



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

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MEMORANDUM

DATE SEPTEMBER 9, 2021

TO: COASTAL PERMIT ADMINISTRATOR

FROM: PLANNER JULIANA CHERRY

SUBJECT: CDP 2019-0032 EROSION HAZARDS AND GROUNDWATER RESOURCES

BACKGROUND: On August 18th, Planning Staff reviewed project recommendations with the applicant's agent, Wynn Coastal Planning. They request clarification about the type of test that would establish proof of water, see MCC Sec. 20.516.015(B) and Coastal Element Chapter 3.8 policies. Additionally on August 23rd, comments were received from Coastal Commission Staff about conditions #10(d) and #16, and about groundwater resource policies in Coastal Element Chapters 3.8 and 3.9 (Attachment B). In response, the following are either clarifications to the September 9th Staff Report or additional information about habitats and natural resources, hazards management, and groundwater resources. Staff recommends revisions to recommended Conditions #1 and #19.

HABITATS AND NATURAL RESOURCES: Staff Report pages 4-5 identify four on-site ESHAs. Development is proposed within the ESHA buffer, as there is no other feasible area available on the parcel for a residential structure. Mitigation measures are recommended to compensate for development within the ESHA buffers, including measures that will also serve to reduce impacts to protected resources (e.g. low stature fencing intended to restrict access to ESHA areas). This recommendation is supported in the correspondence received from North Coast District Supervisor Melissa Kraemer and statements from the applicant's agent. (Note that recommended Condition #14 limits future uses within the ESAH buffer.)

CLARIFICATIONS ABOUT HAZARDS MANAGEMENT: Staff Report pages 5-6 describe bluff, tsunami, landslide, erosion, fire, and flood hazards specific to this site. The applicant provided a geotechnical report and proposes to locate the residence further from the bluff edge than what is recommended. The application, including the filed technical reports, demonstrates that the project would neither *create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs* (See MCC Sec. 20.500.010(A)(3)).

The Staff Report for CDP 2019-0032 includes two conditions relating to unforeseen geological hazards: Condition #10(d) requires a deed restriction and Condition #16 supports MCC Sec. 20.500.020(E)(1) *Erosion*.

- 10(d). *The landowner shall not construct any bluff or shoreline protective devices to protect the subject structures or other improvements in the event that these structures are subject to damage, or other erosional hazards in the future without first obtaining a coastal development permit or permit amendment; and ...*
16. *In accordance with MCC Section 20.500.020(E), a coastal development permit, or permit amendment, is required prior to constructing seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls. These structures shall not be permitted unless judged necessary for the protection of existing development, public beaches or coastal dependent uses.*

These conditions do not individually allow construction of bluff or shoreline protective devices. Neither do they deny the property owner the opportunity to apply for a Coastal Development Permit or deny an application that could protect development from unforeseen geologic hazards and methods that could include relocating development further from the hazard. (Please note that Mendocino County Coastal Element Chapter 3.4 does not define "existing development." In adopting MCC Chapter 20.500 in 1991, Mendocino County may have intended "existing development" to include development previously authorized by a Coastal Development Permit.)

CLARIFICATIONS ABOUT GROUNDWATER RESOURCES: The site is a bluff parcel where any development, including ground water testing requires a coastal development permit and the property owner has filed said application. The lot, in its current size and arrangement, is shown on a 1966 assessor's parcel map; therefore, staff concludes that the lot existed prior to the County's adopting Coastal Element goals, policies, and implementation measures, like MCC Sec. 20.516 or Coastal Element Chapters 3.8 and 3.9. The site is also constrained by setbacks from the bluff edge and 100-foot minimum buffer distances from four different on-site ESHAs. The application demonstrates that there is no other feasible location for development.

The project site is located within a mapped Critical Water Resource Area. Under the project, potable water would be provided by a proposed on-site well. The proposed water system will be permitted through the Mendocino County Division of Environmental Health (DEH). The new well will be required to be constructed in accordance with DEH Standards and will comply with all relevant local and State regulations. DEH reviewed the project and commented on the proposed development. DEH also has standards for the amount of water that the well produces in order to be deemed adequate to serve a single-family residence. One gallon per minute is the standard for DEH for supporting a single-family residence; and half (0.5) gallon per minute is also acceptable when on-site water storage is provided. Staff finds the proposed project would not adversely affect groundwater resources and recommends adopting Condition 19, and these related conditions #20 and #21 that are avoidance measures intended to protect ESHA and limit impacts within buffer areas.

As the hearing for CDP 2018-0012 is scheduled in September (a typical month for groundwater testing), staff suggests extending the effective period for the authorized permit (to allow sufficient time complete groundwater testing, record a deed restriction, and secure building permits).

RECOMENDATION: Staff recommends revising the effective period of the Coastal Development Permit from two years to three years (See Attachment A):

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Coastal Zoning Code. The permit 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. The permit shall expire and become null and void at the expiration of ~~two~~ **three** years after the effective date except where construction and use of the property in reliance on such permit have been initiated prior to its expiration.

Staff recommends clarifying that MCC Sec. 20.516.015(B) shall be satisfied prior to the issuance of a building permit and prior to the conclusion of the initial expiration date for this permit (See Attachment A):

19. **Prior to the issuance of any building permit and prior to the conclusion of the initial expiration date for CDP 2019-0021, the Coastal Permit Administrator, or their designee, shall accept a test demonstrating proof of water in accordance with MCC Section 20.516.015(B).** ~~In accordance with MCC Section 20.516.015(B), demonstration of proof of water shall be completed prior to issuance of a building permit and prior to the conclusion of the initial expiration date for CDP_2019-0032.~~

ATTACHMENTS:

- A. Recommended Revisions to September 9, 2021 Conditions
- B. Email from Melissa Kraemer, North Coast District Supervisor, California Coastal Commission dated August 23, 2021.

RECOMMENDED REVISIONS TO SEPTEMBER 9, 2021**PROJECT FINDINGS AND CONDITIONS**

Pursuant to the provisions of Chapter 20.532 and Chapter 20.536 of the Mendocino County Coastal Zoning Code, staff recommends the Coastal Permit Administrator adopt a mitigated negative declaration and approve CDP 2019-0032, a request to construct a single family residence, within recommended buffers for environmentally sensitive habitat areas, and construct ancillary development, including two test wells and a sewer lateral connection, in the Coastal Zone at 47101 Big Gulch Road, Gualala; APN 145-121-18.

RECOMMENDED FINDINGS:

1. Pursuant with MCC Section 20.532.095(A)(1), Coastal Residential Land Use Types are principally permitted in the Rural Residential classification; single family residential land uses conform to the goals and policies of the certified Mendocino coastal program, including policies identified in Coastal Element Chapters 3.4 (Hazards) to avoid bluff retreat, 3.6 (Coastal Access) and Chapter 4.12 (Iversen Road to Sonoma County Like Planning Area); and
2. Pursuant with MCC Section 20.532.095(A)(2), the proposed residence would connect to a sewer lateral with on-site septic tank, PG&E service, and enjoys access to adequate utilities, access roads, including Big Gulch Road, drainage, and other necessary facilities; and
3. Pursuant with MCC Section 20.532.095(A)(3), Coastal Residential Land Uses are principally permitted uses in the Rural Residential District; the location of development meets or exceed MCC Chapter 20.376 standards; and the proposed development is consistent with the purpose and intent of the Rural Residential District; and
4. Pursuant with MCC Section 20.532.095(A)(4), as conditioned with mitigation, the project will not have any significant adverse impacts on the environment and the project would not substantially alter natural land forms along bluffs; and as conditioned, the recommended habitat enhancement measures would restore the protective values of the environmentally sensitive habitat buffers; and
5. Pursuant with MCC Section 20.532.095(A)(5), the proposed would not have any adverse impact on any known archaeological or paleontological resources, as Standard Condition 8 is in place when archaeological sites or artifacts are discovered and the Archaeological Commission accepted the cultural report on December 9, 2020; and
6. Pursuant with MCC Section 20.532.095(A)(6), other public services are in place to serve the existing Residential Land Use, including PG&E, on-site propane, sewer lateral connection, and two on-site test wells, and these services are adequate; and
7. Pursuant to MCC Section 20.532.095(B)(1), the proposed development conforms to public access and public recreation policies of Coastal Element Chapter 3.6 of Mendocino County General Plan; shoreline access is available within walking distance of the residence, at Bourns Landing.

REVISED RECOMMENDED CONDITIONS:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Coastal Zoning Code. The permit 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. The permit shall expire and become null and void at the expiration of **three** years after the effective date except where construction and use of the property in reliance on such permit have 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.

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 of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The property owners shall secure all required building permits for the proposed project, as required by the Building Inspection 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. This permit 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 property owner shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.
9. Any Building Permit request shall include all conditions of approval of Coastal Development Permit CDP_2019-0032. Conditions shall be attached to or printed on the plans submitted.
10. Prior to the issuance of a building permit, the property owner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator and County Counsel. The deed restriction will include the following statements and 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, 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 property owner; and

- d. The landowner shall not construct any bluff or shoreline protective devices to protect the subject structures or other improvements in the event that these structures are subject to damage, or other erosional hazards in the future without first obtaining a coastal development permit or permit amendment; and
 - e. The landowner shall remove the subject structures when bluff retreat reaches the point where the structures are threatened. In the event that portions of the subject structures, or other improvements associated with the subject structures, fall to the beach or ocean before they can be removed from the bluff-top, 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 conditions of Permit CDP_2019-0032 are imposed as covenants, conditions and restrictions on the use and enjoyment of the property; and
 - 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.
 - h. The adopted findings and conditions approving CDP_2019-0032 and the approved site plan (e.g. AGD Sheet A1.1 stamped received Sep 21, 2020) shall be attachment as exhibits to the Deed Restriction; and
 - i. A figure showing the location of the ESHA resource areas and ESHA buffers boundaries shall be provided and accepted by the approving authority. The basis of this figure shall be "Appendix 1 Constraints Figure." This figure shall be attachment as an exhibit to the Deed Restriction.
11. In accordance with **MCC Chapter 20.492**, all grading specifications and techniques shall follow the recommendations cited in the California Building Code and the geotechnical engineer's report (for example, Brunsing Associates Geotechnical Investigation of March 7, 2019 and correspondence dated June 11, 2020), and MCC Chapter 20.500.
12. In accordance with **MCC Chapter 20.496**, sensitive habitat area buffer widths shall be as follows:
- a. *Northern Coastal Bluff Scrub ESHA* buffer area shall be no less than 100 feet wide.
 - b. *Tufted Hair Grass Meadows ESHA* buffer area shall be no less than 100 feet wide.
 - c. *Slough Sedge Swards ESHA* buffer area shall be no less than 100 feet wide.
 - d. *Stream ESHA* buffer area shall be no less than 100 feet wide.
13. In accordance with **MCC Section 20.496.020(A)(4)** and as no other feasible site is available, the proposed location for the residence, garage, wells, and low-stature protective fencing shall be allowed within the ESHA buffer (See the approved site plan). As there are areas more than 50 feet from the ESHA, the following development shall not be located within 50 feet of the ESHA: construction staging, fences and gates, flag poles, septic tank, water storage tank, and propane tank.
14. The allowed uses within the environmentally sensitive habitat areas and their buffers shall be limited to site preparation and enhancement activities and *Open Space Use Types*, as allowed within the Rural Residential District. (See Section 6 of the *Coastal Habitat Mitigation and Enhancement Plan* prepared by WRA and dated July 2020.)
15. Future development, beyond that approved by the subject Coastal Development Permit, may be exempt from the requirement of a new Coastal Development Permit, provided development meets the exemption requirements of MCC Section 20.532.020 and is located outside adopted Environmentally

Sensitive Habitat Area (ESHA) buffers and ESHA resource areas. Future development located within ESHA buffers or ESHA resource areas requires a coastal development permit or permit amendment.

16. In accordance with **MCC Section 20.500.020(E)**, a coastal development permit, or permit amendment, is required prior to constructing seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls. These structures shall not be permitted unless judged necessary for the protection of existing development, public beaches or coastal dependent uses.
17. Prior to issuance of a Building Permit, the property owner shall furnish exterior lighting details to the satisfaction of the Director or their designee. In compliance with **MCC Section 20.504.035**, 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.
18. In accordance with **MCC Section 20.516.015(A)**, an on-site septic tank shall be installed with a connection to a sewer lateral. Any future repair or maintenance of the septic tank or sewer lateral shall require a coastal development permit or permit amendment.
19. Prior to the issuance of any building permit and prior to the conclusion of the initial expiration date for CDP 2019-0021, the Coastal Permit Administrator, or their designee, shall accept a test demonstrating proof of water in accordance with MCC Section 20.516.015(B).
20. Prior to construction or groundwater testing, the property owner shall provide for the following pre-construction measures (described in the *Coastal Habitat Mitigation and Enhancement Plan* report Section 5.1.1 prepared by WRA and dated July 2020):
 - a. Prior to ground disturbance or clearing of herbaceous vegetation associated with the digging of the test wells, the edge of ESHA shall be clearly marked with flagging to prevent entry. If test well drilling is to occur during the dry season and the access road is to be located the furthest extent feasible from the stream ESHA, erosion control measures may be excluded. If test well digging is conducted during the wet season, erosion control measures will be installed between work areas and edge of ESHA at a distance sufficient to prevent impacts to ESHA.
 - b. Prior to any ground disturbance or clearing of herbaceous vegetation associated with the proposed residence, a combination silt fence and high visibility construction fence shall be installed around the construction impact area along the *Stream ESHA* (to the north of the proposed residence). In the direction of remaining ESHA (to the west), high visibility construction fencing only shall be installed. The locations of the fencing and any ESHA boundaries in the vicinity of construction shall be clearly delineated by a qualified biologist.
 - c. Where and when feasible, perennial native species shall be "salvaged" from the designated construction area to be relocated to an appropriate sized container and maintained until such time they can be transplanted into a designated enhancement area. During the fence delineation, the qualified biologist shall identify "candidate" native plants for relocation (e.g., robust perennial herbs, small native shrubs).
 - d. Prior to construction, project contractors shall be informed of the sensitive resources within the area. Project contractors shall be trained in proper implementation of erosion and sediment control techniques.
21. During construction or groundwater testing, the following shall be completed (as described in the *Coastal Habitat Mitigation and Enhancement Plan* report Section 5.1.2 prepared by WRA and dated July 2020):
 - a. Construction and well drilling should occur during the dry season (generally April 15 through

October 15, weather dependent), and/or periods of substantial dry weather to minimize potential erosion and sedimentation (during the wet season: five days or greater of less than 0.25 inch of rainfall with a 10 day preceding rainfall of less than one inch, and a 25 day preceding rainfall of less than three inches). Should work necessarily occur during the wet season, erosion control measures (e.g., silt fencing) will be deployed. Likewise, a biological monitor should inspect the site during wet season work to ensure that erosion control measures are appropriate and effective.

- b. No grading, placement of fill material and/or equipment, or other ground disturbance may occur beyond the designated construction impact area without County of Mendocino approval and consultation with a qualified biologist. The fencing shall be inspected by a qualified biologist at least once during construction to ensure that no encroachment into ESHA has occurred. The combination silt fence/construction fence may only be removed once all construction activities are completed and revegetation has occurred.
 - c. Activities shall not disturb vegetation, topography, or hydrology beyond the construction impact area, both during and following construction, including, but not limited to laying down of materials or equipment, parking of vehicles, regular and frequent visitation, side cast of excess building materials.
 - d. Solid materials, including, but not limited to, wood, masonry, rock, glass, paper, or other materials shall not be stored outside of the construction impact area. Solid waste materials shall be stored within designated areas outside of the literal extent of ESHA, in clearly delineated designated areas.
 - e. Fluid materials, including, but not limited to concrete, wash water, lubricants, gasoline, diesel, solvents, and paint used during construction shall not be disposed of on-site and shall be stored or confined as necessary to prevent spillage into natural habitats including the onsite ESHA. Spill prevention devices (e.g., drip pans) shall be available for all fluids necessary to construction activities. If a spill of such materials occurs, the area shall be cleaned immediately and contaminated materials disposed of properly. The affected area shall be restored to its original condition.
 - f. At least one cubic yard of cut topsoil from foundation work and other construction related activities shall be relocated to a tarpaulin and covered with mulch. This topsoil will serve as a slurry medium for post-construction seed scattering in the enhancement areas. The cut topsoil shall be stored in the on-site non-native grassland or Monterey cypress woodland portion of the Project Area.
22. Post-construction and prior to Final Occupancy, the property owner shall provide for the following post-construction measures (as described in the *Coastal Habitat Mitigation and Enhancement Plan* report Section 5.1.3 prepared by WRA and dated July 2020):
- a. Immediately following completion of construction activities, areas of bare soil outside of proposed enhancement areas shall be seeded with fast-growing native annual and perennial herbaceous species to reduce the potential for erosion (Table 1). Certified weed-free straw and/or mulch shall be lain down with the seed. Those areas of unearthed bare soil from construction related activities within the proposed enhancement areas shall be seeded and planted from the recommended plant palette (See report Section 5.1.3 Tables 2 and 3).
 - b. Landscape plantings in the immediate vicinity of the proposed residence shall be preferentially species native to coastal Mendocino County. Those non-native species selected for landscape plantings or gardening shall not be invasive species listed with Cal-IPC (2020) or CDFA (2003), or have the potential to escape into the remainder of the Parcel. A qualified biologist and/or landscape contractor can assist the property owners to determine which species would meet these criteria. Planting of non-native species shall not occur within the proposed enhancement areas, on-site ESHA, or the non-native grassland within the ESHA buffer.

- c. A low stature fence will be erected (during the project) to provide a barrier between the residence and the *Northern Coastal Bluff Scrub ESHA*, *Tufted Hair Grass Meadow ESHA*, and *Stream ESHA*. Visitation to these habitats shall be kept to a minimum and for the purpose of typical property management and habitat enhancement (e.g., removal of invasive weeds). The property owners (current and future) shall inform all guests, contractors, or other visitors to the property that frequent entry into these habitats is forbidden for reasons other than property and habitat management.
 - d. Monitoring of enhancement areas, a photographic record, and a report documenting the implementation of the enhancement efforts shall be submitted to the County of Mendocino. The report shall be drafted on an annual basis for 5 years and will be submitted no later than December 31.
23. The property owner shall provide for the following Mitigation Measures (as described in the *Environmentally Sensitive Habitat Area Survey* report Section 8.0 prepared by WRA and dated May 2019):
- a. Mitigation Measure 1-1: Reduce vegetation removal to the minimum necessary by targeting vegetation only within the footprint of future development. Prior to construction, erect temporary fencing or silt wattle between the Least Damaging Area (or LDA) boundary and adjacent environmentally sensitive habitat area (or ESHA). See "Figure 3 Constraints Figure."
 - b. Mitigation Measure 1-2: Utilize the existing landscaped/developed areas for staging and laydown area for all construction materials and planning.
 - c. Mitigation Measure 1-3: Prior to final occupancy, reseed and/or replant with fast-growing native herbaceous species known to occur on the Mendocino coast, to reinforce areas of loosened soil.
 - d. Mitigation Measure 1-4: Prior to construction, a native plant landscaping plan shall be developed by a licensed landscape architect to address compensation for impacts and to enhance the ESHA buffer. The plan shall include planting native shrubs and herbs to reduce cover of non-native grasses and herbs within the Least Damaging Area and enhance on-site native grassland. Plants used shall be locally sourced from nearby nursery or botanical garden.
 - e. Mitigation Measure 1-5: Prior to construction, an iceplant removal plan shall be developed by a qualified biologist or landscape architect, to enhance both coastal bluff scrub and tufted hair grass meadow habitat and enhance habitat for coast morning glory. The plan should include a map of area of iceplant to be removed and a description of restoration efforts post removal, which may include seeding, supplemental planting or consecutive years of iceplant removal.
 - f. Mitigation Measure 2-1: Prior to construction, literal extent of special-status plants will be flagged for avoidance. Development within environmentally sensitive habitat areas is prohibited.
 - g. Mitigation Measure 2-2: All staging areas shall be located within the Least Damaging Area. Machinery (i.e. excavators, backhoe) used shall be limited to the smallest size appropriate to complete the work. All equipment fueling, lubrication, and maintenance shall be completed off-site. Any fuel or lubrication spills will be cleaned up and contaminated soils disposed of properly.
 - h. Mitigation Measure 2-3: Prior to final occupancy, areas of ground disturbance shall be reseeded with fast growing herbaceous species native to the Mendocino coast.
 - i. Mitigation Measure 2-4: Implementation of standard erosion best management practices such as straw wattles, silt fencing, hay bales, etc., shall be used to prevent sediment migration and runoff. Where feasible, work will be conducted during the dry season to reduce the potential for sediment migration and runoff.
 - j. Mitigation Measure 3-1: 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 pre-construction breeding bird surveys 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 an exclusion zone determined by a qualified biologist. 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 have fledged or the nest is otherwise no longer active. A biologist should manage monitoring of the nest to ensure the buffer is sufficient to protect the nest site from potential disturbances.

24. The property owner shall adhere to the avoidance, minimization and mitigation measures, and enhancement activities identified in the July 2020 *Coastal Habitat Mitigation and Enhancement Plan* prepared by WRA, including:
 - a. Section 6.2 Site preparation and implementation of enhancement areas
 - b. Section 6.3 Monitoring and success criteria of the enhancement areas
 - c. Section 6.4 Breeding birds
 - d. Section 7.0 Contingency measures
25. The property owner shall provide for the following compensatory mitigation, as recommended in the July 27, 2020 addendum to the Environmentally Sensitive Habitat Area survey report prepared by WRA:
 - a. The removal of iceplant in 0.06 acres of *Tufted Hair Grass Meadow ESHA* and *Norther Coastal Bluff Scrub ESHA*; and
 - b. Enhancement of 0.06 acre within the Least Damaging Areas shall establish additional habitat for coastal bluff morning glory and enhance non-native grassland to native grassland in quantities similar to quantities impacted (1:1 ratio).
26. The summer following final occupancy and to the satisfaction of California Department of Fish and Wildlife, the property owner shall demonstrate compliance with the July 2020 *Coastal Habitat Mitigation and Enhancement Plan* report Section 6.0 *Enhancement activities and monitoring* specifications, *et seq.*
27. 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 \$2,530.25 or current fee 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 public hearing action*. 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.

From: "Kraemer, Melissa@Coastal" <Melissa.Kraemer@coastal.ca.gov>
To: Juliana Cherry <cherryj@mendocinocounty.org>
CC: Julia Krog <krogj@mendocinocounty.org>
Date: 8/23/2021 1:17 PM
Subject: comments on CDP_2019-0032 (Wahlberg)

Hi Juliana

We noticed that special conditions 19 and 20 relate to groundwater testing and demonstration of proof of adequate water. When we previously commented on this application, we focused on the geologic hazard issues and were unaware that a fundamental CDP application filing requirement (demonstration of proof of water) had not been established. The County's LCP requires that the approving authority consider whether an adequate on-site water source to serve proposed development is available **before** approving a CDP. See County Land Use Plan (LUP) Policy 3.8-1, which requires that the adequacy of water services, among others, be evaluated when CDP applications are granted or modified, in conjunction with LUP Policy 3.9-1 and Coastal Zoning Code sec. 20.532.095(A)(2), which require that residential development **only** be authorized "provided that adequate... water... exists..." and that there are **findings** to support the approving authority's decision that "The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities." At this point, because no water testing has been done, it is unknown whether there is adequate water to support the proposed use. In order to allow the County to make the necessary findings demonstrating that adequate services exist to serve the proposed development, the County needs to receive evidence of an adequate water supply prior to approval of the CDP. As currently recommended, proof of water is not required to be submitted until after the CDP has been issued and before the building permit is issued. As we have recommended to the County in comments on various other CDPs in the past, we recommend the County require submittal of proof of water as a CDP application filing requirement rather than as a condition of approval of building permit issuance.

In addition, we oppose two recommended conditions related to the possible future authorization of a shoreline protective device to protect the authorized development. Both the Coastal Act and the certified Land Use Plan (Policy 3.4-7) require that new development be sufficiently set back from the bluff edge so as not to be threatened by erosion/retreat hazards during its economic life. The Coastal Zoning Code includes numerous standards for development in hazardous areas, such as the subject site, the purpose of which are, in part, to ensure that the authorized development neither creates nor contributes "significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs" [emphasis added; CZC sec. 20.500.010(A)(3)]. As such, if, after proof of water has been demonstrated, the County elects to approve development on the subject site, we recommend the following deletions to the recommended conditions:

* Condition 10-d. Delete the last part of the condition that reads "...without first obtaining a coastal development permit or permit amendment;..."

[cid:image001.jpg@01D79821.4098AFD0]

* Condition 16: Delete this condition in its entirety, which conflicts with Condition 10-e as well as with the LCP policies and standards related to Hazards:

[cid:image002.jpg@01D79821.4098AFD0]

Please note that the code reference in the condition (MCC sec. 20.500.020(E)) pertains only to "existing development, public beaches or coastal dependent uses" as being entitled to shoreline protection. The proposed development is **not** such entitled "existing development" which refers to development in existence at the time that the corresponding Coastal Act policy statute went into effect (i.e., January 1, 1977). Any authorized development on the site should be required to be removed when bluff retreat reaches the point where the structures are threatened, as required by the LCP.

Finally, while Condition 10-i requires recordation of a map showing the locations of ESHA and ESHA buffers, and Condition 12 specifies buffer widths, and Condition 14 restricts allowed uses within ESHA and ESHA buffer areas, it's unclear what uses are allowed within ESHA and ESHA buffers under this permit. Any approval should specify in the permit conditions (the terms and conditions should be required to be recorded and should run with the land and bind all successors in interest) the list of specific uses that are allowed in the restricted areas. Future owners of the property are not going to have access to Section 6 of the WRA report from July of 2020 to understand what may be allowed in restricted areas. We also think that a feasible mitigation measure to protect ESHA could be the required erection of a mitigation fence (e.g., low split rail fence) between the approved development footprint and the ESHA/ESHA buffers to remind owners of restrictions on the use and enjoyment of the property outside of the approved building footprint (e.g., no gardens, landscaping, patios, trampolines, dog runs, etc.)

Please let me know if you have any questions or would like to discuss these comments.

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Please note that public counter hours for all Commission offices are currently suspended indefinitely in light of the coronavirus. However, in order to provide the public with continuity of service while protecting both you and our employees, the Commission remains open for business, and you can contact staff by phone, email, and regular mail (email communication likely will result in the fastest response). In addition, more information on the Commission's response to the COVID-19 virus can be found on our website. Thank you for your patience and understanding as we all work through this public health crisis.