

MEETING DATE: July 24, 2019

PREPARED BY: M Jones

PRESENTED BY: Marie Jones

AGENDA ITEM SUMMARY REPORT

APPLICATION NO.: Coastal Development Permit 10-19 (CDP 10-19)

PROPERTY OWNERS: Judy L Haun

APPLICANT/AGENT: City of Fort Bragg

PROJECT DESCRIPTION: Construction of a split rail habitat protection fence totaling 1,200 linear feet. The purpose of the fence is to prevent vehicular trespassing and the resulting stormwater pollution and vegetation destruction.

LOCATION: 200-250 West Ocean View Drive. The project is in the Coastal Zone.

ZONING: Medium Density Residential (RM), 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 15303e. The split rail habitat protection fence is a Class 3 accessory structure which is used to protect the property from environmental impacts by preventing vehicular trespass, which can cause destruction of vegetation and pollution of stormwater runoff.

SURROUNDING LAND USES:

NORTH:	Residential
EAST:	Hotel
SOUTH:	Vacant
WEST:	Vacant

Recommended Action: Approve Coastal Development Permit 10-19 (CDP 10-19) subject to the Findings and Special and Standard Conditions.

PROJECT HISTORY

This vacant parcel has no planning or building permit history or files. The site has been vacant for many years. In the 1980s it was part of the old dairy farm.

PROJECT DESCRIPTION

Construction of 1,200 linear feet of split rail habitat protection fence. The purpose of the fence is to prevent trespassing and vehicles from destroying vegetation and impacting stormwater.

CLUDC Analysis

Land Use. The parcel is located in the Medium Density Residential (RM) zone and construction of a fence is consistent with this zoning. The proposed fence would be located outside of all setbacks and thus would comply with setback requirements.

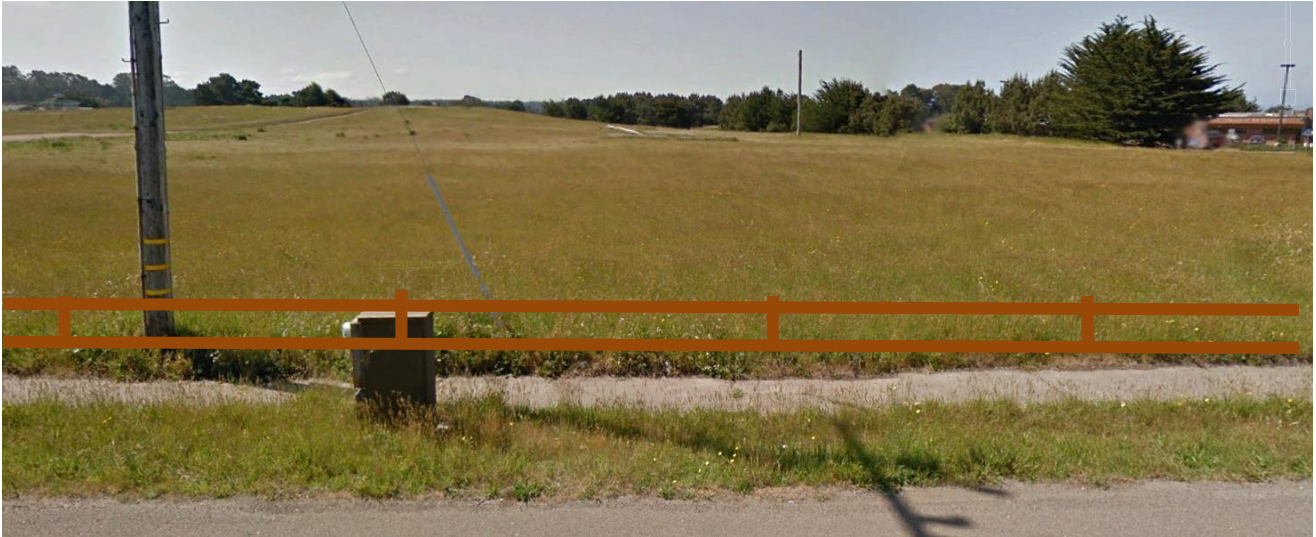
Coastal Development Permit Analysis

Visual Resources. The proposed development is 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 across the property from the public right of way, as the proposed fence would be low profile (less than 42 inches high) and composed of split rail.

The photos below illustrate the views from the public right of way and the proposed fence locations (in brown line work). As illustrated below, the fencing will be low to the ground and will not inhibit views of the grassy field and low hillock in the back ground.



Visual Simulation 1: Proposed Fence location (brown lines) on north side of parcel. View from Ocean View Drive looking south onto the parcel.



Visual Simulation 2: Proposed Fence location (Brown lines) on north side of parcel. View from Ocean View Drive looking south

As noted later in this staff report, the Sherwood Valley Band of Pomo would prefer that the fence on the south and east side of the property include t-stakes with livestock wire. This fence would be difficult to see from the public right of way and would not inhibit views as it is very easy to see through.

Environmentally Sensitive Habitat Area (ESHA).

The area proposed for the fence has a predominance of weedy vegetation. The property is regularly mowed and the plant community consists primarily of non-native grasses and invasive wild radish. The proposed fence would be located in an area that is impacted by trespass parking and recreational vehicle activities as illustrated in the photo below.

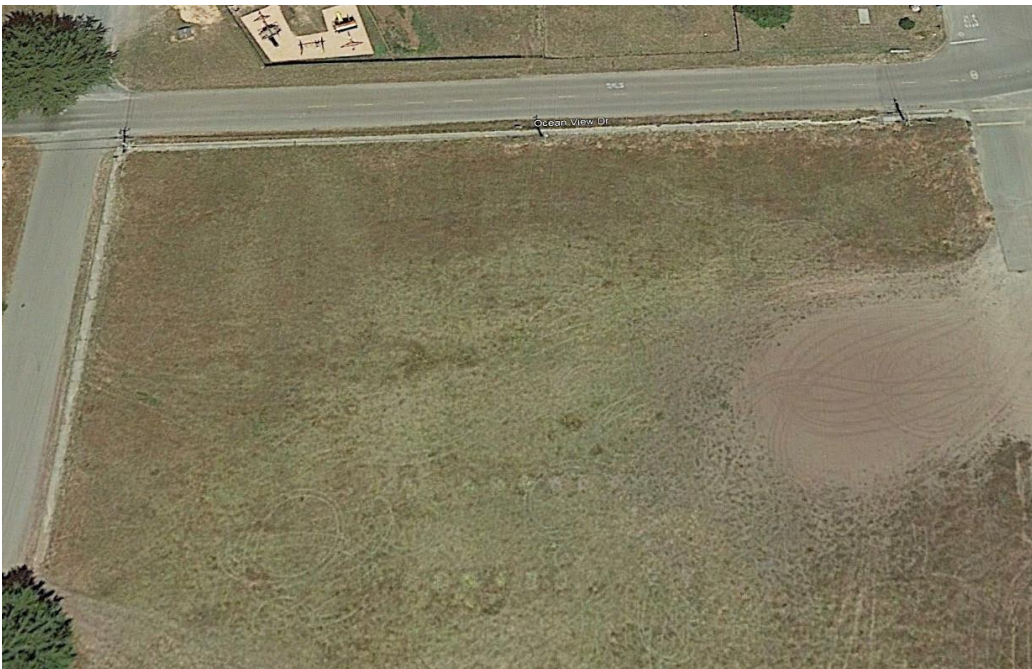


Photo 1: tracks and vegetation destruction from vehicular use of the property (2018 Aerial).

The applicant has noted that the trespass vehicular use of the project has increased significantly in the past year. The image below shows the property in 2013, and the revegetation and damage from parked vehicles is considerably less than it is today. Google earth aerial photos from 2009 and 2006 illustrate even less damage to the vegetation than is evidenced in the photo below.

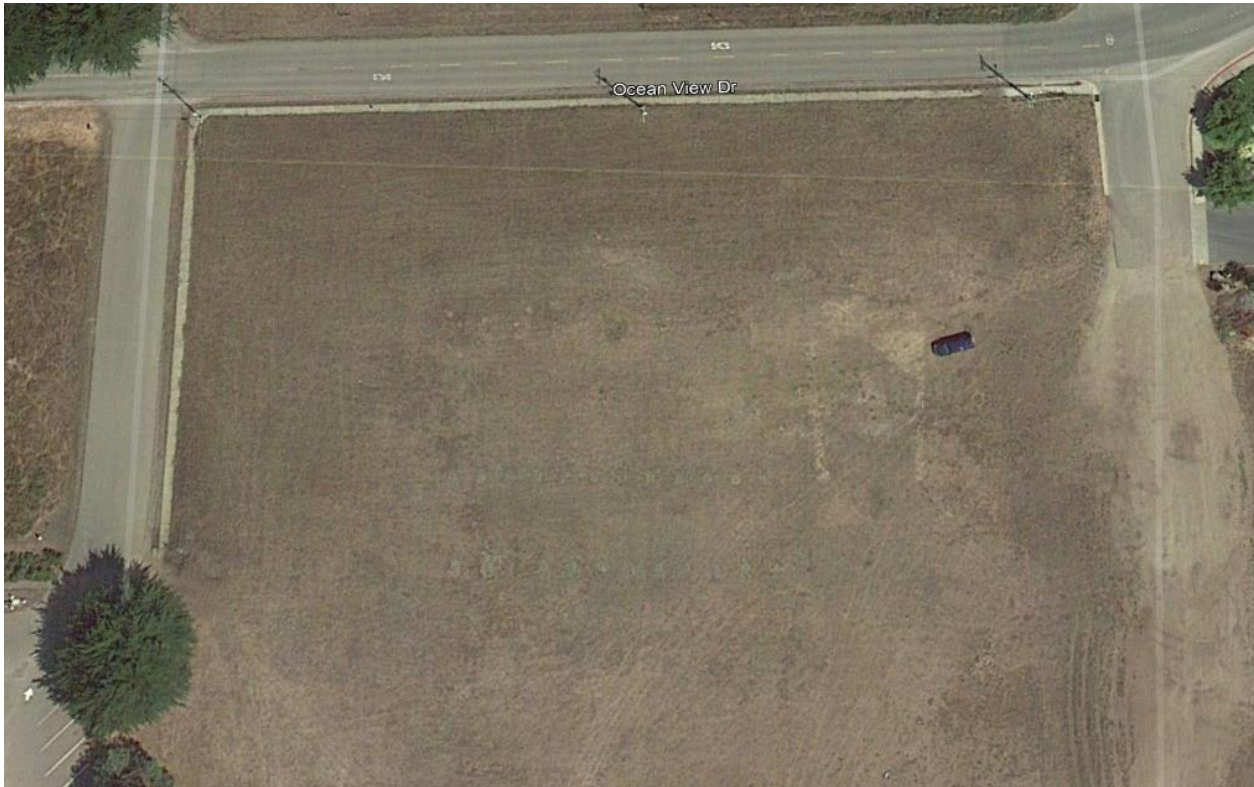


Photo 2: 2013 Google aerial photo showing less habitat destruction.

A botanical study was not completed for this project, due to: 1) the habitat protective nature of the fence; and 2) if important botanical resources are located on the site the proposed project would protect those resources from further habitat destruction caused by the vehicle use on the site. Indeed, the typical mitigation measure for the protection of botanical resources is to install fencing. Thus, the project is a habitat protective activity.

The site is also regularly used for events and event parking, both activities have the potential to impact any special habitat located on the property. This image below illustrates the foot print of a typical event on the property.

The project as proposed and modified will allow for the free movement of deer and other wildlife onto the and off of the property and therefore it will not have a negative impact on animals.



Archaeological and Cultural Resources

No archaeological investigation has been completed for this project site. Staff contacted the Tribal Preservation Monitor at Sherwood Valley Band of Pomo (SVBP) and the SVBP would support a split rail fence on the front of the property (adjacent to Ocean Drive) and along the western boundary (adjacent to the College) because these areas have already been disturbed for the construction of the sidewalk and road. SVBP would prefer a T-stake fence for the southern property boundary and along the eastern edge of the site where past ground disturbance may not have occurred. The T-stake fence should use black coated livestock fencing.

Special Condition 1: The fence on the south and east side of the property shall be constructed of t-stakes with 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.

Additionally, the Sherwood Valley Band or Pomo has determined that no Native American monitoring is required for the project.

Shoreline Access

This parcel does not provide access to the shore. Nor would the placement of the fence limit access to the shore. The parcel is not included in Map OS-3 as a potential coastal access. Map OS-3 identifies areas that require coastal access as a condition of approval for a CDP.

Existing nearby access to the shore is noted on the photo below (in blue).



The site is regularly used for recreational uses, although the property owner has indicated that these activities are trespassing and the property owner has recently installed no-trespassing signs.

If there is a concern that the fence would limit public access to this site, the Planning Commission could ask staff to determine if there is a prescriptive right for recreational vehicle use and pedestrian access

on the property. To establish a prescriptive easement, the City would have to prove that the public has had use of the property, for the statutory period of five years, which has been: (1) open and notorious; (2) continuous and uninterrupted; (3) hostile to the true owner; and (4) under a claim of right. (Main Street Plaza v. Cartwright & Main (2011) 194 Cal.App.4th 1044, 1054.) Generally, the City would have the burden of proof for proving each of the elements above to establish that the easement has been created by prescription. (Code Civ. Proc. § 321.) Whether the easement satisfies the above requirements is considered a question of fact. (Warsaw v. Chicago Metallic Ceilings, Inc. (1984) 35 Cal.3d 564, 571.). A prescriptive easement may be difficult to prove given all four requirements described above. If the Planning Commission wants staff to research this issue, staff recommends that the Commission: continue the public hearing, and direct staff to complete research to determine if there is sufficient evidence of use to require a prescriptive easement across the property as described above.

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

RECOMMENDATION

Recommended Action: Approve Coastal Development Permit 10-19 (CDP 10-19) 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 15303e 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 on the south and east side of the property shall be constructed of t-stakes with 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.

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. Site Map - Proposed Fencing Plan