



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
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MEMORANDUM

DATE: DECEMBER 18, 2024
TO: COASTAL PERMIT ADMINISTRATOR
FROM: KEITH GRONENDYKE/RUSS FORD
SUBJECT: COASTAL COMMISSION COMMENTS REGARDING CDP_2019-0035 (MALMBERG)

On December 10, 2024, County planning staff (hereafter "Staff") received substantial comment from Coastal Commission (CCC) Staff regarding the above Coastal Development Permit, which seeks to remediate after-the-fact tree removal and install a fence. Staff responses to CCC comments are itemized below. Comments that propose a modification to the posted Staff Report or IS-MND are shown in [blue underline](#). The full text of CCC comments are attached to the end of this memorandum.

Comment 1:

"The County's staff report does not specify the extent of tree removal that occurred without prior authorization and does not specify the number of trees proposed to be reestablished as part of the mitigation for impacts to Bishop Pine Forest ESHAs. According to page 16 of the August 27, 2019 biological report (pdf page 48 of the county's staff report), 651 bishop pine, Grand fir, Douglas-fir and redwood trees ranging from 1" to 38" were removed, and of 100 trees of 12" dbh or greater, 64 were bishop pine. The County's findings should specify the total number of all trees removed and clarify that all areas of tree removal were part of Northern Bishop Pine Forest ESHA as depicted on the biologist's map included on pdf page 116 of the county's staff report."

Staff Response: Staff proposes the following modified text to finding number three (3) in the published Staff Report:

3) Pursuant to MCC Section 20.532.095(A)(4), the installation of one-thousand (1,000)± feet of seven-foot tall wildlife friendly fencing and Bishop pine forest restoration measures will not have a significant impact on the environment within the meaning of the California Environmental Quality Act (CEQA). Per the biological report, a total of 651 trees were previously removed from the site including 64 Bishop pine, which constitutes part of the Northern Bishop Pine Forest ESHA. Recommend restoration of the ESHA includes a tree replacement rate of 3:1 over a period of five (5) years for a total of 192 trees, which includes new plantings as well as naturally regenerating saplings. If completed in accordance with the recommended Mitigation Measures in the Mitigation Negative Declaration and the attached Conditions of Approval, staff finds the project to be compliant with the required findings, and;

Comment 2:

"Page 6 (pdf page 8) of the staff report references mitigation that includes a reference to trees to be replanted, whereas Condition 9 states in part that "It is recommended to not replant replacement trees, but to use the existing regenerating trees as replacement trees due to the high number of regeneration of Bishop pine trees occurring at the site." Page 19 (pdf page 51) of the biological report indicates that as of 8/6/2019, the count of regenerating bishop pine is 84 trees, "leaving 44 more to be replaced" (at a mitigation ratio of 2:1), and includes a recommendation that in spring of 2020 another count should be conducted. The

County's staff report does not address whether any recent surveys have occurred, but it appears that additional tree planting should be required to ensure that the 3:1 mitigation ratio required by Condition 8 will be met within the five-year monitoring period."

Staff Response: An updated Bishop Pine Forest Mitigation plan prepared by Senior Wildlife Biologist Alicia Ives Ringstad was provided to the Department on December 13, 2024. It states that an updated survey of the property was performed on December 21, 2023 and counted more than 2,000 regenerating Bishop pine trees across 51 locations within the project area (page 4). Staff recommends the below change to Condition 8:

[plantings. Preference shall be given to natural regeneration, but may be supplemented with plantings in order to meet the 3:1 replacement ratio unless subsequent consultation with a biologist determines the site to be overstocked and a lower number of replacement trees is recommended.](#)

Comment 3:

"The County staff report states on Page 3 (pdf page 5) that CDFW's prior concerns have been addressed by a letter from the applicant's biologist but does not reference the date of the letter or include a copy of the letter and doesn't detail how the concerns were addressed. Therefore, Commission staff recommend including the biologist's letter as part of the county's findings and detailing how CDFW's concerns were addressed."

Staff Response: CDFW comments provided to Staff on February 25, 2020 listed several primary concerns: the first was allowing new development (wildlife fencing) as part of after-the-fact permitting of MVR and requesting more information regarding how the fence will not impact wildlife. The biological report provided with the application indicates that the proposed fencing *"shall be built with wildlife friendly deer fencing with t-posts and shall not hinder any wildlife corridors as the property won't be completely fenced and still allow for wildlife movement through the property."*

CDFW staff had additional concerns about possible future development within the identified ESHA on the project site, however the only development proposed with this application is the installation of the wildlife-friendly fencing along the western property line. Any subsequent development, in or out of ESHA, would require additional discretionary review by the County.

Comment 4:

"The "replanting" plan focuses on the reestablishment of Bishop Pine trees, however the Bishop Pine Forest as an ESHA is a community that is made of diverse plant species. As it appears in the report, the understory has been removed/disturbed in addition to the removal of trees that include Bishop Pine among others. CDFW had previously recommended revising the mitigation plan to include planting of additional trees and tree species in areas where natural recruitment is sparse, and additional planting of understory plants. However, it does not appear that the County has required a revised mitigation plan incorporating CDFW's recommendations as part of its conditions of approval. Therefore, Commission staff recommend the County require a revised mitigation plan, in consultation with CDFW, that includes replanting of native plant species that would add diversity and increase the successful reestablishment of the Bishop Pine Forest sensitive natural community"

Staff Response: Ms. Ringstad notes in the 2023 updated study that the forest understory, including coyote brush, rhododendron, and sword fern have re-established within the project area.

Comment 5:

"The County staff report Condition #7 (and #16 in the CEQA document) require in part that "Exotic species shall comprise no more than twenty (20) percent of the total cover" but do not indicate what is considered an "exotic species." Commission staff recommend that the County revise the requirement to specify that "The absolute cover of any Cal-IPC rated high or moderate invasive species shall be no more than five (5) percent, except for non-native annual grasses. All other non-native species shall comprise no more than twenty (20) percent of the total cover."

Staff Response: Staff notes that CCC staff possibly transposed condition numbers between the Staff Report and the MND, but recommend the following change to Condition 14 of the published Staff Report:

14) Disturbed areas shall have a continuous cover of native vegetation. Exotic species shall comprise no more than twenty percent (20%) of the total cover. The absolute cover of any Cal-IPC rated high or moderate invasive non-native species shall comprise no more than twenty percent (20%) of the total cover”

Comment 6:

“Are there any measures proposed or required to ensure success of the mitigation efforts? For instance, the revised mitigation plan should specify any proposed use of deer-proof cages to protect saplings from herbivory, temporary watering regimes, etc.”

Staff Response: As noted in the 2023 updated bio report, restoration of native species including both Bishop pine and understory vegetation has thrived without additional measures. The report also calls for annual monitoring for five years (to conclude in 2027) to ensure an 80% success rate. This monitoring may also include supplemental watering, thinning, and weed reduction as necessary.

Comment 7:

“The proposed 7-foot-tall “wildlife friendly” wire fence appears to be proposed entirely within Northern Bishop Pine Forest ESHA (as depicted on the biologist’s map included on pdf page 116 of the county’s staff report), although fencing is not a resource-dependent use in ESHA. Therefore, Commission staff recommend the proposed fencing be eliminated from the project or the County should address in its findings how the proposed fencing can be approved consistent with the ESHA protection policies of the certified LCP.”

Staff Response: The 2019 biological report indicates a number of sensitive species that may be present within the project area, but does not appear to include a map of identified ESHAs. The project site plan includes a hatched area indicated as ‘removed tree area’, which may be the basis of the CCC staff comments. It’s reasonable to conclude that the area shown on that map constitutes part of the Bishop pine ESHA on the property site, and a portion of the proposed fence would cross through this area. The proposed fence is to be constructed in a ‘wildlife friendly’ manner, consisting of only t-posts and wire deer fencing. No excavation or cement reinforcement of fenceposts shall occur. The presence of the fence will prevent further damage to the extant ESHA by creating a physical barrier for humans while still permitting transition of wildlife.

Staff recommend finding 1 in the Staff Report be changed to read as follows:

1) Pursuant to MCC Section 20.532.095(A)(1), the installation of one-thousand (1,000) feet of seven (7) foot-tall wildlife friendly fencing and restoration of Bishop pine ESHA is in conformity with the certified Local Coastal Program and the Rural Residential land use classification. Development of the fence within the existing Bishop pine ESHA is consistent with Section 20.496.020(A)(4)(a) through (k) regarding development within ESHA or ESHA buffers in the following ways: Installation of the wildlife-friendly fence is compatible with the continuance of the adjacent habitat area as it will not affect the functional capacity of the ESHA. The fence is to be located at the westernmost boundary of the property, the best and most feasible location to prevent human trespass into the ESHA. The t-post and wire construction of the fence will have no impacts on drainage, soil types, vegetation, hydrological characteristics, elevation, topography, stream channels, hydraulic capacity, subsurface flow patterns, or biological diversity. No vegetation removal is required to install the fence, so no replacement vegetation is needed. Installation of the fence will not include or result in impervious surfaces, bare soil, noise, dust, artificial light, nutrient runoff, or air pollution, and will passively discourage human intrusion into the ESHA. Approval of the project will result in rehabilitation of the site following unpermitted tree removal if completed in compliance with the recommended Conditions of Approval, and;

Comment 8:

“The County staff report includes Condition 5 requiring a private road approach shall be constructed onto Comptche Ukiah Road. It is unclear why the driveway approach is required at this time and the site plan does not depict the location of any proposed driveway

improvements. Any development proposed or required as part of the subject project should be depicted on the site plan and the County's findings should demonstrate that all development avoids ESHA and minimum ESHA buffers as required by the certified LCP."

Staff Response: Improvement of the apron connecting a driveway to a County-maintained road is a standard condition of approval from the Mendocino County Department of Transportation. The portion of the parcel abutting Comptche-Ukiah Road appears to be outside of the Bishop pine ESHA, so construction of the apron should not present a development concern.

Comment 9:

"The proposed project does not appear to incorporate all feasible mitigation measures. To ensure continued protection of the Northern Bishop Pine Forest ESHA into the future, we recommend that the County add a special condition requiring the recordation of an open space deed restricted area over all ESHAs, with depiction of the ESHA protected areas on one referenced exhibit (and as depicted on the biologist's map included on pdf page 116 of the county's staff report), and that that prohibits all development in the open space area except for: a) removal of non-native vegetation; b) the planting of native vegetation, or c) vegetation clearance if required by CalFire and only upon obtaining a CDP. As part of a deed restriction with an exhibit, future buyers would have clear noticing regarding the requirements for protection of ESHAs."


Staff Response: Staff believes that all reasonable mitigation and restoration measures that are supported by a nexus to the proposed project are included. The County's LCP and coastal zoning code currently provide significant protections for ESHA, and Staff have concerns that requiring an additional restriction may not meet standards for proportionality under CEQA.

Comment 10:

"Condition 16 requires submittal of an updated mitigation plan, to be drafted by a qualified forester or biologist, if the survival rate is less than 80 percent after five (5) years. Commission staff recommend the county revise the condition to require a permit amendment shall be required if mitigation is unsuccessful after the five year period."

Staff Response: Per the updated bio report, the Bishop pines have naturally regenerated at a rate many times that of the minimum requirement, so this comment may already be moot. Nevertheless, Staff recommend Condition 16 be updated to read as follows:

[16\) If, after five \(5\) years, the survival rate of the Bishop pine saplings is less than 80%, the applicant shall prepare an alternate restoration plan in consultation with a certified biologist, and apply for a Modification of the Coastal Development Permit.](#)

From: [Keith Gronendyke](#)
To: [Russell Ford](#)
Subject: FW: CDP application 2019-0035 (Malmberg)
Date: Wednesday, December 11, 2024 9:43:43 AM
Attachments:  [image003.png](#)

Here are the Coastal Commission's comments for the Malmberg project.

Keith Gronendyke

From: Yuwiler, Robert@Coastal <robert.yuwiler@coastal.ca.gov>
Sent: Tuesday, December 10, 2024 8:41 AM
To: Keith Gronendyke <gronendykek@mendocinocounty.gov>; pbscommissions <pbscommissions@mendocinocounty.gov>
Cc: Gedik, Tamara@Coastal <Tamara.Gedik@coastal.ca.gov>
Subject: CDP application 2019-0035 (Malmberg)

This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Keith,

Thank you for the opportunity to comment on the subject CDP application, which the November 4, 2024 County staff report describes as: "Standard Coastal Development Permit to approve restoration measures for after the fact removal of dead and dying Grand Fir and Bishop Pine trees for fuel reduction and creation of recreational space and installation of one thousand (1,000) feet of seven (7) foot tall wildlife friendly perimeter fencing." Commission staff agree with and echo the comments submitted to the County by CA Department of Fish and Wildlife (CDFW) via email on February 25, 2020. Additionally, please consider the following comments and recommendations from Commission staff regarding the County staff report dated November 4, 2024 (accessed online here:

<https://www.mendocinocounty.gov/home/showpublisheddocument/68377/638678802454700000>):

The County's staff report does not specify the extent of tree removal that occurred without prior authorization and does not specify the number of trees proposed to be reestablished as part of the mitigation for impacts to Bishop Pine Forest ESHAs. According to page 16 of the August 27, 2019 biological report (pdf page 48 of the county's staff report), 651 bishop pine, Grand fir, Douglas-fir and redwood trees ranging from 1" to 38" were removed, and of 100 trees of 12" dbh or greater, 64 were bishop pine. The County's findings should specify the total number of all trees removed and clarify that all areas of tree removal were part of Northern Bishop Pine Forest ESHA as depicted on the biologist's map included on pdf page 116 of the county's staff report.

1. Page 6 (pdf page 8) of the staff report references mitigation that includes a reference to trees to be replanted, whereas Condition 9 states in part that “It is recommended to not replant replacement trees, but to use the existing regenerating trees as replacement trees due to the high number of regeneration of Bishop pine trees occurring at the site.” Page 19 (pdf page 51) of the biological report indicates that as of 8/6/2019, the count of regenerating bishop pine is 84 trees, “leaving 44 more to be replaced” (at a mitigation ratio of 2:1), and includes a recommendation that in spring of 2020 another count should be conducted. The County’s staff report does not address whether any recent surveys have occurred, but it appears that additional tree planting should be required to ensure that the 3:1 mitigation ratio required by Condition 8 will be met within the five-year monitoring period.
2. The County staff report states on Page 3 (pdf page 5) that CDFW’s prior concerns have been addressed by a letter from the applicant’s biologist but does not reference the date of the letter or include a copy of the letter and doesn’t detail how the concerns were addressed. Therefore, Commission staff recommend including the biologist’s letter as part of the county’s findings and detailing how CDFW’s concerns were addressed.
3. The “replanting” plan focuses on the reestablishment of Bishop Pine trees, however the Bishop Pine Forest as an ESHA is a *community* that is made of diverse plant species. As it appears in the report, the understory has been removed/disturbed in addition to the removal of trees that include Bishop Pine among others.

CDFW had previously recommended revising the mitigation plan to include planting of additional trees and tree species in areas where natural recruitment is sparse, and additional planting of understory plants. However, it does not appear that the County has required a revised mitigation plan incorporating CDFW’s recommendations as part of its conditions of approval. Therefore, Commission staff recommend the County require a revised mitigation plan, in consultation with CDFW, that includes replanting of native plant species that would add diversity and increase the successful reestablishment of the Bishop Pine Forest sensitive natural community.

4. The County staff report Condition #7 (and #16 in the CEQA document) require in part that “Exotic species shall comprise no more than twenty (20) percent of the total cover” but do not indicate what is considered an “exotic species.” Commission staff recommend that the County revise the requirement to specify that “The absolute cover of any Cal-IPC rated high or moderate invasive species shall be no more than five (5) percent, except for non-native annual grasses. All other non-native species shall comprise no more than twenty (20) percent of the total cover.”
5. Are there any measures proposed or required to ensure success of the mitigation efforts? For instance, the revised mitigation plan should specify any proposed use of deer-proof

cages to protect saplings from herbivory, temporary watering regimes, etc.

6. The proposed 7-foot-tall “wildlife friendly” wire fence appears to be proposed entirely within Northern Bishop Pine Forest ESHA (as depicted on the biologist’s map included on pdf page 116 of the county’s staff report), although fencing is not a resource-dependent use in ESHA. Therefore, Commission staff recommend the proposed fencing be eliminated from the project or the County should address in its findings how the proposed fencing can be approved consistent with the ESHA protection policies of the certified LCP.
7. The County staff report includes Condition 5 requiring a private road approach shall be constructed onto Comptche Ukiah Road. It is unclear why the driveway approach is required at this time and the site plan does not depict the location of any proposed driveway improvements. Any development proposed or required as part of the subject project should be depicted on the site plan and the County’s findings should demonstrate that all development avoids ESHA and minimum ESHA buffers as required by the certified LCP.
8. The proposed project does not appear to incorporate all feasible mitigation measures. To ensure continued protection of the Northern Bishop Pine Forest ESHA into the future, we recommend that the County add a special condition requiring the recordation of an open space deed restricted area over all ESHAs, with depiction of the ESHA protected areas on one referenced exhibit (and as depicted on the biologist’s map included on pdf page 116 of the county’s staff report), and that that prohibits all development in the open space area except for: a) removal of non-native vegetation; b) the planting of native vegetation, or c) vegetation clearance if required by CalFire and only upon obtaining a CDP. As part of a deed restriction with an exhibit, future buyers would have clear noticing regarding the requirements for protection of ESHAs.
9. Condition 16 requires submittal of an updated mitigation plan, to be drafted by a qualified forester or biologist, if the survival rate is less than 80 percent after five (5) years. Commission staff recommend the county revise the condition to require a permit amendment shall be required if mitigation is unsuccessful after the five year period.

Thank you,



Robert Yuwiler

Coastal Analyst

California Coastal Commission