

MEETING DATE: May 14, 2019

PREPARED BY: M Jones

PRESENTED BY: Marie Jones

AGENDA ITEM SUMMARY REPORT

APPLICATION NO.: Coastal Development Permit 1-19 (CDP 1-19)

PROPERTY OWNERS: Judy L Haun

APPLICANT/AGENT: City of Fort Bragg

PROJECT DESCRIPTION: Construction of three sections of 6 foot high habitat protection fence totaling 250 feet, 450 and 350 linear feet, at the following addresses: 180 Boatyard Drive, 1190 S Main St, 1102 S Main St. The purpose of the fence is to prevent trespassing and homeless encampments and related contamination of these properties with waste and trash.

LOCATION: 180 Boatyard Drive, 1190 S Main St, 1102 S Main St. The project is in the Coastal Zone.

ZONING: Highway Visitor Commercial (CH), Coastal Zone (CZ)

ENVIRONMENTAL DETERMINATION: The City of Fort Bragg is Lead Agency for California Environmental Quality Act purposes, and this project is exempt from CEQA per Section 15303c: accessory structures, including fences.

SURROUNDING LAND USES:

NORTH:	Noyo River & Harbor
EAST:	Noyo River & Harbor
SOUTH:	Hotel and Shopping Center
WEST:	RV Park, Restaurant, and Retail

Recommended Action: Approve Coastal Development Permit 1-19 (CDP 1-19) subject to the Findings and Special and Standard Conditions.

PROJECT HISTORY

IN 2014 the Planning Commission approved a Major Subdivision 4-02/14 (DIV 4-02/14) and Coastal Development Permit 9-02/14 (CDP 9-02/14) to subdivide this 7.13 acre property into four parcels. The CDP included a number of Special Conditions relevant to the proposed project, including special conditions to protect trees and provide a irrevocable offer to dedicate and easement for public access to Noyo Harbor.

The subject property has been the subject of code enforcement activities for more than 12 years to clean up extensive homeless encampments. Just this year, the City, MedoRecycle and the property owner participated in a significant multi-day clean-up effort, involving volunteers, employees of MendoRecycle, the City of Fort Bragg and of the property owner. A total of 80 cubic yards of waste and debris were removed from the property. As part of the Code Enforcement activity the City requested that the property owner apply for a CDP to install a fence to deter future trespassing, homeless encampments and pollution of ESHAs and the Noyo River.

PROJECT DESCRIPTION

Construction of three sections of 6 foot high habitat protective fencing totaling 250 feet, 450 and 350 linear feet, at the following addresses: 180 Boatyard Drive, 1190 S Main St, 1102 S Main St (see Attachment 2 for the fence location). The purpose of the fence is to protect native habitat and Environmentally Sensitive Habitat Area (ESHA) from habitat degradation resulting from illegal camping, illegal dumping and illegal clearing or land for illegal camping. The fence will be constructed of 6 foot high black mesh livestock wire and a combination of T-stakes and wood posts (a similar design to the Coastal Trail property line fencing). The fence is easy to see through but should deter activities that result in habitat degradation within and around a Bishop Pine Forest ESHA (See Attachment 1).

CLUDC Analysis

Land Use. The parcel is located in the Highway Visitor Commercial (CH) zone and a habitat protection fence is consistent with this zoning. The proposed fence would be located outside of all setbacks and thus would comply with setback requirements.

Coastal Development Permit Analysis

Visual Resources. The proposed development is not located in a mapped scenic view area, as shown on Map CD-1, "Potential Scenic Views Toward the Ocean or the Noyo River" of the Coastal General Plan. The proposed fence would allow for visual access to the views from the public right of way as the fence is a coasted black open weave wire fence. This proposed fence is the same as the property line fencing at the Coastal Trail and is illustrated in the photo below:



The photos below illustrate the views from the public right of way and the proposed fence locations (in grey line). As illustrated below the fencing will be virtually invisible (given the distance from the public right of way and the background of obscuring trees and vegetation).



Visual Simulation 1: Proposed Fence location (grey lines) on north side of parcel. View from Highway 1 looking east



Visual Simulation 2: Proposed Fence location (grey lines) at the middle of site. View from Highway 1 looking east



Visual Simulation 3: Proposed Fence location (grey lines) at southern edge of site - Boatyard Dr. looking north

Environmentally Sensitive Habitat Area (ESHA).

The area proposed for the fence is composed of weedy (aka ruderal) vegetation. The property was surveyed in 2013 for potentially sensitive native habitat areas, wetlands, rare plants or other protected wildlife or plant habitats. The survey report, Coastal Act Compliance Report, Riverview, LLC, North Main Street, Fort Bragg, Mendocino County, California, dated May 2013 and prepared by Matt Richmond of WRA Environmental Consultants (located in the project file) indicates that the property contains Northern Bishop Pine Forest, a Department of Fish and Wildlife Communities List plant community with a rarity status warranting protections. The Northern Bishop Pine Forest additionally has the potential to be habitat for Sonoma tree voles, a Department of Fish and Wildlife species of special concern. The easterly portion of the property is Northern Bishop Pine Forest plant community, edging into non-native and ruderal landscaped areas as the property flattens out. See below for a map of the ESHA, the proposed fence locations and the existing unaccepted offer to dedicate (public access trail).

The City's CLUDC sets general development standards for development adjacent to or within an ESHA as follows, along with staff's analysis for compliance with the requirements:

17.50.050 D General development standards.

1. Performance standards. All development adjacent to or within an ESHA shall comply with the following requirements:

- a. New development shall be designed, sited, constructed, and maintained so as to not significantly disrupt the resource.

Siting and construction techniques. The majority of the proposed project has been sited outside off all ESHA habitat, instead it is located within the ESHA buffer. Habitat protective fencing is a permitted use both within and outside of the ESHA buffer per policy OS-1.6 of the Coastal General Plan which allows habitat fencing within an ESHA buffer as a resource dependent use. The proposed fencing, commonly known as livestock fencing, has been used throughout the Coastal Trail project and there is no evidence that it interferes with the movement of native animals or birds. There have been no injuries to any animals or birds associated with the use of this fence on the Coastal Trail which includes more than 5 linear miles of this type of fencing (some of which has been installed specifically to protect native habitat from impacts). The construction process for this type of fencing is minimally impactful as it does not require any digging or concrete for footings. The T stakes are pounded into the ground with a manually operated (non-mechanical) post pounder. Fencing can be installed with a six inch gap on the bottom of the fence to allow small animals such as skunks, raccoons, rats, mice etc. to easily traverse the fence and a special condition is included below to insure that these construction techniques are followed:

Special Condition 1: The fence shall be constructed out of black coated livestock wire. The fence will be held up 6 inches form the ground to allow the easy movement of small mammals through the barrier.

- b. Where feasible, damaged habitats shall be restored as a condition of development approval.

The property owners have removed a significant quantity of waste form this property on multiple occasions over the years. Most recently, this year, the property owners removed 80 yards of trash and debris from the property. The fence will assist in the

restoration of the ESHA by limiting illegal camping, illegal dumping, and habitat destruction that results from people engaging in these activities on the property.

- c. Development shall be consistent with the biological continuance of the ESHA.

The proposed fencing would protect the Bishop Pine Forest from fire risk as a homeless encampment fire was extinguished on this property a few years ago. Additionally it will protect the forest from significant impacts caused by illegal camping, trash dumping and illegal clearing of areas for illegal camping.

- 2. **Vegetation removal.** Existing native vegetation shall not be removed within an ESHA or an ESHA buffer except for: (1) vegetation removal authorized through coastal permit approval to accommodate permissible development, (2) removal of trees for disease control, (3) public safety purposes to abate a nuisance consistent with Coastal Act Section 30005, or (4) removal of firewood for the personal use of the property owner at his or her residence to the extent that such removal does not constitute development pursuant to Coastal Act Section 30106.

No vegetation removal is associated with this project.

- 3. **Landscaping.** A landscaping plan shall be submitted to the City for approval prior to construction for any site where development will disturb existing or potential native plant habitat. The plan shall provide...

No landscaping is associated with this project.

- 4. **Fencing.** Fencing within or adjacent to ESHAs shall be restricted to that which will not impact public views or the free passage of native wildlife, and shall employ design and materials determined by the review authority to be compatible with the visual and biological character of the habitat.

As conditioned the proposed project shall not impact public views or the free passage of native wildlife. Staff recommends that the Planning Commission find that the fencing is compatible with the visual and biological character of the habitat.

- 5. **Resource protection during construction.** Habitat areas containing vegetation that is essential to the maintenance of the habitat and/or rare or endangered plant or animal species shall be protected from disturbance by construction activities. Temporary wire mesh fencing shall be placed around habitat prior to construction, and protected areas shall not be used by workers or for the storage of machinery or materials. Inspections for compliance shall occur during construction.

- 6. **Herbicide use.** The use and disposal of any herbicides for invasive species removal shall follow the written directions of the manufacturer, shall comply with all conditions imposed by the City, and shall be accomplished in a manner that will fully protect adjacent native vegetation.

- 7. **Erosion and sediment control.** During construction, temporary fencing shall be placed around the ESHA buffer area. Prior to issuance of a Coastal Development Permit or any required Grading Permit, an erosion control plan prepared by a registered professional engineer shall be submitted to the City Engineer for approval, including best management practices to minimize siltation, sedimentation, and erosion. To ensure that sediment remains on the site and is not transported into adjacent ESHA, erosion and sediment controls shall be left in place until the site is stabilized with permanent vegetation.

As the project consists of the construction of a resource protection fence, it is clearly duplicative for the applicant to construct a resource protection fence in order to construct a resource protection fence. No herbicide use is proposed as part of the project. Ground disturbance will consist of less than one cubic yard of material (for

corner posts) and the project will take place in the summer. No erosion and sediment control measures are warranted.

As illustrated in the image below the proposed fence would be located outside of all Bishop Pine Forest ESHAs. Additionally all fencing will be located in areas of ruderal vegetation (primarily non-native grass lawns) which is regularly mowed and impacted by human activities.



In order to ensure that fence posts do not impact the roots of the Bishop Pine trees, Staff recommends the following Special Condition:

Special Condition 2: Fence posts that require post holes shall not be placed within ten feet of any Bishop Pine trees.

The Northern Bishop Pine Forest additionally has the potential to be habitat for Sonoma tree voles, a Department of Fish and Wildlife species of special concern. However the project will not result in the removal of an bishop pine trees, and so will not have any impact on Sonoma Tree voles.

Archaeological and Cultural Resources

An archaeological investigation report by Thad Van Bueren dated June 26, 2005 is located in the project file. The report indicates that a heavily disturbed prehistoric site is present on the property. According to the report, the site appears to consist of re-deposited fill likely derived from a location that was a prehistoric activity area. The site fails to qualify as a historical resource and has also been determined not to be a unique archaeological resource under California law. Additionally, the proposed fencing would be located more than 100 feet from the known arch site even at its closest point. The Sherwood Valley Band or Pomo may determine that they would like to have a Native American monitor present during ground disturbing activities and Special Condition 3 has been added in case of this eventuality.

Special Condition 3: The Applicant shall allow a Tribal Monitor to monitor all ground disturbing activities on projects where cultural resources may be reasonably expected to be located. However the applicant is not obligated to pay for this monitoring. Instead the applicant shall notify SVBP's Tribal Preservation Officer, at (707) 459-9690, 14 days in advance of ground disturbing activities so that the TPO can schedule monitoring if desired by SVBP.

Shoreline Access

An irrevocable offer to dedicate (OTD) a coastal access easement to the Noyo River from the south side of the Noyo River Bridge was recorded on the title for parcel 018-140-02 as part of the minor subdivision for this site in 2014. No governmental agency or non-profit has accepted the OTD.

There has been trespassing on this property for many years for the purposes of inhabiting a number of illegal encampments which have resulted in ESHA habitat destruction and degradation. The proposed habitat protective fence would limit access to the OTD in order to protect the Bishop Pine forest ESHA. Policy OS-16.1 of the Coastal General plan requires "maximum public access consistent with the protection of natural resources areas." Public access will be preserved in this location upon acceptance and development of the Offer to Dedicate of the Coastal Access easement. At that time the access will be developed and natural resources can be protected as part of that project. However public access is not currently consistent with the protection of the Bishop Pine Forest ESHA. Consequently Special Condition 4 is proposed to ensure that a portion of the fencing will be removed at such time as the OTD is accepted and developed for coastal access.

Special Condition 4: Upon acceptance of the OTD and development of a trail to the Noyo River, the fencing shall be removed from the area defined in the OTD.

Environmental Determination. This project is exempt from CEQA per section 15303c which includes an exemption for fences.

RECOMMENDATION

Recommended Action: Approve Coastal Development Permit 6-18 (CDP 6-18) subject to the Findings and Standard Conditions.

GENERAL FINDINGS

1. The proposed project is consistent with the purpose and intent of the zoning district, as well as all other provisions of the General Plan, Coastal Land Use and Development Code (CLUDC) and the Fort Bragg Municipal Code;
2. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity;
3. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities (e.g., fire protection, police protection, potable water, schools, solid waste collection and disposal, storm drainage, wastewater collection, treatment, and disposal, etc.), to ensure that the type, density, and intensity of use being proposed would not endanger, jeopardize, or otherwise constitute a hazard to the public interest, health, safety, convenience, or welfare, or be materially injurious to the improvements, persons, property, or uses in the vicinity and zoning district in which the property is located; and
4. For the purposes of the environmental determination, the project is exempt under Section 15303c of the California Environmental Quality Act (CEQA).

COASTAL DEVELOPMENT PERMIT FINDINGS

1. The proposed development as described in the application and accompanying materials, as modified by any conditions of approval, is in conformity with the City of Fort Bragg's certified Local Coastal Program and will not adversely affect coastal resources;
2. The project is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code);
3. The proposed use is consistent with the purposes of the zone in which the site is located;
4. The proposed development is in conformance with the City of Fort Bragg's Coastal General Plan;
5. The proposed location of the use and conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity; and
6. Services, including but not limited to, water supply, sewage disposal, solid waste, and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The resource as identified will not be significantly degraded by the proposed development;
8. There is no feasible less environmentally damaging alternative;
9. All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted; and
10. The resource as identified will not be significantly degraded by the proposed development.

SPECIAL CONDITIONS

1. The fence shall be constructed out of black coated livestock wire. The fence will be held up 6 inches from the ground to allow the easy movement of small mammals through the barrier.
2. Fence posts that require post holes shall not be placed within ten feet of any Bishop Pine trees.
3. The Applicant shall allow a Tribal Monitor to monitor all ground disturbing activities on projects where cultural resources may be reasonably expected to be located. However the applicant is not obligated to pay for this monitoring. Instead the applicant shall notify SVBP's Tribal Preservation Officer, at (707) 459-9690, 14 days in advance of ground disturbing activities so that the TPO can schedule monitoring if desired by SVBP.

4. Upon acceptance of the OTD and development of a trail to the Noyo River, the fencing shall be removed from the area defined in the OTD.

STANDARD CONDITIONS

1. This action shall become final on the 11th working day following the decision unless an appeal to the City Council is filed pursuant to Chapter 17.92.030. This action is appealable to the California Coastal Commission pursuant to Chapter 17.92.040.
2. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and compliance therewith is mandatory, unless an amendment has been approved by the City.
3. This permit shall be subject to the securing of all necessary permits for the proposed development from City, County, State and Federal agencies having jurisdiction. All plans submitted with required permit applications shall be consistent with this approval.
4. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - (a) That such permit was obtained or extended by fraud.
 - (b) That one or more of the conditions upon which such permit was granted have been violated.
 - (c) That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or as to be a nuisance.
 - (d) A final judgment of 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 conditions.
5. This 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.
6. This Coastal Development Permit approval shall lapse and become null and void 24 months from the date of approval unless before the passing of 24 months, a Final Map examined and approved by the City Engineer is approved by the City Council and recorded or an extension is requested and obtained.

ATTACHMENTS

1. Photos of Code Violation & Homeless Encampments
2. Site Map - Proposed Fencing Plan