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*By James Feenan at 10:55 am, May 20, 2024*

**From:** [pbscommissions](#)  
**To:** [James Feenan](#); [Julia Krog](#); [Liam Crowley](#); [Nash Gonzalez](#)  
**Subject:** FW: CDP\_2023-0009 Comments for 5/23/2024 CPA Meeting  
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**From:** Jacob Patterson <jacob.patterson.esq@gmail.com>  
**Sent:** Saturday, May 18, 2024 1:28 PM  
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**Subject:** CDP\_2023-0009 Comments for 5/23/2024 CPA Meeting

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Coastal Permit Administrator,

I find this application interesting but am confused why the agenda materials appear to only include the original staff report and analysis from the March 2024 meeting and nothing has subsequently been prepared to address the numerous concerns brought up by the Coastal Commission staff comments that necessitated the continuance to this May meeting. Perhaps a supplemental memo is forthcoming prior to the meeting. My below comments are based on the materials available as of May 18th.

For some reason the takings analysis remains the same as it did even though the Coastal Commission staff raised some valid concerns that it might not be adequate or reliable because it failed to address less-impactful project alternatives. Moreover and as pointed out, the comparable projects used in that analysis appear to be easily distinguishable from this application other than the one specific project identified by the Coastal Commission staff. I would have expected updated analysis and some project alternatives but I don't see them. If all the County is going to do is reiterate its initial recommendations without addressing the various Coastal Commission concerns, then you are probably setting yourselves up for an appeal to the Coastal Commission should this project be approved as is. It seems entirely feasible to alter the project details to have lesser impacts on the ESHAs, which was really only addressed as if it was a CEQA analysis concern and not from the planning perspective for LCP consistency, which is what the Coastal Commission staff identified as the inadequacy (IMO). You can mitigate a CEQA impact to less than significant but you can't really do that from an LCP consistency perspective.

The issue here is that this project, as proposed in March (and apparently again in May without amendment), is not actually consistent with the LCP. Thus the real concern is if you still need to approve it because of the purported takings issue. Unfortunately, the takings analysis from March appears to be off-base and not in line with the actual standards that apply in these situations. It is not reasonable to expect to be able to develop your property exactly as you want to just because

you were not already aware of the existence of ESHA prior to your purchase. Moreover, it can be argued that if a proposed project is inconsistent with a Certified LCP, all of which was available to any prospective buyer when this property was purchased, then no buyer or investor has any reasonable investment-backed expectation that they could develop the property in such a manner that it would be inconsistent with the LCP even if they were not actually aware of a particular relevant constraint because they had not bothered to see if it was constrained by existing ESHA. The only permit condition a buyer could clearly rely upon is the reduction of the bluff-top setback from 100 to 50 feet because that was affirmed just last year.

This appears to be an issue of inadequate due diligence on the part of the buyer. A prudent buyer of an ocean-front property like this with extensive existing biological resources would commission a biological study prior to closing their purchase or developing additional development plans. More significantly, just because a building envelope was approved many years in the past doesn't mean it is still viable because of the nature of how plants grow and spread. The prior building site might have been ESHA-free at the time of approval but since no development happened within a reasonable time frame, no one can reasonably rely upon it remaining ESHA-free or as a viable development location many years after that initial approval because plants and biomes shift over time since they involve living organisms. Thus, there is no reasonable expectation that a buyer would be able to use a prior identified building envelope without qualified evaluation of the current conditions.

This property is already developed and usable in its current state and therefore has existing value that would not be diminished to the level to be considered a taking by an inability to further develop the property in a manner inconsistent with the certified LCP. If there had not been the existing cabin and the property was vacant, there might be an issue with a denial but that is not the case here. Furthermore, the leach field issue is interesting because it appears to be the source of a lot of the problems. The leach field was originally intended to be able to serve up to three bedrooms but it cannot due to intervening development. Well, that subsequent voluntary development of the property in a manner that makes the prior approved leach field unable to be built means, IMO, that there is no longer a reasonable expectation that the property can be developed with up to three bedrooms of residential uses. If no alternative leach field site exists that wouldn't impact protected ESHA, then the property isn't really developable but that isn't the County's concern because the County didn't build a road over the leach field location, the prior property owners did. The property owners' own actions can't result in the County subsequently being determined to create a taking by denying a future development project that has become infeasible because the property owners' themselves (or their predecessors in interest) did something to preclude what they now want to do.

Have amended plans been considered that would not involve development within the ESHAs and ESHA buffers or at least impact a smaller percentage of the ESHAs? Have alternate sites on the property for the proposed development been identified that don't involve ESHA or buffers at all? Just taking this applicant-preferred location (that is likely based on desired ocean views, etc.) and not looking for less-impactful alternatives undermines the reliability of the purported takings analysis. Has a smaller residential unit been considered that has room to be built without displacing the ESHA plant communities? All those issues should have been addressed prior to this coming back for a decision on the application. Unless staff is going to recommend denial or an amended project is proposed that isn't evident in the published meeting materials, I don't see how this application can

be approved as recommended in the original March staff report.

(FYI, please don't consider my comment to be legal advice to anyone, these are only my personal opinions and observations and cannot be relied upon as any sort of legal advice.)

Regards,

Jacob Patterson  
Fort Bragg