

## Jessie Waldman - comments on CDP\_2020-0022 (Irwin)

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**From:** "Kraemer, Melissa@Coastal" <Melissa.Kraemer@coastal.ca.gov>  
**To:** Jessie Waldman <waldmanj@mendocinocounty.org>  
**Date:** 1/10/2022 12:40 PM  
**Subject:** comments on CDP\_2020-0022 (Irwin)  
**Cc:** "Jansen, Bente@Coastal" <bente.jansen@coastal.ca.gov>, "Garcia,Tatiana@C..."

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Hello Jessie

We reviewed the staff report and have several concerns with the recommended findings for approval at this time. We apologize for not commenting on the initial referral, but we cannot locate paperwork for this project received from the County in our files. Did the County mail us a copy of the initial referral and subsequent environmental documents/updated referrals? We recognize that mailing, especially during the earlier phases of the pandemic in 2020, was challenging, and at this point it is unclear if the paperwork error or misfiling was from the County's records or ours (our office has gone through staffing changes and staff shortages over the past couple of years, which could have resulted in filing errors that we're unaware of). Looking at the County's public referral website, we see referral documents posted from September 2020 but nothing thereafter in terms of updated information. We also cannot locate past notices for the CEQA document or other project information in our emails or hardcopy files for this application. Regardless, we now offer the following comments.

1. Has a recent water supply test well established that sufficient water supply is available to serve the proposed single family dwelling? Based on the findings, it appears the last water supply test was conducted in 1973 – nearly 50 years ago. If that's the case, the County should require submittal of updated test well results prior to filing a CDP application for the dwelling as complete. Proof of water is needed in order for the County to make the findings to support approval of a residence on the site, and it's unclear what the measured water supply was that allegedly was demonstrated as adequate 50 years ago (the findings do not say) and whether the 50-year-old standards are equivalent to today's standards. Without this necessary supporting information, we believe the County's findings are inadequate to support the LCP requirement that the site will be adequately served. The County's LCP requires that the approving authority consider whether an adequate onsite 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." As noted in the staff report, the site is located in a Critical Water Resource Area, and the State has experienced significant periods of drought over the past several decades. As we have previously commented to the County for other projects, the County should not defer submittal of the proof of water evidence as a condition of issuing or filing a building permit application.
2. The County is recommending approval of a project that is fundamentally inconsistent with the LCP on multiple fronts: [potentially] lack of demonstration of adequate water supply and [as noted in the staff report findings] inadequate ESHA buffers. Denying the project is an alternative that the County could choose to achieve LCP consistency. If the County is concerned that denial would lead to a

regulatory takings situation, then the County must evaluate in its findings whether a denial would result in a regulatory takings. We don't see any findings in the staff report evaluating a takings claim that would compel the County to approve the proposed application. It should be noted that without demonstration of adequate services, a takings claim for the residential development project may not be viable.

3. IF adequate services are demonstrated [following an updated water supply test if needed processed under a separate CDP authorization issued prior to consideration of the residential development that would be served by the demonstrated adequate water supply] and IF after evaluating a takings claim the County concludes that it must approve a residential use of the site to avoid a takings, we recommend adding additional conditions to protect site ESHA, including (1) require recordation of a map showing the locations of ESHA and ESHA buffers [we could find no ESHA map in the circulated project documents that we were able to access from the County's website]; (2) specify mandatory buffer widths for protect the remaining ESHA on the site that won't be degraded by the direct removal of/encroachment into Bishop pine forest and other identified ESHA for the proposed residential development; (3) restrict allowed uses within ESHA and ESHA buffers and specify those future uses that may be allowed within ESHA and ESHA buffers (either under this permit and/or subject to future permit modifications); (4) require the terms and conditions of the CDP, including recorded open space/deed restricted areas, to be recorded against the property so that they run with the land and bind all successors in interest; (5) add a feasible mitigation measure to further protect wetland and forest ESHA requiring the erection of a mitigation fence (e.g., low split rail fence or other symbolic fencing) between the approved development footprint and the remaining wetland and forest ESHA and ESHA buffers on the property 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, vegetation removal, etc.).

Thank you for the opportunity to comment and if you have questions or would like to discuss these comments please let us know.

**Melissa B. Kraemer** *(she/her)*

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