanting Plan dated July 28, 2020, as listed below:

Impact Avoidance Plan with the following modified procedures:

- a. **Staging and Fencing.** Prior to any construction related ground disturbing activities, orange plastic construction fence will be erected 50 feet from the outward extent of the *Grand Fir Forest ESHA* and 100 feet from *Riparian ESHA*. This construction fence will be maintained in good working order until all ground disturbance, staging, storage, and heavy equipment use associated with the project is complete. Fencing will be staked with an approximately 6 foot metal t-posts at 4 to 6 foot intervals, and secured to the t-posts with zip ties. During the rainy season (between October 31 and May 1 of any year), silt fencing will be installed and maintained in place on the outer (side away from ESHA) side of the construction fence. Staging and stockpiling will be limited to areas at least 50 feet from *Grand Fir Forest ESHA* and 100 feet from *Riparian ESHA*. No equipment or materials will enter sensitive areas, and all contractors will be made aware of the purpose of the construction fence, and where to store materials. (Supplanting report Section 3.1)
- b. **Erosion, Sedimentation and Dust Control.** (1) Ground disturbance will be minimized, and limited to that which is necessary for the project. (2) Any soil stockpiles will be covered or otherwise stabilized to reduce dust impacts. (3) Areas of disturbed soil will be planted or otherwise stabilized as soon as possible after disturbance.
- c. **Invasive Plant Contamination Avoidance.** (1) Heavy equipment will be washed off-site, prior to use at the site. Special care will be taken to wash tires and undercarriages, where invasive seeds might be present. (2) Soil stabilizing seed will not include invasive seed. (3) Landscaping will be limited to regionally native plants and will not include species found on the CallPC Invasive inventory. (Supplanting report Section 3.2.2)
- d. **Spill Prevention Plan.** (1) All heavy equipment maintenance, such as filling with oil and lubricants, will occur off-property. Fuel, oils, and lubricants used for heavy equipment will not be stored at the site. Paints, stains, cement, and other construction materials that may spill will be stored inside sheds or other storage structures if feasible, or in a dedicated portion of the staging area where a tarp or similar device is placed, preventing absorption into the soil if accidentally spilled. Brushes, pans, and other equipment to be rinsed will be wrapped in a plastic bag and rinsed off site. Wash water will not be thrown into the bushes. (2) An accidental spill kit will be kept on site, which will include a shovel, heavy duty plastic bags, absorbent pads, and personal protective devices (gloves, goggles etc.) necessary for the types of materials kept on the site. (3) The Caltrans Spill Prevention and Control manual (WM-4) included as Appendix A (or a more current version if available), should be followed for spill prevention and control procedures.
- e. **Contractor Education.** Prior to the onset of ground disturbing activities, an onsite contractor training will occur. Contractors and subcontractors will be trained by a qualified biologist or ecologist, to recognize on-site special status habitats, including special status vegetation alliances. The contractors will be made aware of the purpose of the construction fence, how it will need to be maintained in place in good working order throughout project implementation, how equipment and materials will need to stay out of sensitive areas, and where staging is to occur. A copy of the final

Special Status Community Avoidance and Mitigation Plan will be provided to contractors, and kept on site. (Supplanting report Section 3.4)

Restoration Plan with the following modified procedures:

- f. Restoration planting shall be completed prior to final occupancy. (Supplanting report Section 4).
- g. **Replacement Goal 1/ Replanting of clearing and replanting within 50 feet of the Grand Fir Forest.** Prior to the conclusion of the initial effective period of this permit and prior to final occupancy permit, restoration planting will occur as shown in Report Figure 2. Should adjustments to the planting plan be needed, an alternative planting plan shall be reviewed by the Coastal Permit Administrator, or their designee, and in consultation with California Department of Fish and Wildlife staff. (Supplanting report Section 4.1.1)
- h. Plants used will be purchased in a minimum 5 gallon size container, and will be irrigated or hand watered daily to twice a week as needed for at least the first dry season. Plants will be protected from deer browse, and dead plants will be replaced as needed. (Supplanting report Section 4.1.1)
- i. Quantity and variety of regionally native plants: minimum 2 Grand Fir, minimum 1 Douglas Fir, minimum 15 Sword Ferns, and minimum 11 Wax Myrtles. See Figure 2.
- j. **Report to California Department of Fish and Wildlife.** As soon as it is discovered that Grand fir forest, or areas mapped as such have been detrimentally impacted during project implementation, the head contractor on site will be responsible to contact the California Department of Fish and Wildlife (CDFW), who will be allowed on-site as soon as possible in order to assess and record the extent of the disturbance. California Department of Fish and Wildlife contacts include Jennifer Garrison at 707-964-1476.
- k. **Cease Disturbance.** As soon as it is discovered that accidental disturbance has taken place, all disturbances to the sensitive area will stop. Any equipment or materials will be removed from the area as carefully as possible. Protective fencing and/or flagging will be immediately placed around the disturbed area to prevent further impacts.
- l. **Soil Restoration.** After permission is granted by CDFW, any disturbed soils will be replaced to previous conditions to the extent feasible. Care will be taken to avoid impacts to any undisturbed areas or special status plants still present.
- m. **Replacement Goal 2/ Grand Fir Forest Restoration of Existing Areas Disturbed.** When areas of *Grand Fir Forest ESHA* is impacted, the Coastal Permit Administrator, or their designee, in consultation with the Department of Fish and Wildlife staff, shall require a Grand Fir Forest Restoration Plan. Restoration efforts will result in restoration of plants lost at a ratio of at least 2:1 or as required by the Coastal Permit Administrator.
- n. **Monitoring.** Monitoring will occur until replacement goals are achieved. The minimum monitoring period is ten years. (Supplanting report Section 5)
- o. **Reporting.** Reports shall be received by the California Department of Fish and Wildlife by December 1 of each year until replacement goals have been met and CDFW signs off on the restoration effort. Reports shall be sent by US Mail to:

Jennifer Garrison
California Department of Fish and Wildlife
32330 North Harbor Drive
Fort Bragg, CA 95437

Reports shall include the following information:

- Name and contact information of person in charge of monitoring activities, and name and contact information of reporting party.
 - Color photos of the active management areas at the beginning and end of the reporting period.
 - A summary of any issues encountered and management steps taken during the reporting period.
 - Methods used during that monitoring period to eradicate weeds, improve ecosystem health, and encourage appropriate vegetative growth.
 - Any new invasive plant species observed or evidence of pathogen presence will be described.
18. Prior to the issuance of a Building Permit, a mitigation monitoring and reporting plan (MMRP) shall be prepared and accepted by the Coastal Permit Administer in consultation with the Department of Fish and Wildlife. The MMRP shall include the adopted mitigation measures, criteria to assess survival of plantings after a ten-year period, and identify cessation of water after the third year.
19. 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 fess 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 \$2,530.25 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.
20. The code violation, storing an unassembled residence on the site, shall be resolved prior to the expiration of CDP 2018-0012. The structure shall either (1) be removed from the property or (2) a residential building permit final inspection shall be completed prior to the expiration of CDP 2018-0012.