

CITY OF FORT BRAGG

REC'D FEB 06 2020

To: City of Fort Bragg Planning Commission

Date: February 6, 2020

Re: Coastal Development Permit 13-19 / Design Review 2-19

The staff report for CDP 13-19 / DR 2-19 includes a recommendation that "This project is exempt from CEQA per Statutory Exemption 15304, which exempts minor alterations in the conditions of vegetation." This recommended environmental determination is incorrect for several reasons. First, Section 15304 of the CEQA Guidelines, Minor Alterations to Land, is a categorical exemption not a statutory exemption from further environmental review. Statutory exemptions are absolute but categorical exemptions only apply to projects when there are not actually no potentially significant impacts to the environment.

CEQA Guidelines Section 15304 (see full text below) does not apply to this project because of the status of the area in question and an Initial Study/Mitigated Negative Declaration (IS/MND) is required prior to approval of CDP 13-19 / DR 2-19. The City should probably prepare an IS/MND that incorporates the mitigation and avoidance measures recommended in the biology report prepared by Wynn Coastal Planning and Biology as mitigation measures rather than merely special conditions included in the CDP with a claim of exemption from environmental review. The underlying issue is this project involved removal of at least one large tree that provided significant wildlife habitat and involved alteration to the area that comprised the historical Union Lumber Company tree nursery, which is arguably a historic cultural resource of local importance. The potentially significant impacts of the removal and alteration of the vegetation covered by this after-the-fact CDP require proper analysis and mitigation.

The biological impacts have been at least partially reviewed in a professional report, which recommended mitigation measures to avoid or reduce the potentially significant impacts of the tree removals and landscape maintenance activities. Many of these mitigation measures are proposed actions by the project's proponent to mitigate or offset the alleged adverse environmental impacts of the project, which are required to be recognized as mitigation measures in an environmental document rather than merely treated as permit special conditions and preclude reliance on a categorical exemption. The mitigation measures also fail to include sufficient mitigation for the removal of the existing trees because no replacement of the removed trees has been required (e.g., to replace lost habitat and compensate for the removed tree canopy and contribution to the forested area as a connected ecosystem rather than a collection of individual trees).

In addition to the classification of the mitigation measures, the project activities have not been reviewed for potentially significant impacts to the integrity of the historic Union Lumber Company nursery on the site. Cultural landscapes are a specific type of historic resource that focuses on the planted vegetation as opposed to naturally occurring vegetation. This project site involves both naturally occurring vegetation in the identified ESHAs and human-introduced vegetation in the nursery area. Trees that are removed should be evaluated to determine if they were likely introduced as part of the historic nursery activities and any replacement plantings should be historically appropriate (e.g., limited to certain species and locations). This has not been studied and should be included within the scope of the analysis in the IS/MND. The IS/MND will need to be prepared and circulated for public review before this permit is considered for approval.

15304. Minor Alterations to Land

Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes. Examples include, but are not limited to:

- (a) Grading on land with a slope of less than 10 percent, except that grading shall not be exempt in a waterway, in any wetland, in an officially designated (by federal, state, or local government action) scenic area, or in officially mapped areas of severe geologic hazard such as an Alquist-Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist.
- (b) New gardening or landscaping, including the replacement of existing conventional landscaping with water efficient or fire resistant landscaping.
- (c) Filling of earth into previously excavated land with material compatible with the natural features of the site;
- (d) Minor alterations in land, water, and vegetation on existing officially designated wildlife management areas or fish production facilities which result in improvement of habitat for fish and wildlife resources or greater fish production;
- (e) Minor temporary use of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc;
- (f) Minor trenching and backfilling where the surface is restored;
- (g) Maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies;
- (h) The creation of bicycle lanes on existing rights-of-way.
- (i) Fuel management activities within 30 feet of structures to reduce the volume of flammable vegetation, provided that the activities will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters. This exemption shall apply to fuel management activities within 100 feet of a structure if the public agency having fire protection responsibility for the area has determined that 100 feet of fuel clearance is required due to extra hazardous fire conditions.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

Discussion: This section describes the class of projects involving minor alterations to the land. The 1998 revision to the section specified that this exemption applies to fuel management activities which will not impact threatened or endangered species or result in significant erosion or sedimentation.