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MEMORANDUM

DATE: February 22, 2022
TO: Coastal Permit Administrator Gonzalez
FROM: Jessie Waldman, Planner II
SUBJECT: CDP_2020-0022 (Irwin) Revisions to recommended Conditions of Approval

On January 10, 2022, Planning Staff received comments from the California Coastal Commission (CCC), recommending further Conditions of Approval and regarding future development and possible risks of adverse environmental effects, including Groundwater Resources and Environmentally Sensitive Habitat Area (ESHA).

On February 9, 2022, Planning Staff received comments from the California Native Plant Society (CNPS) and California Department of Fish and Wildlife (CDFW), recommending further conditions of approval and regarding future development and possible risks of adverse environmental effects, including Groundwater Resources and Environmentally Sensitive Habitat Area (ESHA).

On February 10, 2022, the project was scheduled for presentation to the Coastal Permit Administrator (CPA), where CPA Gonzalez recommended continuation of the project due to inadequate time for staff to respond to comments submitted at the close of the noticing period. The project was continued to a date certain of March 10, 2022.

On February 11, 2022, Planning Staff sent a request to the Division of Environmental Health (DEH) for review of the Water Test Report, where DEH responded that they do not require Proof of Water for an initial residence; the only regulations fall under the Coastal Element and Mendocino County Code of Regulations.

On February 11, 2022, DEH responded with the following comments:

1. Septic permit (ST27463) has been approved but not issued, to support a three bedroom residence consistent with the proposed development; and
2. DEH does not have any requirements for proof of water for the first residence on a parcel; and
3. No well permit on file.

Upon review of comments received from CCC, CNPS and CDFW, Planning Staff has prepared revisions to the recommended Conditions of Approval to concur with CNPS and CDFW, with the exception of CNPS recommendation for a 100% survival rate of Bishop Pine Forest due to the hardship and time to attain this recommendation. And where CDFW approves the 80% survival rate of Bishop Pine Forest, a restoration plan will need to be approved by CDFW as stated in the revised recommended Condition of Approval #15 prior to issuance of this Coastal Development Permit.

Coastal Development Permits are subject to Proof of Water regulations pursuant to Mendocino County Coastal Element, Mendocino County Coastal Groundwater Development Guidelines (MCCGWDG) and Mendocino County Code of Regulations (MCC) Chapter 20.516 (Transportation, Utilities and Public Services). The property owner shall provide proof of water as required by Local Coastal Program policies Chapters 3.8-1 and 3.9-1 and MCC Section 20.516.015(B). No permit for the single-family residence shall be issued until there is demonstrated sufficient yield to support the construction of the single-family residence. If sufficient yield cannot be demonstrated, the single-family residence shall not be constructed, as stated in the revised recommended Condition of Approval 27, prior to issuance of this Coastal Development Permit.

Revisions to Groundwater Section of Staff Report, Section 7:

The site is designated as a Critical Water Resource Area, as shown on the *Ground Water Resources* map. New development shall be approved subject to the availability of necessary public services and consistent with MCC Sections 20.516.015(A) Septage and Leach Field and (B) Water Supply. The proposed development includes the establishment of an on-site septic system and on-site well, [a 5,000 gallon water storage tank for Elk Community Services District and a 7,000 gallon water storage tank for private use](#). The project was referred to the Mendocino County Division of Environmental Health (DEH) to review impacts to water and septic. DEH commented that no well permit has been applied for at this time. DEH responded with comments stating a septic permit (ST27463) has been approved but not issued, to support a three bedroom residence, consistent with the proposed development.

The original subdivision for this parcel, CDMS 27-72, was approved with conditions in May of 1972, where a soils percolation test, water quantity and a water quality test approved by the Division of Environmental Health was required and satisfied in May 1972. The second subdivision for this parcel, CDMD 172-73, was approved with conditions in October of 1973, where a soils percolation test, water quantity evaluation and a standard mineral analysis approved by the Division of Environmental Health was required and satisfied in July 1973.

[Coastal Development Permits are subject to Proof of Water regulations under the Mendocino County Coastal Element, Mendocino County Coastal Groundwater Development Guidelines \(MCCGWDG\) and Mendocino County Code of Regulations \(MCC\) Chapter 20.516 \(Transportation, Utilities and Public Services\).](#)

[Mendocino County Coastal Element Policy 3.8-1 states:](#)

[Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits.](#)

[Mendocino County Coastal Element Policy 3.9-1 states:](#)

[One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards. Determination of service capacity shall be made prior to the issuance of a coastal development permit.](#)

[Mendocino County Coastal Groundwater Development Guidelines \(MCCGWDG\) states:](#)

[Estimated Water Demand: The estimated water demand shall be determined for individual projects ... for ... single-family residents shall be ... A minimum supply of 0.5 to 1.0 gal/min. may be acceptable for individual residences if supplemented with water storage of 2,500 gallons or more. In no case will a supply of less than 0.5 gal/min. be considered acceptable for individual residences.](#)

[MCC Section 20.516.015\(B\)\(1\) states:](#)

[Approval of the creation of any new parcels or additional building sites shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels, and will not adversely affect the groundwater table of contiguous or surrounding areas. Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study dated June 1982, as revised from time to time and the Mendocino County Division of Environmental Health's Land Division requirements as revised.](#)

[With the proposal of a single-family residence, a proof of water test is required per Coastal Element Policies 3.8-1 and 3.9-1 and MCC Section 20.516.015\(B\) prior to construction of the single-family residence. Coastal Element Policies 3.8-1 and 3.9-1 requires demonstration of proof of adequate water prior to issuance of the Coastal Development Permit. This requirement is not reflected in the implementation of this Policy in MCC Section 20.516.015\(B\). If sufficient yield is not demonstrated, the single-family residence shall not be constructed.](#)

Conditions 5 and 6 are recommended requiring the applicant to secure all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction ensures any groundwater and DEH regulations will be addressed.

[Condition 27](#) is recommended to require proof of water to prove the proposed development will have adequate water and is consistent with the Local Coastal Program policies Chapters 3.8-1 and 3.9-1 and MCC Section 20.516.015(B) and Section 20.532.095(A)(2) related to groundwater resources.

With added conditions, the proposed project will be consistent with the Local Coastal Program policies related to groundwater resources Chapter 3.8-1 and 3.9-1, MCC Sections 20.516.015(A) and (B) and Section 20.532.095(A)(2) and DEH regulations.

Revisions to Initial Study, Section VII. GEOLOGY AND SOILS, Page 14, Paragraph 1:

- a, c) **No Impact:** The proposed project will not expose people, or structures to substantial adverse effects including the risk of loss, injury, or death involving rupture of a known earthquake fault, strong seismic ground shaking, seismic-related ground failure, or landslides. The nearest active fault is the San Andreas Fault which is located approximately 3.5 miles offshore, ~~east west~~ from the project site.

Additions to Staff Report, Section 11 (Takings Analysis), Page 15, Paragraph 2:

12. **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 project is 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 a stream, wetland, and rare plant community are present on the site.

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. Staff believes there was a reasonable investment backed expectation that the scale of the residential development proposed is consistent with similar properties in the vicinity. The applicant has incurred costs, including the purchase price of \$230,000 for approximately five acres of vacant land purchasing the site in 2019, in an effort to develop the property and is a substantial investment. Considering the property is zoned for residential development as a principally permitted use, and residential development exists on adjacent properties, a reasonable person would have believed that the property could have been developed with a single family residence.

In order to assess the applicant's expectation to build an approximately 2,925 square foot single family residence with 720 square feet of attached patio and a 500 square foot detached garage; to be built on approximately five acres, was similar to comparable single family homes in the area. The proposed development is roughly equal to the square footage of development in the area found during Staff's review.

MCC Section 20.376.010 states, the principally permitted use types in the RR district, which include: single family residential, vacation home rental, light agriculture, row and field crops, tree crops, and passive recreation. Due to the prevalence of ESHA on the parcel, all principally permitted uses except for passive recreation would require encroachment into a fifty foot ESHA buffer. The allowed agricultural uses would require substantial site disturbance, clearing and are not a viable way to use the property. Passive recreation use would be the only option that would be less impactful than the construction of a single family residence, and possibly not require any activities meeting the definition of development under the Coastal Act. Passive recreation uses do not afford the property owner an economically viable use.

The property was purchased with an investment-backed expectation that construction of a single family residence would be permitted. Alternatives to the proposed development, including different development projects, and alternative locations, were considered and analyzed by a qualified professional, as required by MCC Sections 20.496.020(A)(4)(b) and 20.532.060(E). The proposed project is considered the most feasible, least environmentally damaging alternative that avoids sensitive plant ESHA, and related ESHA buffer requirements that satisfies the investment backed expectation of the owner. Mitigation Measures were recommended in the *Rare Plant Assessment & Botanical Survey*, prepared by Alicia Ives Ringstad of Jacobszoon & Associates, Inc. updated on February 19, 2021 and **Conditions 14**

through 27 are recommended to ensure the project does not have an adverse impact on the sensitive resources at the site.

Revisions to Recommended Conditions of Approval 11, 12, 14 and 15:

11. Prior to issuance of a Building Permit, the property owner shall furnish exterior finish schedule consistent with Mendocino County Coastal Element Policy 3.5-4 and Mendocino County Code of Ordinances Section 20.504.015(C), for approval from the Coastal Permit Administrator ~~of~~ to the satisfaction of the Director of Planning and Building Services or their designees.
12. Prior to issuance of a Building Permit, the property owner shall furnish exterior lighting details consistent with Mendocino County Coastal Element Policy 3.5-4 and Mendocino County Code of Ordinances Section 20.504.035, for approval from the Coastal Permit Administrator ~~of~~ to the satisfaction of the Director of Planning and Building Services or their designees.
14. ** Mitigation and Avoidance Measures proposed in the *Rare Plant Assessment & Botanical Survey*, prepared by Alicia Ives Ringstad of Jacobszoon & Associates, Inc. updated on February 19, 2021, California Department of Fish and Wildlife (CDFW) and the California Native Plant Society (CNSP). In order to provide for the protection of the portion of the parcel subject to Development Limitation Combining District, the following mitigation measures are recommended to minimize impacts to presumed ESHA within the study area:
 - a. Vegetation removal, especially along the western and southern portions of the parcel, particularly the portion of the parcel subject to Development Limitation Combining District, with the exception of that requires for the construction of the single-family residence, garage and ground mount solar, including the installation of the on-site septic system and driveway access, in its approved building location, is not permitted with this Coastal Development Permit; and
 - b. Request for additional vegetation removal on the subject parcel will require a separate Coastal Development Permit and will be reviewed on its own merits; and
 - c. Future development of the subject parcel, including additional development and accessory development, not limited to vegetation removal, shall maintain a 50 foot buffer to all identified ESHA or require a separate Coastal Development Permit and will be reviewed on its own merits.
15. ** Mitigation and Avoidance Measures proposed in the *Rare Plant Assessment & Botanical Survey*, prepared by Alicia Ives Ringstad of Jacobszoon & Associates, Inc. updated on February 19, California Department of Fish and Wildlife (CDFW) and the California Native Plant Society (CNSP). In order to provide for the **protection of Bishop pine and Grand fir trees**, Section 6 Assessment Summary and Recommendations/Mitigations and Appendix D: Reduced Buffer Analysis of the *Rare Plant Assessment & Botanical Survey*, prepared by Jacobszoon & Associates (Jacobszoon, 6.5), the following mitigation measures are recommended to minimize impacts to presumed ESHA within the study area:
 - a. The regeneration of the Bishop pine trees is low within the Study Area (3 trees under 6" DBH), most likely due to the lack of sunlight and that Bishop pinecones are serotinous (need fire to open and germinate) Typically, the lack of fire resulting in excessively thick understory vegetation and duff layers inhibits seed germination and recruitment. The regeneration of the Grand fir trees is high with 93 trees under 6" DBH; and
 - b. It is recommended that there is sufficient regeneration to replace the Grand fir trees that are proposed for removal and to not replant due to the available space and sunlight on the rest of the 5.09-acre parcel; and
 - c. It is recommended that the remediation of the removed 68 Bishop pine trees over 7" DBH be a 1:1 replacement based on available space and sunlight on the remainder of the parcel. Placement of Bishop pine saplings shall be where there is sufficient sunlight to aid in growth over five (5) years; and
 - d. Bishop pine individuals shall be replaced with saplings obtained from local stock in the area. Planted Bishop pine saplings should be planted by hand, with workers using hand tools and/or digging through the soil with a portable augur without the usage of heavy construction machinery that could trample and/or compact ground layer plants and underlying soil. Newly planted Bishop pine individuals should be protected by "protective tubes"; and
 - e. An 80% survival rate for the newly planted replacement Bishop pine trees shall occur and be monitored for five (5) consecutive years annually in October by a qualified biologist. Results of restoration activities shall be submitted to CDFW, the County and the California Coastal Commission on an annual basis no later than

December 31 for each of the five (5) monitoring years (2021 through 2025, for example, if construction begins and this Plan's mitigation measure actions are initiated by spring 2021). CDFW may provide comments on each annual summary letter and require planting of new Bishop pine trees based on results noted in each of the annual summary letter. ~~For example, in~~ In the event that an 80% survival rate of the Bishop pine trees is not achieved in the first five (5) years, the monitoring period will be extended until compliance is demonstrated; and

- f. Supplemental watering will be conducted if necessary, as well as thinning if necessary, to release crowded individuals for more rapid tree growth. During the monitoring visit, the qualified biologist will remove any non-native species that may have encroached within the Project Area; ~~and-~~
- h. Conservation of the remainder of the bishop pine forest (BPF) on the parcel. The remaining bishop pine stands shall be preserved to reduce the cumulative impacts of the BPF stand, which has already been impacted through the development on adjacent parcels and will likely be further impacted by development on undeveloped parcels; and
- i. To minimize long-term significant net loss of BPF ground layer vegetation, the Restoration Plan shall include revegetation with native understory plants as part of the BPF restoration effort. Species composition of the ground layer shall include either the pre-project existing species, or the species composition of another local reference stand with higher species richness. Local stock (divisions, seed) should be used to avoid introduction of pests or pollution of local population genetics. Planting density and final (5 yr) absolute cover should not differ significantly from existing BPF on the parcel; and
- j. Prior to issuance of this Coastal Development Permit, the applicant shall furnish evidence to the Planning Division of Mendocino County Planning and Building Services and to the satisfaction of CDFW, a Restoration Plan to ensure that tree removal is designed to have the least impact feasible on BPF and restoration efforts will be successful.

Recommendations for Additional Conditions of Approval:

- 27. Prior to issuance of this Coastal Development Permit, the property owner shall provide proof of water as required by Local Coastal Program policies Chapters 3.8-1 and 3.9-1 and MCC Section 20.516.015(B). No permit for the single-family residence shall be issued until there is demonstrated sufficient yield to support the construction of the single-family residence. If sufficient yield cannot be demonstrated, the single-family residence shall not be constructed.