



MEMORANDUM

DATE: MARCH 26, 2024
TO: IGNACIO GONZALEZ, COASTAL PERMIT ADMINISTRATOR
FROM: LIAM CROWLEY, PLANNER II
SUBJECT: CDP_2023-0039 (WAHLBERG) RESPONSE TO COMMENTS

On March 19, 2024, staff received comments from the California Coastal Commission regarding the subject Coastal Development Permit (CDP). The comments assert that the project is inconsistent with the Mendocino County Local Coastal Program (LCP), and that the County failed to consider denial of the project and a possible taking claim because of this inconsistency. The Coastal Commission also recommended that additional conditions of approval be incorporated into the CDP, should the County determine that it must approve the project to avoid a taking. Staff offers the following in response to these comments:

Inconsistency with LCP: Staff accepts the comments from the Coastal Commission regarding inconsistency with the LCP. According to Coastal Act Section 30240, only uses dependent on ESHA may be allowed within ESHA. Therefore, a proposed residential development may not be allowed within ESHA because residential use is not dependent on such resources. Additionally, Mendocino County Code (MCC) Section 20.493.020(A)(1) states that “*developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent ESHA.*” Therefore, residential development cannot be allowed within ESHA buffer areas.

Due to this interpretation, the currently proposed development is inconsistent with the County LCP and findings #1, 8, 9, and 10 within the staff report are incorrect. The only portion of the subject parcel which exists outside of mapped ESHA and ESHA buffers is a narrow, triangular corner in the northeastern part of the lot. Therefore, the County must address potential alternatives to the project that would either (1) result in consistency with the LCP by siting development within this area, or (2) maximize compatibility with the LCP while allowing the minimum amount of development to occur within ESHA or ESHA buffers that would avoid a taking.

Takings Analysis: The Project must be analyzed to determine if denial would result in a taking. California Public Resources Code (PRC) Section 30010 (California Coastal Act) addresses takings as follows:

“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 therefor. 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.”

Although the County is not a court and may not ultimately adjudicate whether its actions constitute a taking, the Coastal Act imposes on the County the duty to assess whether its action might constitute a taking so that the County may take steps to avoid it. If the County concludes that its action does not constitute a taking, then it may deny the Project with the assurance that its actions are consistent with Section 30010. If the County determines that its action would constitute a taking, then application of Section 30010 would overcome the presumption of denial. In the latter case, the County would propose modifications to the development to minimize its Coastal Act inconsistencies while still allowing some reasonable amount of development.

Some factors that courts examine to determine if a regulatory taking has occurred include the presence of reasonable

investment-backed expectations, the degree to which a regulation may interfere with those reasonable investment-backed expectations, and whether a regulation deprives an owner of economically viable use of the property. To aid in the analysis of a taking, staff used a letter submitted for CDP_2019-0032 on September 8, 2021, which outlined the costs incurred by the owner in purchasing and managing the property (see attached). Since that time, it is expected that additional costs have been incurred as it relates to test well drilling and fees associated with the submittal of CDP_2023-0039.

The property was acquired on July 10, 2018. Document No. 2018-08244 O.R. explicitly establishes the owners' interest in the property. Expenses incurred during the last five (5) years include purchase of the property, property taxes, and costs related to development of the property. The Rural Residential Land Use Classification and Zoning District has not changed since the property was purchased.

A reasonable, investment-backed expectation to carry out a residential development exists because substantial investment or costs of at least \$200,000 were incurred prior to the discovery of development constraints when the ESHA Survey was completed in May 2019.¹ Residential development is considered a principal permitted use in the Rural Residential Zoning District. The presence of existing residential development in the surrounding area may also have indicated that the lot was of sufficient size or was located within an area that could be developed.

However, the project must be further analyzed to determine a reasonably expected scale of development was appropriate given the surrounding neighborhood. Therefore, staff conducted an analysis using properties in appropriate proximity and a level of sensitive resources comparable to the proposed development. The following criteria were used to determine which parcels could be used in this analysis:

- Parcels that are similarly zoned
- Parcels that were developed after the applicant purchased the subject parcel
- Parcels developed after implementation of the Local Coastal Program (1991-1992)
- Parcels with available permit information
- Similarly sized parcels with similar lot coverage
- Parcels with similar constraints such as biological, geological, highly scenic, etc.

The properties used in the analysis include the following:

- 37901 Marine View Drive; APN 145-125-12
- 37941 Old Coast Highway; APN 145-122-11
- 38220 South Highway 1; APN 145-122-04
- 46951 Big Gulch Road; APN 145-125-03
- 47030 Big Gulch Road; APN 145-121-15

37901 Marine View Drive is located 0.3± miles east of the project site and is within the Rural Residential 5-acre minimum zoning district (RR-5). The parcel is 0.57± acres in size. CDP_2015-0005 approved a 2,880 square-foot single-family residence, driveway, production well, storage tank, and propane tank on the property. A biological survey was submitted for the project, which found that no ESHA were present on the site. An archaeological survey was also submitted for the project, which found no evidence of any archaeological or other types of historical resources within the parcel. The single-family residence associated with this CDP was constructed under Building Permit BF_2016-0258, which had an estimated job value of \$222,758.

37941 Old Coast Highway is located 0.25± miles east of the project site and is within the Rural Residential 5-acre minimum zoning district (RR-5). The parcel is 1.5± acres in size. CDP #30-03 was approved by the County of Mendocino on 07/24/2003 and was subsequently appealed to the Coastal Commission, who found substantial issue and conducted a de novo review of the project. The Commission approved the project with conditions, and the permit was sent on 02/17/2005. The permit authorized construction of a 2,390 square foot, two-story single-family residence with an average height of 27 feet 3 inches; a two-story detached structure consisting of a 730 square foot garage/storage space on the first floor and a 630 square foot guest cottage on the second; decks on the south side of the house and garage/guest cottage; replacement of a dilapidated wooden deck along the northern boundary of the parcel; a propane tank; and a pad. A creek was identified on an adjacent parcel, a 100-foot buffer was established, and development was located outside of this buffer. No other ESHA were identified. The garage/guest room was constructed under Building Permit BF_2005-0137, which had an estimated job value of \$56,030. The single-family residence was constructed under Building Permit BF_2009-0132, which had an estimated job value of \$232,658.

¹ The actual cost incurred by May 2019 is likely greater than \$200,000 because the submitted letter indicates that \$100,000 had been spent on site operation and management, which likely included the costs of the preparation of the ESHA survey. The Geotechnical Investigation was completed in March 2019, and therefore was likely to have been paid for prior to completion of the ESHA Survey.

38220 South Highway 1 is located 0.4± miles southeast of the project site and is within the Rural Residential 5-acre minimum zoning district (RR-5). The parcel is 0.91± acres in size. CDP #108-01 was approved by the County of Mendocino on 08/20/2004. The permit authorized the construction of a 1,597 square foot single-family residence with a maximum average height on 23 feet above finished grade; construction of a 780 square foot detached garage with a 527 square foot guest cottage above with an average height of 25 feet above finished grade; construction of a 120 square foot storage building and an 80 square foot children's playhouse; connection to Gualala Community Services District and North Gualala Water Company services for sewage disposal and water; construction of wood fences along the east, south, and west property boundaries; and extension of a driveway from an existing State Route 1 encroachment to the proposed building site. A Special Status Plant Survey and Wetland Delineation was conducted for the associated CDP. A buffer of 70 feet was established, and proposed structures were sited outside of the buffer. Additional mitigation measures were incorporated as conditions of approval. The single-family residence was constructed under Building Permit BF_2005-0490, which had an estimated job value of \$103,704.

46951 Big Gulch Road is located 0.15± miles northeast of the project site and is within the Rural Residential 5-acre minimum zoning district (RR-5). The parcel is 0.45± acres in size. CDP #26-04 was approved by the County of Mendocino on 03/24/2005. The permit authorized the construction of a 2,700 square foot single-family residence, 640 square foot garage/workshop with a 640 square foot guest cottage above, a greenhouse, entry court, driveway, and connections to community sewer and water service. The permit was appealed to the Coastal Commission on 04/22/2005 but the appeal was ultimately withdrawn on 06/07/2006. The single-family residence and garage/guest cottage were constructed under Building Permit BF_2007-0385, which had an estimated job value of \$316,246.52.

47030 Big Gulch Road is located 300± feet north of the project site and is within the Rural Residential 5-acre minimum zoning district (RR-5). The parcel is 0.79± acres in size. CDP 1-92-94 was issued by the Coastal Commission on 11/18/1992. The permit authorized the construction of a 22 foot-high, 3,590 square foot single-family residence with an attached garage, deck, and hot tub; construction of a driveway with a culvert; removal of five (5) trees; and installation of underground utilities. An application is currently on file with Planning & Building Services for CDP_2022-0042 on the subject property, which would authorize conversion of an existing 645 square foot attached garage/porch into a workout gym with a half bathroom; construction of a new 576 square foot detached garage; a 6 foot wide by 44 foot-long therapy pool and surrounding 759 square foot fenced deck; and a new propane tank/trash enclosure. A biological survey was conducted for this project, which found multiple ESHA on the site. The proposed project would avoid the literal extent of identified ESHA but would be located within the proposed 50-foot buffer of identified ESHA. Though action has not yet been taken by the County of Mendocino on this project, this report represents comparable information regarding ESHA constraints on nearby property.

The Project would include 4,010 square feet of additional building footprint, including a 1,875 square foot residence and attached garage, 1,032 square feet of decking, 260 square feet of patio, and 843 square feet of concrete driveway. Of the properties included in this analysis (excluding 47030 Big Gulch Road), the average square footage of single-family residence is 2,392± square feet. The average total square footage of all development for these properties (excluding second-floor guest cottages) was 2,929± square feet. However, this average does not include the total square footage of decking and driveway development for neighborhood properties because this information could not be found by staff within the time between submittal of Coastal Commission comments and the hearing date. Therefore, the average of total square footage of development in the surrounding neighborhood is likely underreported.

Based on the findings above, staff has determined that the applicant had a reasonable investment-backed expectation to develop the proposed project at its current scale. The size of the residence and attached garage is less than comparable surrounding development. Though surrounding development was able to locate development outside of ESHA or contained no ESHA on the respective property does not diminish the expectations of the applicant. In fact, the negative results of past surveys and the ability of surrounding properties to locate development outside of respective ESHA buffers may have constituted further evidence of the applicant's ability to proceed with the intended development if they assumed that development of the subject property could similarly avoid any ESHA found. The applicant purchased the property and paid for a Geotechnical Investigation prior to discovering ESHA constraints on the property. This constitutes a substantial investment directly related to the proposed development.

The Project must also be evaluated to determine the extent to which regulations interfere with reasonable investment-backed expectations. In this case, denial of the project based on inconsistency with ESHA regulations (the "no project alternative) would interfere completely with the established expectations because denial would not permit any proposed development to occur. This would almost entirely, if not completely diminish economically viable use of the property as discussed below. Other alternatives to the proposed project would either result in similar inconsistencies with ESHA regulations or would diminish economically viable use of the property to the point that it would likely constitute a taking, in the opinion of staff.

One such alternative would be to locate development outside of established ESHA buffer areas. However, the only portion of the parcel not within an ESHA buffer area is a small triangular portion in the northeast corner of the lot. As shown on the

submitted site plan and explained in the staff report, this corner portion is further constrained by side and front yard setback requirements to the extent that a reasonably sized residence could not be developed. Assuming that this corner portion is a scalene triangle with a base of 60 feet and a height of 20 feet (taking into consideration the required 20-foot front yard setback measured from the outside edge of Big Gulch Road), the developable area would be approximately 600± square feet. To restrict the proposed development to this area would likely constitute a taking.

Another alternative would be to reduce the scale of development such that consistency of the LCP is maximized while simultaneously allowing reasonable development within ESHA buffers. As noted in the staff report, the project would avoid the literal extent of ESHA identified in the biological survey and mitigation measures are recommended to ensure that encroachment into the mapped ESHA is minimized. An alternative location of scale of development may further reduce encroachment into the mapped ESHA by furthering the distance between the edge of development and the mapped ESHA, but existing constraints limit any substantial change of location. A reduced scale of development would likely result in a taking because the proposed size of the residence and attached garage are already smaller than the average discussed above. Therefore, consistency with the LCP would be sufficiently maximized upon adoption of the recommended conditions of approval while simultaneously allowing a reasonable scale of development to avoid a taking.

Lastly, the Project must be evaluated to determine whether such regulations would deprive the owner of economically viable use of the property. Therefore, the analysis should determine whether an economically viable use of the property is available that (1) would not be located within an ESHA buffer area; (2) would be located within an ESHA buffer area but would meet the requirements of Section 20.496.020(A)(4); (3) would be located within ESHA but would meet the required findings of Section 20.532.100(A); or (4) does not require the issuance of a CDP. As discussed above, alternatives located outside of ESHA buffer are not reasonable. The proposed development would not meet the requirements of Section 20.496.020(A)(4) or Section 20.532.100(A) because residential development is not permitted within ESHA or ESHA buffer. Principal Permitted Uses in the RR-5 district which may not require the issuance of a CDP include Light Agriculture, Row and Field Crops, Tree Crops, and Passive Recreation. However, it was determined in the staff report that existing agricultural viability of the lot is minimal. Passive Recreation does not represent an economically viable use of the property because the property is at the terminus of a private road and the opportunity to profit upon public use for recreation is therefore limited.

As discussed, denial would significantly interfere with investment-backed expectations. Denial of a principal permitted use would significantly restrict economic use of the property. Denial would likely diminish all economically viable use of the property. As such, staff recommends that the Project be approved to avoid a possible taking. As noted in the Habitats and Natural Resources section, conditions of approval are recommended to minimize potential impacts to ESHA. No other LCP inconsistencies were found.

Modification of Findings and Conditions of Approval: Based on the discussion above, staff recommends that the CPA approve the project subject to the modified findings #1, 8, 9, and 10 and subject to the modified conditions of approval as shown in the attached "redline" version of the Project Findings and Conditions. Though comments from the Coastal Commission note that mandatory buffers widths should be specified to protect remaining ESHA on site, staff notes that the mapped Least Damaging Area (LDA), mapped ESHA buffers within the HMMP, and proposed mitigation measures already serve an equivalent function. Therefore, staff would recommend that this condition be modified to require that development occur within the LDA rather than establishing mandatory buffer widths. Additionally, staff notes that all conditions of approval are normally included within the recorded Deed Restriction document and therefore inherently run with the land and are binding on all successors in interest.

MODIFIED PROJECT FINDINGS AND CONDITIONS
CDP 2023-0039 (WAHLBERG)

FINDINGS:

1. Per MCC Section 20.532.095(A)(1), the proposed development is not in conformity with the certified local coastal program. As currently proposed, portions of the residential development would be located within ESHA buffers. This is inconsistent with MCC Section 20.493.020(A)(1). However, it has been determined that denial of the proposed development considering this inconsistency is likely to result in a regulatory taking. As such, staff recommends that some residential development be allowed to avoid a taking. To the maximum extent feasible without exposure to a possible takings claim, the project is in conformity with other local coastal program regulations. As discussed throughout the staff report and shown in the application materials, the Project is in conformity with both the applicable sections of the Mendocino County Coastal Zoning Code and the applicable policies of the Mendocino County Coastal Element that together comprise the Local Coastal Program. At approximately 0.84 acres on a blufftop property, the existing agricultural viability of the lot is minimal. Residential use and associated utilities are listed as the Principal Permitted Use in the RR:5 classification along with light agriculture. These Principal Permitted Uses are not organized by preference. Therefore, the proposed use should be considered consistent with the intent of the RR:5 classification; and
2. Per MCC Section 20.532.095(A)(2), the proposed development will be provided with adequate utilities, access roads, drainage, and other necessary facilities. The site is accessed via a private road. The Department of Transportation responded with no comment on the Project. Gualala Community Services District would provide sewage disposal service to the development. Adequate proof of water supply has been demonstrated for the existing well via a 17-hour Proof of Water Test where the recovery rate of the well was determined to be 0.62 gallons per minute in addition to a proposed 5,000-gallon water storage tank. Electric service would be provided by a utility company. The submitted plans outline facilities and construction methods for adequate drainage; and
3. Per MCC Section 20.532.095(A)(3), the proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of this Division and preserves the integrity of the zoning district. The existing agricultural viability of the lot is minimal due to the small size of the lot and environmental constraints. The “Family Residential: Single-Family” use type is a Principal Permitted Use in the RR zoning district. In addition to the residential structure, the proposed deck, attached garage, water storage tank, driveway, fence, well, propane tank, and connection to other utilities are considered either an Accessory Use permitted pursuant to MCC Section 20.456.015, or part of the Family Residential: Single-Family use type. In accordance with MCC Section 20.456.010, these Accessory Uses are encompassed by the Principal Permitted Use. Temporary use of a trailer during construction of the residence is a Permitted Temporary Use pursuant to MCC Section 20.460.035; and
4. Per MCC Section 20.532.095(A)(4), the proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act. A Mitigated Negative Declaration was prepared for the Project. No impacts were found which could not be mitigated below associated thresholds of significance. Mitigation measures have been recommended as conditions of approval; and
5. Per MCC Section 20.532.095(A)(5), the proposed development will not have any adverse impacts on any known archaeological or paleontological resource. An archaeological survey was conducted on the property and did not identify any resources. The survey was accepted by the Archaeological Commission at a regular meeting. The project was referred to the Cloverdale Rancheria, Redwood Valley Rancheria, and Sherwood Valley Band of Pomo Indians. No response was received. The ‘Discovery Clause’ has been added as a condition of approval to address any unanticipated discoveries; and

6. Per MCC Section 20.532.095(A)(6), other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development. The roadway capacity effects of development of a Principal Permitted Use on this property were addressed when the Rural Residential land use classification was assigned. The South Coast Transfer Station provides solid waste service and is located 7.5 miles north of the site; and
7. Per MCC Section 20.532.095(B)(1), the proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan. Per MCC Section 20.528.010, the site is not within an access location and no offer to dedicate an access easement is required; and
8. Per MCC Section 20.532.100(A)(1)(a), the proposed residential development is not an allowable use within either ESHA or ESHA buffer. Therefore, the project is inconsistent with this section. However, it has been determined that denial of the proposed development considering this inconsistency is likely to result in a regulatory taking. As such, staff recommends that some residential development be allowed to avoid a taking. To the maximum extent feasible without exposure to a possible takings claim, the project is in conformity with other local coastal program regulations. ~~some development may be allowed in identified ESHA because the resource will not be significantly degraded by the proposed development.~~ Permanent impacts to the single coastal bluff morning-glory individual would be rendered insignificant upon implementation of the HMMP discussed within the staff report, application materials, and incorporated as conditions of approval. The HMMP would restore habitat through enhancement and invasive species removal; and
9. Per MCC Section 20.532.100(A)(1)(b), the proposed residential development is not an allowable use within either ESHA or ESHA buffer. Therefore, the project is inconsistent with this section. However, it has been determined that denial of the proposed development considering this inconsistency is likely to result in a regulatory taking. As such, staff recommends that some residential development be allowed to avoid a taking. To the maximum extent feasible without exposure to a possible takings claim, the project is in conformity with other local coastal program regulations. ~~some development may be allowed in identified ESHA because there is no feasible less environmentally damaging alternative.~~ A Least Damaging Area was established by the ESHA Survey and HMMP. Existing ESHA constrain potential building sites, and the current proposal is situated in the least damaging area. There could be a less damaging alternative where the house footprint was reduced to avoid the 0.06-acre impact to ESHA buffers, but this is not a feasible alternative because a requirement that the applicant revise the scope and plans prepared for the project to reduce the building footprint and avoid such impacts is not proportional to potential impacts already demonstrated to be sufficiently mitigated by implementation of the HMMP. *Calystegia purpurata* (Coastal bluff morning glory) is not a State or Federally listed threatened, endangered, or rare species. CDFW would not issue a violation or fine for the take of this species, while substantial costs could be incurred for revising and submitting plans for a reduced building footprint; and
10. Per MCC Section 20.532.100(A)(1)(c), the proposed residential development is not an allowable use within either ESHA or ESHA buffer. Therefore, the project is inconsistent with this section. However, it has been determined that denial of the proposed development considering this inconsistency is likely to result in a regulatory taking. As such, staff recommends that some residential development be allowed to avoid a taking. To the maximum extent feasible without exposure to a possible takings claim, the project is in conformity with other local coastal program regulations. ~~some development may be allowed in identified ESHA because~~ Regardless, all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted. Staff recommends adoption of the HMMP as conditions of approval, including the monitoring and success criteria contained therein. The HMMP represents feasible mitigation measures that would reduce or eliminate impacts through enhancement and invasive species removal.

CONDITIONS OF APPROVAL AND MITIGATION MEASURES (as indicated by “*)”:**

1. This action shall become final on the 11th 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 (10) working day appeal period to the Coastal Commission has expired and no appeal has been filed with Coastal Commission. This Coastal Development Permit shall expire and become null and void at the expiration of two years after the effective date, except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.
2. To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.
3. 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 (MCC).
4. 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.
5. This permit shall be subject to the securing of all necessary permits for the proposed development from County, State, and Federal agencies having jurisdiction.
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 judgement in 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 Coastal Development 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 applicant shall cease and desist from further excavation and disturbances within one hundred (100) feet of the discovery and make notification of the discovery to the Director 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. Conditions approving this Coastal Development Permit shall be attached to or printed on any building permit application and shall be a part of on-site construction drawings.
10. Prior to issuance of a building permit, the applicant shall specify Best Management Practices (BMPs) to be implemented to reduce erosion and sedimentation from construction activities. If the

amount of grading on the site exceeds fifty (50) cubic yards, the applicant shall cease construction activities and develop a Grading and Erosion Control Plan for the site and submit it to Planning and Building Services for review and approval.

11. In accordance with MCC Chapter 20.492, a building permit, or grading permit exemption, shall be required for any grading, including but not limited to, any excavation or filling or combination thereof involving transfer or more than two (2) cubic yards of material.
12. The applicant shall comply with those recommendations in the California Department of Forestry and Fire Protection Conditions of Approval (CAL FIRE file #53-19) or other alternatives acceptable to the Department of Forestry. Prior to final inspection of the building permit for the single-family residence, written verification shall be submitted from the Department of Forestry and Fire Protection (CAL FIRE) to the Department of Planning and Building Services that this condition has been met to the satisfaction of CAL FIRE.
13. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the 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 \$2,966.75 or current fee shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services within five (5) days of the end of any appeal period. 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 has been 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 applicant has the sole responsibility to ensure timely compliance with this condition.**
14. In accordance with Mendocino County Code Section 20.504.035, any exterior lighting installed as part of the project shall conform to the following standards:
 - a. No light or light standard shall be erected in a manner which exceeds either the height limit designated in this Division for the zoning district in which the light is located or the height of the closest building on the subject property, whichever is the lesser.
 - b. Where possible, all lights, whether installed for security, safety, or landscape design purposes, shall be shielded or shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel on which it is placed.
 - c. Security lighting and flood lighting for occasional and/or emergency use shall be permitted in all areas.
 - d. Minor additions to existing night lighting for safety purposes shall be exempt from a Coastal Development Permit.
 - e. No lights shall be installed so that they distract motorists.
15. 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, which shall provide that:
 - 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 an individual or entity 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 applicant; and
 - d. The landowner shall not construct any bluff or shoreline protection 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; 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 blufftop, 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 landowner shall bear all costs associated with such removal; and
 - f. 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.
16. A Coastal Development Administrative Permit is hereby granted for temporary occupancy of a travel trailer while constructing the single-family residence, subject to the following conditions of approval:
- a. The term of this Administrative Permit is valid for the period required to complete construction of the primary dwelling but shall not exceed two (2) years unless renewed. The administrative permit shall be effective upon the issuance of a Building Permit for the primary dwelling and shall expire two (2) years henceforth.
 - b. A valid Building Permit for a permanent dwelling on the premises must be in effect.
 - c. Any applicable Building and Environmental Health permits must be obtained prior to the set up and occupancy of the travel trailer.
 - d. All utility connections to the travel trailer shall be disconnected and the trailer shall be removed from the property or placed in dead storage per MCC Section 20.456.015(J) prior to the final building inspection or occupancy of the permanent dwelling, whichever comes first.
 - e. The travel trailer shall be placed within the Least Damaging Area outside of the 50-foot ESHA buffer as shown in "*Appendix A, Figure 1 – Impacts Figure*" within the Coastal Habitat Mitigation and Enhancement Plan prepared for the Project.
 - f. The travel trailer shall be subject to all regulations as would be applied to any use located in the Rural Residential zoning district, except as provided by MCC Chapter 20.460.
17. **Construction shall be carried out in accordance with the Civil Improvement Plans prepared for the Project, including the notes and plans contained therein. This includes but is not limited to notes and plans regarding Clearing, Stormwater Pollution Prevention, Grading, Dust Control, and Erosion & Sediment Control.

18. **Construction shall be carried out in accordance with the Geotechnical Investigation prepared for the project, including those recommendations related to Setbacks, Site Grading, Foundation Support, Seismic Design Criteria, Concrete Slab-on-Grade, Retaining Walls, and Site Drainage.

19. **In accordance with the Coastal Habitat Mitigation and Enhancement Plan (HMMP) dated July 2020, the following measures shall be implemented for the Project:

a. Pre-Construction General Measures:

- i. Prior to 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 potential ESHA boundaries in the vicinity of construction shall be clearly delineated by a qualified biologist.
- ii. Where and when feasible, perennial native species shall be “salvaged” from the designated construction area to be relocated to an appropriate sized contained 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).
- iii. Prior to construction, project contractors shall be informed of the sensitive resources within the Study Area. Project contractors shall be trained in proper implementation of erosion and sediment control techniques.

b. During Construction General Measures:

- i. 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.
- ii. 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 potential ESHA has occurred. The combination silt fence/construction fence may only be removed once all construction activities are completed and revegetation has occurred.
- iii. No activities may occur that will 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, and side cast of excess building materials.
- iv. 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.

- v. 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 potential 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.
 - vi. At least one cubic yard of cut topsoil from foundation work and other construction related activities shall be relocated to a tarpaulin and covered in 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.
- c. Post-Construction General Measures:
- i. 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 (see Table 1 in Section 5.1.3 of the HMMP). Certified weed-free straw and/or mulch shall be laid down with the seed. Those areas of unearthened bare soil from construction related activities within the proposed enhancement areas shall be seeded and planted from the recommended plant palette (see Tables 2 & 3 in Section 5.1.3 of the HMMP).
 - ii. 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, as defined in this HMMP, shall not occur within the proposed enhancement areas, on-site ESHA, or the non-native grassland within the 50-foot ESHA buffer.
 - iii. A fence will be erected (during the project) to provide a barrier between the residence and the 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.
 - iv. 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.
- d. Measures for Breeding Birds:
- i. The bird breeding season typically extends from February 1 to August 15. If feasible, project activities (vegetation/tree removal, the initiation of mechanized ground disturbance) are recommended to be performed in avian non-breeding

season from August 16 to January 31. If such is not feasible, a qualified biologist shall perform a pre-construction breeding bird survey within 14 days of the onset of construction and/or vegetation removal. All active bird nests observed during the survey will be protected by an exclusion buffer in which no work activities are allowed. The size of each work exclusion buffer will be determined by the qualified biologist; relevant factors include bird species, nest location (e.g., height off ground), and levels of ambient visual and acoustic disturbances in the area. Exclusion buffers shall remain in place until all young at each respective nest are no longer dependent upon the nest structure. A biologist should monitor buffered nest sites regularly (e.g., weekly) during the breeding season to ensure the implemented buffer is sufficient to protect the nest site from potential disturbances.

20. ****Enhancement activities and monitoring shall occur in accordance with Section 6 of the Coastal Habitat Mitigation and Enhancement Plan (HMMP) dated July 2020, including Section 6.2 *Site Preparation and Implementation of Enhancement Areas*, Section 6.3 *Monitoring and Success Criteria of the Enhancement Areas*, and Section 6.4 *Breeding Birds*.**
21. ****Symbolic fencing shall be installed along the edge of the western bluff ESHA to prevent future encroachment into the ESHA.**
22. ****In accordance with the Gualala Community Services District letter regarding the site, the following conditions of approval shall be required to establish a sewer connection:**
 - a. The owner shall pay to GCSD all fees and charges in effect as established by either Resolution or by Ordinance before connecting to the District sewer mains and shall adhere to the rules and regulations set forth by the District.
 - b. The District reserves the right to modify the following conditions based on changes to future projects or changes to the project site plan. The proposed project shall be subject to the following conditions of approval:
 - i. A plan showing the septic tank placement, conforming to all codes required by the District and Mendocino County shall be submitted to the District for approval.
 - ii. All plumbing fixtures while in the process of building shall not be connected to the sanitary sewer system until the District deems it is safe to connect.
 - iii. The proposed project will be subject to the following fees:"
 1. Sewer Application Fee - \$250.00 or current fee.
 2. Capital Expansion Fee - \$17,135 or current fee.
 3. Annexation Fee - \$350.00 plus \$200 per acre (if applicable).These fees must be paid prior to the start of the project.
 - iv. A sewer application permit must be filled out and returned to the District before work can commence.
23. The applicant shall furnish a map exhibit to Planning & Building Services showing the locations of identified ESHA and ESHA buffers on the property. This map shall be recorded with the Deed Restriction.
24. Development shall occur within the mapped Least Damaging Area (LDA) identified within the ESHA Survey and HMMP submitted for the project to protect remaining ESHA on the site from

degradation or encroachment.

25. Future use of the property outside the development footprint and existing structure footprints shall be limited to those uses allowed within ESHA or ESHA buffers as outlined in Coastal Zoning Code Section 20.496.025. No future development, as defined in Coastal Zoning Code Section 20.308.035(D), may occur within these areas without issuance of a Coastal Development Permit Amendment or a subsequent Coastal Development Permit