



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
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MEMORANDUM

DATE: OCTOBER 13, 2022
TO: COASTAL PERMIT ADMINISTRATOR
FROM: JESSIE WALDMAN, PLANNER II
SUBJECT: CDP_2020-0024 (BOOTHE) REVISIONS TO STAFF REPORT AND INITIAL STUDY

On August 25, 2022, the proposed project was continued by the Coastal Permit Administrator (CPA) to a date certain, October 13, 2022. This is to allow time for Staff to review public comments received during the public noticing period, July 25 to August 25, 2022, where public comments expressed concerns regarding the location of the proposed project, the revised Staff Report and Initial Study, dated July 25, 2022, potential impacts to Environmentally Sensitive Habitat Area (ESHA), visual resources to adjacent parcels, requests for story poles and consideration that private view sheds be addressed as part of the County Review process for this project.

Conditions, Covenants and Restrictions (CC&R's): Covenants, Conditions and Restrictions (CC&Rs) are a private and civil matter and Mendocino County Coastal Element and Mendocino County Code (MCC) regulations do not enforce CC&R's.

California Environmental Quality Act (CEQA) Mitigated Negative Declaration (MND): The proposed project will not result in significant impacts that cannot be mitigated and therefore the project does not require an Environmental Impact Report (EIR). Pertinent sections of Public Resources Code have been included below, which address the determination that an EIR is not required and that a Mitigated Negative Declaration is the appropriate level of environmental review pursuant to CEQA after the completion of an Initial Study.

California Environmental Quality Act (CEQA), Title 14, Article 6, Section 15070 (*Decision to Prepare a Negative or Mitigated Negative Declaration*) which states:

A public agency shall prepare or have prepared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when:

- (a) The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or*
- (b) The initial study identifies potentially significant effects, but:*
 - (1) Revisions in the project plans or proposals made by or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and*
 - (2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.*

California Environmental Quality Act (CEQA), Title 14, Article 5, Section 15064(f) (*Determining the Significance of the Environmental Effects Caused by a Project*) states (Emphasis added):

- (f) The decision as to whether a project may have one or more significant effects shall be based on*

substantial evidence in the record of the lead agency.

- (1) *If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR (Friends of B Street v. City of Hayward (1980) 106 Cal.App.3d 988). Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect (No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68).*
- (2) *If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment but the lead agency determines that revisions in the project plans or proposals made by, or agreed to by, the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment then a mitigated negative declaration shall be prepared.*
- (3) *If the lead agency determines there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration (Friends of B Street v. City of Hayward (1980) 106 Cal.App. 3d 988).*
- (4) *The existence of public controversy over the environmental effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.*
- (5) *Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts.*
- (6) *Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment.*
- (7) *The provisions of sections 15162, 15163, and 15164 apply when the project being analyzed is a change to, or further approval for, a project for which an EIR or negative declaration was previously certified or adopted (e.g. a tentative subdivision, conditional use permit). Under case law, the fair argument standard does not apply to determinations of significance pursuant to sections 15162, 15163, and 15164.*

The project has been reviewed in coordination with California Department of Fish and Wildlife (CDFW). CDFW made recommendations for the proposed project and these are included within the recommended Amended Staff Report and Amended Initial Study and Mitigated Negative Declaration. CDFW has not expressed concerns regarding the project resulting in significant impacts that cannot be adequately mitigated.

There is no substantial evidence in light of the whole record before the CPA that the project may have a significant effect on the environment that cannot be adequately mitigated through the recommended conditions of approval and mitigation measures.

The proposed development, if constructed in compliance with the recommended conditions of approval (including mitigation measures), will have less than significant impacts with mitigation incorporated on the environment within the meaning of the California Environmental Quality Act (CEQA). **Mitigation Measures Conditions 12 through 25** are recommended to insure compliance with the California Environmental Quality Act requirements for a Mitigated Negative Declaration. Staff finds that if we were to deny this project, it could constitute for a regulatory takings and Staff is recommending approval of the proposed project despite being inconsistent with our zoning code.

Staff recommends to the CPA the proposed project be approved with the recommended Conditions of Approval within the attached Memorandum, dated August 25, 2022, the Amended Staff Report, dated August 25, 2022, and the Amended Initial Study and Mitigated Negative Declaration, dated July 22, 2022 as presented to the CPA on August 25, 2022.

ATTACHMENTS: A. CDP_2020-0024 CAP Memo & Hearing Packet 2022 0825