



## SECOND SUPPLEMENTAL MEMORANDUM

DATE SEPTEMBER 9, 2021

TO: COASTAL PERMIT ADMINISTRATOR

FROM: PLANNER JULIANA CHERRY

**SUBJECT: CDP 2019-0032 ADDITIONAL CONDITIONS AND REVISED FINDINGS**

**BACKGROUND:** On September 2, PBS received additional comments from California Coastal Commission staff and these comments were shared with the applicant's agent, Wynn Coastal Planning. On September 8 and in response to these additional comments, the agent requested to limit the scope of the proposed project.

Initially proposed as a two-phase project (as detailed in the Supplemental Memorandum) is now proposed as two separate applications. The September 9 published staff report described the project as follows:

*"A Standard Coastal Development Permit request to construct a single family residence with attachment covered deck; two car garage; driveway; two test wells with one to be converted to a production well; water storage tank; fencing; and septic tank with connection to community sewer; and connect to utilities. The proposed development area is less than 100 feet from surveyed environmentally sensitive habitat areas, or ESHA. With adoption of the recommended mitigation and avoidance measures, construction would occur in the least damaging location and outside of the mapped ESHA. The recommended bluff top setback is 26 feet. A coastal habitat mitigation and enhancement plan, prepared by WRA in July 2020, includes recommendations to enhance the site following construction of the proposed project. The majority of the residential footprint is within the buffer area, as there is no other feasible site available on the parcel. Recommended conditions would require ancillary structures to be located more than 50 feet from ESHA (e.g. water storage, propane tank, flag pole, fencing and others) (page 1)."*

As originally proposed, CDP\_2019-0032 requests to complete groundwater testing to demonstrate compliance with MCC Chapter 20.516. Shortly after testing the site's hydrology, the applicant intends to file second coastal development permit request to construct a residence and ancillary development.

**FURTHER CLARIFIED RECOMMENDATION:** Attached are recommended additional revisions to findings and conditions as the scope of the project is limited to two test wells. Also included, as Attachment C, is a takings analysis should the proposed test wells be denied.

\* Attachment A, with text ~~strikeouts~~ and underlines, includes revisions to the project description, findings in support of two test wells, and several of the recommended conditions.

\* Attachment B, includes retained conditions that relate to the limited project scope (two test wells). Three new conditions are also recommended.

\* Attachment C includes takings analysis, which was suggested by Coastal Commission staff.

### **ATTACHMENTS:**

- A. Edited conditions from Supplemental Memorandum with ~~strikeout~~ and underlined copy
- B. Additional Revisions to September 9, 2021 Findings and Conditions – Supplanting Previous Recommendations
- C. Supplement to Staff Report: Takings Analysis

**EDITED FINDINGS AND CONDITIONS FROM  
SUPPLEMENTAL MEMORANDUM  
WITH  
STRIKEOUT AND UNDERLINED COPY**

The following text is from the September 9 dated supplemental memorandum. Additional text is underlined. ~~Strikeouts~~ indicate where text would be deleted.

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 drill 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.

**REVISED 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 completing two test wells on property abutting the shore~~ conforms 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), 3.8 (Transportation, Utilities and Public Services), and Chapter 4.12 (Iversen Road to Sonoma County Like Planning Area); and
2. Pursuant with MCC Section 20.532.095(A)(2), the ~~property 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; a geotechnical investigation includes recommendations to reduce erosion hazards associated with drainage and water runoff; and
3. Pursuant with MCC Section 20.532.095(A)(3), Coastal Residential Land Uses are principally permitted uses in the Rural Residential District and MCC Chapter 20.516 specifies when groundwater testing is required for residential development; ~~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 (e.g. PG&E, on-site propane, sewer lateral connection), and two on-site test wells,~~ have been considered and these services are adequate; and in conformance with Ordinance No. 4493, the anticipated water use of the proposed development has been considered and additional measures to conserve water are conditions of project approval; 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; and

8. Pursuant to MCC Section 20.532.100(A), the Northern Coastal Bluff Scrub ESHA, the Tufted Hair Grass Meadows ESHA, the Slough Sedge Swards ESHA, and the Stream ESHAs will not be significantly degraded by the test wells, as development is limited to the least damaging alternative location and mitigation measures, including a proposed habitat enhancement plan, are capable of reducing impacts related to drilling test wells on this constrained coastal bluff property.

**REVISED RECOMMENDED CONDITIONS:**

1. This action shall become final on the 11<sup>th</sup> day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Coastal 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 GDP\_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.~~
- 11.9. 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.
- 12.10. 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)**.~~
- 20.11. 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.

~~21.12.~~ 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, 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. Prior to Final Occupancy and 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. Prior to Final Occupancy, 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. Prior to Final Occupancy, 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 qualified biologist or 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~~
- 25.13. 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.
- ~~26. In accordance with the 1982 Mendocino County Coastal Ground Water Study recommended water conservation measures, the project will incorporate proven water conservation technology in the construction of the project, including, but not limited to, low flush toilets, flow control inserts on showers (or similar), single control faucets, water efficient dishwashers and clothes washers, and hot water pipe insulation. The property owner may apply for a Coastal Development Permit to install grey water recycling.~~



- ~~27.14.~~ In accordance with the 1982 Mendocino County Coastal Ground Water Study recommended water conservation measures, the property owner will install and maintain water efficient irrigation systems that minimize runoff and evaporation, and maximize the water intended to reach plant roots. Drip irrigation, soil moisture sensors and automatic irrigation systems are methods of improving irrigation efficiency.
- ~~28.15.~~ In accordance with the 1982 Mendocino County Coastal Ground Water Study recommended water conservation measures, the project will either keep rainwater on site in a retention basin to aid in ground water recharge, or where this is not feasible, the project shall be designed to reduce, retard, and disperse runoff. This may be accomplished by mulched and or terraced slopes to reduce erosion and retain rainfall, porous drain swales and paving materials for infiltration, out-sloped roads to spread runoff evenly down slope, and landscaping with suitable water-conserving erosion control plants that will protect the soil, facilitate infiltration of rainwater, and reduce runoff.
16. In accordance with the 1982 Mendocino County Coastal Ground Water Study recommended water conservation measures and to encourage ground water recharge, the project will preserve existing natural drainage areas and encourage the incorporation of natural drainage systems in the development of the site.
17. 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).
18. Within 90 days of ground water testing, the applicant is encouraged to request a Coastal Development Permit for residential development.
19. A temporary water storage tank, in accord with Ordinance No. 4493, may be on-site. The intention is to store water extracted during groundwater testing, which may include a 17-hour pump test.

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

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 drill two test wells 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), completing two test wells on property abutting the shore conforms 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), 3.8 (Transportation, Utilities and Public Services), and Chapter 4.12 (Iversen Road to Sonoma County Like Planning Area); and
2. Pursuant with MCC Section 20.532.095(A)(2), the property enjoys access to adequate utilities, access roads, including Big Gulch Road, drainage, and other necessary facilities; a geotechnical investigation includes recommendations to reduce erosion hazards associated with drainage and water runoff; and
3. Pursuant with MCC Section 20.532.095(A)(3), Coastal Residential Land Uses are principally permitted uses in the Rural Residential District and MCC Chapter 20.516 specifies when groundwater testing is required for residential development; and the proposed test wells 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 (e.g. PG&E, on-site propane, sewer lateral connection) have been considered and these services are adequate to serve the property; and in conformance with Ordinance No. 4493, the anticipated water use of the proposed development has been considered and additional measures to conserve water are conditions of project approval; 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; and
8. Pursuant to MCC Section 20.532.100(A), the *Northern Coastal Bluff Scrub ESHA*, the *Tufted Hair Grass Meadows ESHA*, the *Slough Sedge Swards ESHA*, and the *Stream ESHAs* will not be significantly degraded by the test wells, as development is limited to the least damaging alternative location and mitigation measures are capable of reducing impacts related to drilling test wells on this constrained coastal bluff property.

**RECOMMENDED CONDITIONS:**

1. This action shall become final on the 11<sup>th</sup> day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Coastal 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. 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.
10. 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.
11. Prior to 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.
  12. During 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.
13. 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.
  14. In accordance with the 1982 Mendocino County Coastal Ground Water Study recommended water conservation measures, the property owner will install and maintain water efficient irrigation systems that minimize runoff and evaporation, and maximize the water intended to reach plant roots. Drip irrigation, soil moisture sensors and automatic irrigation systems are methods of improving irrigation efficiency.
  15. In accordance with the 1982 Mendocino County Coastal Ground Water Study recommended water conservation measures, the project will either keep rainwater on site in a retention basin to aid in ground water recharge, or where this is not feasible, the project shall be designed to reduce, retard, and disperse runoff. This may be accomplished by mulched and or terraced slopes to reduce erosion and retain rainfall, porous drain swales and paving materials for infiltration, out-sloped roads to spread runoff evenly down slope, and landscaping with suitable water-conserving erosion control plants that will protect the soil, facilitate infiltration of rainwater, and reduce runoff.
  16. In accordance with the 1982 Mendocino County Coastal Ground Water Study recommended water conservation measures and to encourage ground water recharge, the project will preserve existing natural drainage areas and encourage the incorporation of natural drainage systems in the development of the site.
  17. 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).
  18. Within 90 days of ground water testing, the applicant is encouraged to file a request for a Coastal Development Permit to authorize residential development.
  19. A temporary water storage tank, in accord with Ordinance No. 4493, may be on-site. The intention is to store water extracted during groundwater testing, which may include a 17-hour pump test.

**TAKINGS ANALYSIS:** Despite the identification of the least environmentally damaging alternative, the proposed project is not consistent with Section 20.496.020 (A)(1), which reads in part, “the buffer area shall be measured from the outside edge of Environmentally Sensitive Habitat Areas and shall not be less than fifty feet in width.” The proposed test wells are sited less than fifty feet from ESHA boundaries.

Section 30010 of the California Coastal Act addresses regulatory takings and states the following:

*The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.*

In this case, prohibiting development within fifty feet of an ESHA would deprive the owner of all economic use of the property. There are no alternative development options where the project can be at least fifty feet from ESHA, as the majority of the site is ESHA or associated buffers.

Some factors courts examine to determine if a regulatory taking has occurred involve the presence of reasonable investment-backed expectations, the degree to which a regulation may interfere with those reasonable investment-backed expectations, and whether or not a regulation deprives an owner of all economic use of the property. The scale of the test wells is consistent with similar properties in the vicinity, as residential development on the parcel is dependent upon an on-site water source located so as to not preclude residential development in the future. On September 8, 2020, the applicant’s agent submitted a memo related to the Takings Analysis question and an outline of the cost the applicant has incurred since purchasing the site in an effort to develop the property. Considering residential uses are principally permitted use types in the RR District, and residential development exists on adjacent properties, a reasonable person would believe that the property could support a residential use.

The applicant acquired the lot on July 10, 2018. The subject parcel was purchased for \$200,000 and the applicant has spent over \$100,000 since purchasing the site in operation and management. The applicant has spent the 3 years since purchase working towards construction of habitable development similar in size and scale to development on adjacent parcels. Development footprints on nearby parcels were evaluated in order to assess if the applicant’s expectation to build an approximately 1,611 square foot single-family residence with 1,294 square feet of decks, a 511 square foot attached garage, drill tests wells (with one to be converted to a production well) on approximately 0.88 acres was similar in size and scope to comparable single-family homes and ancillary development in the area. The footprint of the future single-family residence would be 1,368 square feet. The average overall footprint of single-family residences in the area is 2,000 square feet.

MCC Section 20.368.010 states the principally permitted use types in the RR District include: *Coastal Residential Use Types, Coastal Agricultural Use Types, and Coastal Open Space Use Types*. Due to the prevalence of ESHA on the parcel, principally permitted use types, except for passive recreation, would encroach into the ESHA buffer. The allowed agricultural uses would disturb the site (e.g. clearing) and is not the desired use of the property. Passive recreation uses could be a less impactful than the construction of a single-family residence; but passive recreation uses do not afford the property owner an economically viable use.

The property was purchased with an investment-backed expectation that residential use is permitted in the RR District. The proposed project siting is considered the most feasible, least environmentally damaging alternative that avoids sensitive plant ESHA. Mitigation and Avoidance Measures are recommended in the Coastal Habitat Mitigation and Enhancement Plan and are recommended as conditions to ensure the test wells do not have an adverse impact on the sensitive resources at the site.