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September 26, 2023

Mendocino County

SEP 27 2023

Planning & Building Services

Coastal Permit Administrator
Planning and Building Services
County of Mendocino
860 N Bush St.
Ukiah, CA 95482
(pbscommissions@mendocinocounty.org)
(crowleyl@mendocinocounty.org)

RE: Case No.: CDP 2018-0012
Hearing Date and time: September 28, 2023
Owner: Noah Sheppard
Applicant: Noah Sheppard

Dear Coastal Permit Administrator:

This firm represents Noah Sheppard, the owner/applicant regarding CDP 2018-0012.

We are writing in response to comments submitted by Holly and David Guggenheim, and their attorney, Colin Morrow.

The basic purpose of the comments submitted by the Guggenheims and their attorney is to impede your agency from doing its job.

The purpose of my letter is to urge you to do your job, and not to deprive the applicant of his property rights based on unfounded threats.

1. This Agency has the power and authority to issue the requested permit, and the Guggenheims' threats of inverse condemnation are baseless.

This situation is straightforward: the Sheppards are seeking a permit to develop their property. That is the issue before this agency. There's nothing out of the ordinary about that.

The Guggenheims have a lawsuit against the Sheppards, claiming flood damage. That is being addressed in court. The Guggenheims raise in court the argument that a driveway can't be "unilaterally" relocated. It's not being "unilaterally" relocated; it's going to be relocated pursuant to a properly-pursued permit.

There is no legal authority for the Guggenheims' bogus claim that a driveway cannot be relocated within the deeded boundaries of an access easement. Even if there were (which there isn't), the process is for this agency to do its job: issue the permit. If the Guggenheims then wish to seek a court determination that development under a properly-issued permit cannot proceed, then that is their burden. If they wish to seek a court determination that a driveway cannot be relocated within a deeded easement, that is their burden.

However, for purposes of this proceeding, the process is clear: consider and issue the permit.

The Guggenheims threaten the County with Inverse Condemnation claims. The assertion that issuing a permit to relocate a driveway within a deeded easement is somehow a taking of property for a public purpose without compensation is baseless.

2. A properly-designed road should be approved and is of course **acceptable** to the Guggenheims

The Sheppards have submitted plans for the relocated road.

It is easy for the Guggenheims and their attorney to raise heated objections to block their neighbor from building a home, but it is a little less easy to raise

those objections when under oath. Mr. Guggenheim, despite his efforts to block development, has agreed that a properly designed and approved road would be acceptable to him:

7 Q. It would have to address watershed issues,
8 environmental issues, any -- any tree issues, ESHA
9 issues, fire safety issues, and so on, correct?
10 A. Yes, sir.
11 Q. Okay. And if a road were designed and approved
12 that satisfied all the appropriate governmental
13 regulations, would that be acceptable to you?
14 A. Yes --
15 MR. MORROW: Objection. Improperly asking a
16 contention interrogatory in a deposition. Incomplete
17 hypothetical.
18 MR. MAZZIA: Did you get the answer?
19 THE REPORTER: (Nods head up and down.)
20 MR. MAZZIA: Okay.

(Guggenheim 2022 10 19 deposition, page 77).

And that's what the Sheppards are seeking.

3. The Application Seeks to IMPROVE and UPGRADE Access

The Guggenheim property is accessed by means of a narrow, unpaved driveway that goes through the Sheppard property.

The Guggenheims claim that they will be trapped in their property – especially if there is a fire – if the driveway is relocated. This is false.

The Sheppards seek to relocate the driveway.

The Sheppards will improve the relocated driveway:

- It will be paved
- It can have reflectors installed (to improve ingress/egress)
- It will be moved away from the planned Sheppard residence (reducing the possibility of impediments in the event of emergency evacuation)
- It will be to fire-safe standards
- It will have culverts, curbs, and/or drainage consistent with code requirements

In short, relocating the driveway does not damage or harm the Guggenheims. This is a straightforward matter.

4. Drainage problems are disputed; Drainage will be addressed by the relocated driveway

The Guggenheims claim (without expert input, which they've had years to obtain):

Drainage problems caused by the Sheppards damage them;

The relocated driveway will cause drainage problems

Do drainage problems caused by the Sheppards damage the Guggenheims?

This is a claim raised by the Guggenheims in their lawsuit against the Sheppards. So whether there is or is not damage is being addressed in court, and is not determinative in this hearing.

But, assertions made here by the Guggenheims are in dispute:

The Guggenheims claim they had no drainage problems until 2018, when the Sheppards did some work. However, this is not true. Mr. Guggenheim himself has written to the County complaining that drainage has caused him harm for decades:

CDP2018-0012 proposed building plan does all of these.

In order to mitigate annual flooding, twenty years ago we trenched and installed three concrete culverts on both sides of my CALYPSO LANE driveway access to channel rain water into the existing creeks and pond; when applicant moved his

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prefab. onto the two acre sub-division 10760 CALYPSO lot three years ago he filled in all the trenching on both sides of CALYPSO LANE road and the culverts chocking off the surface water from the pond and creeks and redirected the flow down the road and into my dining room that now floods under the house and buckles the wood floors every winter. In accordance with your CDP Page 16, No.16, c., these trenches and the culverts on lot 10760 CALYPSO need to be restored by Mr. Shepard as soon as possible and before the next winter.

(reference: Guggenheim July, 2021 submittal to Department of Planning; page 12).

From Mr. Guggenheim's October 12, 2021 email to Code Enforcement:

3.) 20 years ago we trenched and installed concrete culverts and 20 inch drainage pipe on 10760 Calypso Lane to mitigate annual rain water flooding to 10770 Calypso Lane.

Mr. Guggenheim has testified that there was annual flooding:

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1 "we"?

2 A. Okay. That -- the people that owned the
3 property at the time.

4 Q. Because before when you were talking about your
5 kids, you said "we" this, "we" that, but now when you
6 say "we," you're talking about someone else; is that
7 right?

8 A. "We" is a pronoun that can be used to refer to
9 different groups.

10 Q. So here you're meaning "we" to refer to who?

11 A. Hank McCusker had to trench as a condition of
12 the subdivision.

13 Q. Well, the first sentence here is "In order to
14 mitigate **annual** flooding."

15 Was there annual flooding at the property?

16 A. Yeah. Water would come down -- water would
17 come down the road.

18 Q. For 20 years, right?

19 A. Whenever there was a heavy rain, if we were
20 lucky enough to get heavy rain, you could get water down
21 the road.

22 Q. This includes the first time you owned the
23 property, correct?

24 A. Yes.

25 Q. Right. You would get annual flooding the first

8
1 time you owned the property, is that right? Page 160
2 A. When there was heavy enough rain, you could get
3 flooding on the road.
4 Q. And by "the road," what do you mean?
5 A. By the Calypso Lane road.
6 Q. All the way onto your property, correct?
7 A. Yes. Yes.
8 Q. Which leads to, basically, your front door,
9 right?
10 A. If it didn't get absorbed before it hit the
11 house.

The relocated driveway will not cause drainage problems:

As outlined above, Mr. Guggenheim has sworn that there have been drainage problems for decades. Engineered plans for a relocated driveway have been submitted, and there is no engineering or expert evidence submitted by the Guggenheims to support their bald assertions that a relocated driveway will cause harm.

5. The Sheppards have not delayed the lawsuit the Guggenheims filed.

In order to disparage the Sheppards, the Guggenheims each make the false claim that the Sheppards have delayed proceedings in the lawsuit the Guggenheims filed.

Not true.

The lawsuit has been delayed, but that delay is due to the Guggenheims.

The Guggenheims sued the Sheppards for **elder abuse** and for **punitive damages**, alleging under oath that the Sheppards maliciously targeted the Guggenheims, and that the Sheppards intentionally abused the Guggenheims. They were given repeated opportunities to try to state an elder abuse claim, and they struggled to do so, for many months. Ultimately, the court dismissed their elder abuse and punitive damages claims.

So, it is the Guggenheims, who have struggled to make their lawsuit as broad as possible, who have caused delay.

6. The Guggenheims' assertions about the property and their 'remedial' measure are in dispute

The Guggenheims seek to confuse the issue and disrupt this permitting process by raising the disputed claim that there were substantial culverts and drainage measures on the Sheppard property that the Sheppards somehow demolished.

Not true.

The Guggenheims assert there were culverts alongside the driveway at the time the Sheppards took ownership. Below is a photo taken at that time, showing the driveway **with no culverts**:



Mr. Guggenheim also claims he did extensive remedial work at his property, including installing a ‘french drain’ completely around his property.

He failed to tell Mrs. Guggenheim (who lives at the property with him) about this supposed work. She has stated under oath that she knows of no such ‘french drain’:

18 Q. Have you had a French drain curtain put in?
19 A. No. I don't think so.
20 Q. Have you discussed that or considered that?
21 A. We've never had the problem before. But yes, we
22 have discussed a potential French drain.
23 Q. Is there any reason why you haven't put in a
24 French drain?
25 A. It would have to go through the water pipes, the



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1 electrical pipes, and everything that goes to our house.

2 Q. If you did put in a French drain, what's your
3 understanding of where it would go?

4 A. My husband really was the one that talked to the
5 man who came out. I was inside.

13 Q. Okay. All right. And we're on page 279.

14 Item 6, it says, No. 2, the flooding is so bad that we
15 have had to install a French drain around the entire
16 house.

17 Is that a true statement?

18 A. I -- we looked into putting in a --

19 Q. Did you put a --

20 A. No. We didn't put -- not -- no. I don't think
21 so.

7. Water Availability is Not an Impediment

The Guggenheims assert that allowing a residence to be legally constructed will somehow compromise their water availability.

This is bogus. There is no expert data to support this.

Water availability is a familiar go-to complaint of the Guggenheims. They claim their house is a five-bedroom residence; they provided water services to an 1800 square foot "guest house" without looking into or obtaining permits; they claim that services to their property are sufficient to house 11 or more people (but, of course, neighboring properties cannot be allowed to be developed, and in fact supposedly pollute the Guggenheims' property).

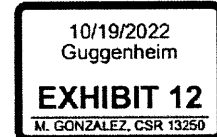
Below is a 2014 letter from Mr. Guggenheim to the County complaining about water and saying that eleven people are housed on his five-bedroom property and 1800 square foot, fully plumbed (without permits) guest house (Mr. Guggenheim is no stranger to doing work without a permit; they also have installed a large deck without a permit):

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GUGGENHEIM

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To: JODI MITCHELL /
MENDOCINO CITY COMMUNITY SERVICE DISTRICT
p.o. box 1029 Mendocino, CA. 95460



From: DAVID GUGGENHEIM
p.o. box 123
Mendocino, Ca. 95460

May 10, 2014

Ms. Mitchell,

Regarding your letter dated 4/11/14,

- 1.) I recently purchased 10770 CALYPSO LANE from the 2007 Owner: HENRY McCUSKER and I was not aware of:
 - > I was Not aware I was in the Mendocino City Community Service District as I do not live in town
 - > a FINAL GROUNDWATER EXTRACTION PERMIT and
 - > a 260 Gallon Per Day ground water EXTRACTION ALLOTMENT or
 - > of a METER on my well.

- 2.) for the Record, the 2007 Owner has misrepresented Property built at 10770 CALYPSO LANE as the Property, at the time, and now is:
 - the House is a 2,400 square foot house with FIVE BEDROOMS and TWO BATHROOMS and OUTSIDE SHOWER and
 - the Property also contains a 1,800 Square Foot Guest House with water service.
 - These Facts can be easily documented by an independent Appraisal.

This property is currently occupied by my wife and I and by our three children, their three partners and our three grandchildren therefore you cannot even flush toilets, let alone bath, on 156 gallons per day therefore

I am Requesting that our current / Reduced Water Allocation be increased from the current 156 Gallons per Day.

- 3.) Last week I was finally able to get SUPERIOR PUMP to service the Property and show me the METER for the first time.

4.) The WELL for which the METER was installed and Approved **IS** in service.
As of 5/10/14 my Meter Reading is: **28,681** Gallons.

5.) In the future I will Report to you my Meter Reading no later than the 20th of the month.

6.) I do **NOT** have a Surface Water Source;
there is an old well that has NOT been Cleaned or Tested and
the two horses and two goats and chickens that my next door / up-hill neighbor
keeps for show have fouled and polluted the surface water in the area and

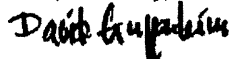
the surface well has **NO** Pump and
there is **NO** Piping from the old surface well to the Property.

Based on the Facts that this Property is a Five Bedroom House with a separate
1,800 sq. ft. Guest House with running water for Nine People,
I am Requesting that our current / Reduced Water Allocation be increased from
the current 156 Gallons per Day.

I have lived in Mendocino of 30 years and my children were born and raised in
Mendocino and
if the M.C.C.S.D. cannot develop new water sources,
all the governors of this area should stop approving Building Permits in order to
better manage the finite water supply; there have been historic droughts in this
area before but now you have over-built and we are all in trouble.

Over the last ten years you have issued five new Building Permits to my
immediate next-store neighbors including THREE new sub-division home
BUILDING PERMITS to One Property Owner and it is obvious that some greedy
residents are skirting the water restrictions by sub-dividing and placing an unfair
burden on owners that have tried to maintain the integrity and character of the
town and a better quality of life in Mendocino.

Very Sincerely,



David Guggenheim

8. Conclusion

This is a straightforward proceeding. A permit application has been submitted and should be processed and granted.

The Sheppards have submitted information from qualified experts to address valid concerns.

The Guggenheims' objections are based on their hostility toward legal development. This process should be guided by proper consideration of the Sheppard permit application and pertinent information, not on the Guggenheims' angry objections.

The Sheppards respectfully request that their permit application be approved.

Very truly yours,

/s/

Christopher M. Mazzia

CMM/jlc