

OWNER/APPLICANT: BRET AND VALERIA TABER
PO BOX 1477
MARTINEZ, CA 94553

REQUEST: The applicant requests a Standard Coastal Development Permit for the (1) partial demolition of an existing 1,882± square foot two-story single-family residence and demolition of two existing sheds; (2) construction of a 2,638± square foot single story single-family residence on a bridge-type foundation with a covered porch, wood deck, wood fences and two sheds; and (3) site work including removal of asphalt surfacing, decommissioning an existing septic system with installation of a new septic system and sewage line, a gravel courtyard, and storm drainage improvements. The existing two-car garage will remain in its present location and configuration.

ENVIRONMENTAL DETERMINATION: Mitigated Negative Declaration

RECOMMENDATION: Approve the request

LOCATION: In the Coastal Zone, 2± miles south of Little River at the terminus of Frog Pond Road (private), 0.5± miles northwest of its intersection with Highway 1, at 5720 North Highway 1, Little River; APN 121-110-06.

TOTAL ACREAGE: 2± Acres

GENERAL PLAN: Mendocino County General Plan – Coastal Element
RR 5 (Rural Residential, 5 acre min. lot sizes)

ZONING: Mendocino County Code – Division II
RR-5 (Rural Residential, 5 acre min. lot sizes)

ADJACENT ZONING: North: RR-5 (Rural Residential, 5 acre min. lot sizes)
East: RR-5 (Rural Residential, 5 acre min. lot sizes)
South: Pacific Ocean
West: Pacific Ocean

EXISTING USES: Single-Family Residential

ADJACENT USES: North: Vacant
East: Vacant
South: Pacific Ocean
West: Pacific Ocean

SUPERVISORIAL DISTRICT: 5

PROJECT DESCRIPTION: The applicant requests a Standard Coastal Development Permit for the (1) partial demolition of an existing ±1,882 square foot two-story single-family residence and demolition of two existing sheds; (2) construction of a ±2,638 square foot single story single-family residence on a bridge-type foundation with a ±410 square foot covered porch, ±638 square feet of wood decking, two sheds

(within a proposed $\pm 1,130$ square foot gravel courtyard utilizing ± 730 square feet of existing asphalt), and ± 46 linear feet of fencing; and (3) site work including removal of asphalt surfacing, decommissioning an existing septic system with installation of a new septic system and sewage line, a gravel courtyard, and storm drainage improvements. The existing two-car garage will remain in its present location and configuration.

SITE DESCRIPTION AND SETTING: The approximately two acre blufftop parcel is located two miles south of Little River at the western terminus of Frog Pond Road (private), approximately 0.5 miles northwest of its intersection with Highway 1, at 5720 North Highway 1. The site is surrounded by a mixture of rural residential development and vacant forest land. Beyond adjacent properties, visitor accommodation, commercial and residential uses are intermixed among vacant parcels throughout Little River. The subject parcel is currently developed with an existing single-family residence, with attached garage, two sheds, and associated utilities.

The vegetative communities on the parcel include non-native perennial grasses, closed-cone coniferous forest, and coastal bluff scrub. Development of the parcel is heavily constrained by Environmentally Sensitive Habitat Areas.

The ocean bluff is located thirty-six feet west of the proposed development. The parcel contains a sea cave that extends approximately 188 feet north from a mouth located on the parcel's south bluff face. The sea cave terminates at a major underground rock fall, but not before the cave tracks to the west and exits at the bluff face on the west of the parcel.

KEY ISSUES: Coastal Development Permit applications are subject to the findings enumerated in Section 20.532.095 and Section 20.532.100 of the Mendocino County Code (MCC). **ATTACHMENT A: COASTAL PERMIT APPROVAL CHECKLIST** individually addresses each of the Required Findings for all Coastal Development Permits and any Supplemental Findings applicable to this project.

The issues listed below are drawn from **ATTACHMENT A** and have been determined to be "key issues" because they either require special conditions for the findings to be made, or they address matters of particular concern by referral agencies.

Key Issue 1: Geology

The proposed structure is located on a relatively flat coastal terrace with a steep coastal bluff approximately seventy-five to eighty feet in vertical height. Section 20.500.20(B) of the MCC outlines siting and land use restrictions relative to ocean bluffs, requiring new structures to be set back a sufficient distance from the edge of the bluff to ensure their safety from bluff erosion and bluff retreat during their economic life span (seventy-five years). The MCC also states that drought tolerant vegetation shall be required within the bluff setback, and construction landward of the setback shall not contribute to erosion of the bluff face or instability of the bluff.

A Geotechnical Investigation was performed by Brunsing Associates, Inc. (BAI) to determine the appropriate setback from the bluff edge for the proposed residence¹ (**ATTACHMENT C: GEOTECHNICAL INVESTIGATION**). The report from BAI recommends a thirty-six foot setback for development from the bluff edge. The report additionally found that a fifteen foot setback from the walls of the underlying sea cave would be sufficient to safely site development. The existing residence is approximately forty-five feet from the bluff edge and meets the recommended bluff setback; however, the existing residence is within the recommended fifteen foot setback from the walls of the underlying sea cave.

As a result of these recommended setbacks, the applicant has designed the residence to rest on a bridge-type foundation spanning the sea cave and anchored over fifteen feet from its walls. The bridge supporting the residence spans from abutment to abutment, gaining no support from the underlying soil or rock within

¹ Brunsing Associates, Inc. *Geotechnical Investigation*. Rep. 11 Jun. 2014.

the cave roof. The bridge is also at least thirty-six feet from the bluff edge, meeting the recommendations of the Geotechnical Investigation. The BAI recommendations for setbacks are included as **Condition 8**.

BAI further recommended that “prior to construction, BAI should review the final grading and foundation plans, and soil related specifications for conformance with our recommendations.” **Condition 9** is in place to require this inspection.

It is the policy of the Coastal Commission and Mendocino County to require recordation of a deed restriction as a condition of development on blufftop parcels, prohibiting the construction of seawalls and requiring that permitted improvements be removed from the property if threatened by bluff retreat. The restriction also requires that the landowner be responsible for any clean-up associated with portions of the development that might fall onto a beach or into the ocean. **Condition 10** is recommended to address this issue.

Key Issue 2: Visual Resources

Protection of visual resources is a specific mandate of Section 30251 of the Coastal Act, and is subsequently addressed in Chapter 3.5 of General Plan’s Coastal Element and implemented by Chapter 20.504 of the MCC. The subject parcel is located within a mapped Highly Scenic Area (HSA), as depicted on the *Albion* LCP map, requiring that new structures not exceed “eighteen feet above natural grade...unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.”² The proposed residence is depicted with a maximum height of eighteen feet on the elevation drawings provided with the application materials, consistent with the height limitations of HSA.

The LCP and MCC contain additional development criteria for projects in HSA to protect views to and along the ocean and scenic coastal areas. The proposed project would replace an existing single-family residence with a new single-family residence and associated development approximately 1,000 feet west of Highway One, where it will stand on the western edge of existing vegetation near the location of the existing single-family residence. The proposed location of the development is buffered by existing woodland vegetation, and is almost completely shielded from the view of motorists.

The proposed development will be visible from the sea, appearing before a forested backdrop. The development is at the toe of the slope, and will not appear as a silhouette against the sky from the sea or any other vantage point. It will appear similar to the existing single-family residential development on site and in the nearby community.

The existing residence to be partially demolished is two stories tall. The removal of the second story, and replacing the residence with a one story structure will lessen the project’s impacts and bring the development into compliance with visual resource policies of the LCP.

Additionally, the project application indicates proposed materials and colors for the proposed structures. The original application included metal roofing. Materials in the Coastal Zone are required to blend with the natural surroundings and minimize reflective surfaces. Staff questioned how the metal roofing could be consistent with these requirements, and in email correspondence on March 30, 2015, the applicant revised the proposed roofing materials from metal to composition shingles, and revised the proposed roofing colors from copper to gray. The final proposed project materials and colors are as follows:

² *Mendocino County Code*, § II-20.376.045 (1991). Print.

Table 1: Proposed Project Materials and Colors		
Element	Materials	Color
Siding	Hardie cement board lap siding	Kelly Moore – Stagecoach (brown)
Trim	Wood (cedar)	Kelly Moore – Swiss Coffee (white)
Chimney	Stone Veneer – Beaver Creek by Telluride Stone Company	Brown / Earth tones
Roofing	Composition shingles	Gray / Charcoal
Window Frame	Fiberglass – Millguard	Brown
Door	Fiberglass – Millguard	Brown
Fencing	Hardie cement board lap siding	Kelly Moore – Stagecoach (brown)
Deck	Wood	Brown

Staff recommends **Condition 12** requiring the project be constructed with the proposed materials and colors.

The MCC provides exterior lighting regulations intended to protect coastal visual resources. Exterior lighting is required to be within the zoning district's height limit regulations, and also must be shielded and positioned in a manner that light and glare does not extend beyond the boundaries of the parcel.³

No lighting is shown on the proposed elevations. **Condition 13** is recommended to ensure that any exterior lighting will comply with lighting policies.

The recommended conditions of approval will ensure the project is consistent with visual resource policies of the LCP.

Key Issue 3: Drainage

Drainage is subject to Section 20.492.025 of the MCC, which requires that water flows in excess of natural flows resulting from the project development be mitigated. The applicant submitted a *Stormwater Management Report* dated May 20, 2014 (revised December 22, 2014) prepared by Doble Thomas & Associates addressing the project impacts on stormwater runoff. The report concludes that “there is no change in the runoff CN as a result of the increased building footprint for the new house and the addition of a court yard area versus what exists today. This is a result of the removal of 0.11ac of existing pavement and replacing with gravel driveway.” The *Storm Water Management Report* recommends **Condition 14**, directing roof drains to planters as stormwater treatment control measures. This volume based approach will detain the increased runoff from the roofs, and slowly release it at a rate that mimics the existing runoff rate of the site. This volume-based treatment is used to minimize erosion in addition to providing filtration and should be sufficient to mitigate an increase in runoff.

Condition 15 is recommended to reduce stormwater runoff impacts, and to provide the development with drainage consistent with MCC Section 20.492.025:

Key Issue 4: Archaeology

On September 10, 2014, the project was referred to the Mendocino County Archaeological Commission to review an archaeological survey prepared for the parcel by John W. Parker dated March 25, 2014. The archaeological survey discovered one historic site within the project area, and recommended that the project be approved as planned with a provision that future construction and development take place at least thirty feet away from the boundary of the historic resource. All development is proposed over thirty feet from the resource as identified in the archaeological survey. The Archaeological Commission accepted the survey and found that the recommendations of the report are acceptable.

³ *Mendocino County Code*. § 20.504.35 (1991). Print.

The Commissioned also advised the applicant of the Mendocino County Archaeological Resources Ordinance, and specifically Section 22.12, commonly referred to as the “Discovery Clause.” Recommended **Condition 16** similarly advises the applicant of the Discovery Clause, which prescribes the procedures governing the discovery of any cultural resources during construction of the project.

Key Issue 5: Biology

The certified Mendocino County LCP includes sections of both the MCC and the Coastal Element of the General Plan addressing Environmentally Sensitive Habitat Areas (ESHA). The MCC states that development having the potential to impact an ESHA shall be subject to a biological survey, prepared by a qualified biologist, to determine the extent of sensitive resources, to document potential negative impacts, and to recommend appropriate mitigation measures.

In 2007, while the parcel was under separate ownership, Planning and Building Services opened a zoning code violation case (BC_2007-0014) on the subject parcel. Earthmoving and vegetation removal activities resulted in disturbed earth within and near a riparian woodland, wetland and seasonal creek that outlets to the ocean. A Coastal Development Permit Authorization for Emergency Work (EM_2007-0003) was issued for the removal of berm piles and stabilization of disturbed earth areas prior to seasonal rains to prevent erosion and sedimentation into the creek and discharging to the ocean.

A Coastal Development Permit (CDP_2007-0071) was later issued following the Emergency Permit. CDP_2007-0071 permitted removal of stockpiles of dirt and logs, and restoration activities including construction of replacement wetlands and establishment of native plant habitats. Special Condition 1 of the approved permit states (in part) the following monitoring mechanism for the restoration plan:

...Allow staff to conduct a site view in two years (September 2014). If for some reason the site becomes significantly degraded, additional restoration activities shall be necessary. Significantly degraded for the purposes of review in two years shall mean that greater than 50% of the planted native species shall have perished or invasive plants have increased cover of the restored areas by more than 30%.

On October 17, 2014, California Department of Fish and Wildlife (CDFW) visited the parcel to assist in verifying whether these criteria for success had been met. Staff and CDFW concluded that Condition 1 of CDP_2007-0071 has been satisfied. CDFW summarizes the visit as follows:

Vegetative cover in the created wetland areas appears to meet the success criteria. Only a small amount of rain has fallen this water year, so it is not surprising that wetland areas were not inundated during our visit. However, hydrophytic vegetation in these areas appeared to be alive and likely to revive with additional precipitation.

In general, success criteria appear to have been reached, and the site appears to be recovering well—especially considering the challenge of the continuing drought.

The applicant submitted biological analysis prepared by WRA Environmental Consultants titled *Coastal Act Compliance Report*⁴ in concert with the application for the replacement single-family residence (**ATTACHMENT D: BIOLOGICAL REPORTS**). Special status species and communities identified in the report include blue blossom scrub (0.29 acres), common rush meadow (0.02 acres), pacific reed grass meadow (0.13 acres), and shore pine forest (0.51 acres). A wetland delineation mapped 0.15 acres of wetlands, featuring hydrophytic vegetation alliances common rush meadow and pacific reed grass meadow.

MCC Section 20.496.020(A) requires that buffer areas “be established adjacent to all environmentally sensitive habitat areas....” The ordinance goes on to describe the ramifications of multiple buffer distances:

⁴ WRA Environmental Consultants, *Coastal Act Compliance Report*. Rep. June. 2014. Print

The width of the buffer area shall be a minimum of one hundred (100) feet, unless the applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width.

There is no area on the parcel greater than one hundred feet from any ESHA, and very little area beyond fifty feet from any ESHA. The proposed development has been sited to avoid the literal extent of all on-site ESHA; however, development is proposed within fifty feet of identified ESHA, conflicting with Section 20.496.020(A)(1), which states that buffer areas shall not be less than fifty feet in width.

Section 20.496.020 requires that development less than one hundred feet from ESHA demonstrate that one hundred feet is not necessary for the protection of the ESHA from the proposed development. Section 20.496.020(A)(4) prescribes minimum standards for development within an ESHA buffer. In the *Coastal Act Compliance Report*, and in subsequent addendum letters dated December 29, 2014, and February 23, 2015, WRA Environmental Consultants address these minimum development standards and offer Mitigation Measures to achieve consistency with the LCP ESHA policies.

The Mitigation Measures are recommended by the project biologist to ensure that the project does not have an adverse impact on the sensitive resources at the site, and have been incorporated into recommended **Condition 17** requiring that the recommendations are implemented.

The minimum development standards listed in Section 20.496.020(A)(4) require that structures are allowed within buffer areas only if there is no other feasible site available on the parcel, and the proposed development is the least environmentally damaging alternative. In the *Coastal Act Compliance Report* addendum letter dated February 23, 2015, WRA Environmental Consultants supplied an analysis of development alternatives to the proposed project (**ATTACHMENT E: ALTERNATIVES ANALYSIS**). The alternatives analysis considers the initially proposed location, three different development locations, and a two-story alternative.

Several competing constraints limit the viability of alternative development proposals, as explained in the Alternatives Analysis. The table below is included within the Alternatives Analysis, and evaluates the various development scenarios against the environmental, geological and policy constraints of the parcel.

CONSTRAINTS	Proposed Residence, 1-story	Proposed Residence Location, 2-story	Alternative A	Alternative B	Alternative C	No Project
Avoids Literal Extent of ESHA?	Yes	Yes	Yes (No)	Yes (No)	Yes	Yes
Avoids 50- and 100-foot ESHA Buffer?	No	No	No	No	No	No
Avoids Previous Restoration Area?	Yes	Yes	Yes (No)	Yes (No)	Yes	Yes
Meets Sea Bluff Setback?	Yes	Yes	No	Yes	Yes	Yes
Meets Sea Cave Setback?	Yes	Yes	No	No	Yes	No
Meets Property Line Setback?	Yes	Yes	Yes	No	No	Yes
Meets PG&E Setback?	Yes	Yes	Yes	Yes	No	Yes
Meets Setback from Proposed Septic Area?	Yes	Yes	Yes	Yes	No	Yes
Off-haul Volume (cubic yards)	158	600	200	560	455	N/A
Driveway Extension Necessary?	No	No	Yes	No	Yes	No
Tree Removal Necessary?	No	No (Yes)	Yes	No	Yes	No
Calfire Turnaround Required	No	No	Yes	Yes	Yes	No
Calfire Fire-safe Vegetation Management Required	No	No	Yes	Yes	Yes	No
Calfire Driveway Upgrade Required	No	No	Yes	Yes	Yes	No

Following analysis of all considered alternatives, the report concludes:

It is the professional opinion of WRA that working within these constraints the Proposed Residence is the least environmentally damaging alternative for a replacement residence. This alternative takes full advantage of areas that have been developed for several decades, essentially repurposing the area. The expansion of the footprint is necessary to ensure the safety and stability of the updated residence, and prevent contamination should the sea cave fail and collapse the existing residence....Siting the residence in Alternatives A through C present violations of several required setbacks, and will result in increased grading, trenching, and soil cutting over the Proposed Residence to provide for grade leveling, utility lines, and CalFire mandated updates. Likewise, these Alternatives would require the removal of the existing residence resulting in the exposure of compacted and denatured soils that would be labor intensive and expensive to remediate and rehabilitate to native habitat. Rather, mitigation for the Proposed Residence would be preferentially sited within one or more of the footprints of Alternatives A through C. These areas have a much higher likelihood of success for habitat restoration than that of the existing residence.

Alternatives to the proposed development, including different projects and alternative locations, have been considered and analyzed by a qualified professional, as required by MCC Sections 20.496.020(A)(4)(b) and 20.532.060(E). The proposed development is the least damaging, feasible alternative development scenario on the parcel.

In addition to identifying the least damaging feasible development scenario, the standards for development within a buffer area also require that mitigation measures shall replace the protective values of the buffer area on the parcel, at a minimum ratio of one-to-one, which are lost as a result of the development (Section 20.496.020(A)(4)(e)). WRA recommends a vegetation planting plan to provide enhanced habitat and visual screening, and notes that "immediate vegetation impacts are overwhelmingly to non-native species." Figure 1, titled *Proposed Footprint, Restoration and Enhancement Areas* found in

the *Coastal Act Compliance Report Addendum* dated December 29, 2014, depicts a combined 0.32 acres of shore pine forest restoration, coastal bluff scrub restoration, and coastal terrace prairie restoration. Additionally, Figure 1 identifies 0.54 acres of shore pine forest enhancement. These areas are identified for future vegetation planting to replace the protective values of the buffer area affected by the proposed development.

Furthermore, development within ESHA buffers must also minimize impervious surfaces and minimize removal of vegetation (Section 20.496.020(A)(4)(f)). The proposed residence location relies heavily on the existing development footprint. This development location utilizes the existing access and does not require driveway expansion, and places development in existing unvegetated areas to limit the removal or existing vegetation.

The proposed project is not consistent with all LCP policies relating to ESHA, despite the identification of the least environmentally damaging alternative, the lack of feasible alternatives on site, the proposed mitigation measures to offset project impacts, and siting development to minimize impervious surfaces and minimize vegetation removal. As stated above, Section 20.496.020(A)(1) reads in part, "the buffer area shall be measured from the outside edge of Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width." The project is inconsistent with this LCP policy; however, no alternative exists on the parcel that could be found to be consistent with this LCP policy. Prohibiting development within fifty feet of an ESHA would deprive the owner of all economic use of the property. Consequently, staff evaluated if denial of the project would result in an unconstitutional taking of private property for public use, which is addressed in further detail under **Key Issue 7** in this Staff Report and **ATTACHMENT F: TAKING ANALYSIS**.

In summary, the proposed project cannot be found consistent with LCP policies relating to ESHA; however, the proposed project is the least damaging alternative, no alternative proposal could be approved, and the proposed mitigation measures required by **Condition 17** will address the impacts to ESHA. These measures will mitigate the impact of the proposed development, and restore and enhance ESHA located on the parcel.

Key Issue 6: Air Quality

The project is located within the jurisdiction of the Mendocino County Air Quality Management District (AQMD). Any new emission point source is subject to an air quality permit, consistent with the district's air quality plan, prior to project construction. The AQMD also enforces standards requiring new construction, including houses, to use energy efficient, low-emission EPA certified wood stoves and similar combustion devices to help reduce area source emissions.

While the project will not include a new point source, it may contribute to area source emissions by generating wood smoke from residential stoves or fireplaces. The County's building permit plan check process ensures that this and similar combustion source requirements are fulfilled before construction is permitted to begin, consistent with the current air quality plan. Consequently, the County's building permit approval process will help to ensure new development, including this project, is consistent with and will not obstruct the implementation of the air quality plan.

The generation of dust during grading activities, another type of area-source emission, will be limited by the County's standard grading and erosion control requirements (MCC Sections 20.492.010; -020). These policies limit ground disturbance and require immediate revegetation after the disturbance. Consequently, these existing County requirements will help to ensure PM10 generated by the project will not be significant and that the project will not conflict with nor obstruct attainment of the air quality plan PM10 reduction goals.

The project will establish a single-family residence in a low density rural residential coastal setting where a single-family residence already exists. Residential uses are consistent with the County's land use plan. Approval of this project will not permit large-scale development that may result in a cumulatively considerable net increase in air pollution, including PM10.

The proposed removal of asphalt surfacing to create a gravel driveway is subject to air quality standards regarding fugitive dust and asbestos. **Condition 18** is recommended to ensure that the driveway and be maintained consistent with Air Quality Management District Regulation 1, Rule 430.

Additionally, there are no short-term or long-term activities or processes associated with the single-family residence that will create objectionable odors. Nor are there any uses in the surrounding area that are commonly associated with a substantial number of people (i.e., churches, schools, etc.) that could be affected by any odor generated by the project.

Adherence to recommended **Condition 18** will reduce potential project impacts to a less than significant level.

Key Issue 7: Takings Analysis

A number of alternative development scenarios were considered for the property (**ATTACHMENT E: ALTERNATIVES ANALYSIS**). The proposed alternative is the least environmentally damaging for the following reasons:

1. While development encroaches within fifty feet of ESHA, the proposed development avoids encroaching on the literal extent of ESHA.
2. There are no locations to site development on the parcel that would buffer development from ESHA by at least fifty feet.
3. Any development over the sea cave requires the bridge-type foundation proposed to meet geologic hazard standards and setbacks. The proposed foundation cannot be reduced and still meet geologic hazard standards.
4. Development beyond the sea cave either encroaches on the literal extent of ESHA, fails to meet required geologic setbacks, or requires an increase in vegetation removal due to grading and/or fire safety requirements.
5. Development beyond the sea cave fails to utilize the extent of existing development, where impacts to ESHA are existing, construction related impacts are lessened, and complete demolition of the existing residence would not be necessary.
6. If no project is approved, the existing residence and associated septic could collapse into the ocean, as geologic setback requirements from the sea cave are not presently met.

Despite the identification of the least environmentally damaging alternative, the proposed project is not consistent with Section 20.496.020(A)(1), which reads in part, "the buffer area shall be measured from the outside edge of Environmentally Sensitive Habitat Areas and shall not be less than fifty feet in width." The proposed project, while avoiding the literal extent of ESHA, is sited less than fifty feet from ESHA boundaries.

Section 30010 of the California Coastal Act addresses regulatory takings and states the following:

The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

In this case, prohibiting development within fifty feet of an ESHA would deprive the owner of all economic use of the property. There are no alternative development options where the project can be at least fifty feet from ESHA.

Some factors courts examine to determine if a regulatory taking has occurred involve the presence of

reasonable investment-backed expectations, the degree to which a regulation may interfere with those reasonable investment-backed expectations, and whether or not a regulation deprives an owner of all economic use of the property. Staff believes that there was a reasonable investment-backed expectation and that the scale of the residential development proposed is consistent with similar properties in the vicinity. **Table 2** below outlines the cost the applicant has incurred since purchasing the site on December 4, 2013, in an effort to develop the property. The purchase price of \$695,000.00 for approximately two acres of vacant land is a substantial investment. Considering the property is zoned for residential development as a principally permitted use, a reasonable person would have believed that the property could have been developed with a single-family residence.

Through February 2015, the applicant has spent approximately \$864,163.00 to purchase the property, design the residence, prepare surveys and studies, and complete permits necessary for future development of the site. The largest expenditures were related to land costs (e.g., purchase of the land, interest, taxes, etc.).

Table 2: Expenditures Related to the Purchase and Improvement of the Property at 5720 N Highway 1, Little River, CA	
Type of Expenditure	Cost
Land Costs	
Purchase Price	\$695,000.00
Closing Costs	\$6,595.00
Interest Expense	\$7,643.00
Lost Interest On Money	\$35,500.00
Taxes	\$12,949.00
Subtotal	\$757,687.00
Architects and Engineers	
Architect	\$8,000.00
Civil Engineer	\$12,574.00
Structural Engineer	\$3,127.00
Geotechnical Engineer	\$12,814.00
Septic Design	\$4,900.00
Subtotal	\$41,415.00
Land Surveys and Studies	
Surveying	\$1,500.00
County Property Records	\$295.00
Coastal Act Compliance Reports (paid)	\$19,669.00
Coastal Act Compliance Reports (due)	\$2,000.00
Archeology Survey	\$800.00
Planner	\$2,280.00
Subtotal	\$26,544.00
Permit Fees	
Planning Application	\$3,623.00
Subtotal	\$3,623.00
Miscellaneous	
Legal	\$12,500.00
Clean Up Work	\$22,125.00
Shore Pine Trees	\$269.00
Subtotal	\$34,894.00
Total Expenditures	\$864,163.00
Notes: Information provided by Mr. Bret Taber in a letter dated February 24, 2015.	

In order to assess if the applicant's expectation to build 2,638 square foot home in addition to an existing 487 square foot garage on two acres was similar to comparable single-family homes the area, thirty-seven single-family residences located west of Highway 1 between Dark Gulch and Little River were examined, as requested by the Coastal Commission. The average square footage was 3,072 square feet (including residence and garage) for the thirty-seven properties, which is comparable to the 3,125 square feet requested by the applicant (**Table 3**).

Table 3: Square Footage and Acreage of Comparable Properties within 1.5 Miles of Subject Parcel

Assessor Parcel Number	Distance from Project (Miles)	House (Square Feet)	Garage (Square Feet)	Total (Square Feet)	Lot Area (Acres)
121-130-36	0.18	1,152	720	1,872	2.50
121-130-35	0.25	3,523	725	4,248	7.50
121-130-27	0.20	1,295	0	1,295	2.85
121-130-31	0.17	2,195	1,020	3,215	5.20
121-110-13	0.16	3,788	245	4,033	7.30
121-110-04	0.16	2,481	460	2,941	1.00
121-040-31	0.15	2,895	600	3,495	1.00
121-040-16	0.12	2,552	504	3,056	1.00
121-040-15	0.13	2,324	0	2,324	1.00
121-040-27	0.16	3,187	192	3,379	1.23
121-040-14	0.18	2,363	450	2,813	1.88
121-040-13	0.20	2,805	0	2,805	0.85
121-040-12	0.22	2,280	500	2,780	2.10
121-040-11	0.23	1,409	420	1,829	1.00
121-040-34	0.25	1,719	600	2,319	1.25
121-040-35	0.32	1,525	0	1,525	2.70
121-040-30	0.39	2,887	499	3,386	3.50
121-040-29	0.41	1,846	0	1,846	2.50
121-050-22	0.51	1,967	576	2,543	2.60
121-050-20	0.54	1,688	250	1,938	2.90
121-050-19	0.53	2,989	572	3,561	3.00
121-050-18	0.46	2,623	220	2,843	15.00
121-050-17	0.74	5,368	1,221	6,589	1.69
121-050-16	0.74	2,534	200	2,734	3.40
121-050-16	0.77	1,986	200	2,186	3.40
121-050-30	0.79	2,932	638	3,570	1.30
121-050-29	0.81	1,491	378	1,869	0.90
121-050-14	0.89	2,117	637	2,754	0.90
121-050-06	1.04	3,277	774	4,051	14.70
121-050-05	1.08	5,225	1,374	6,599	2.92
121-050-04	1.09	1,952	552	2,504	2.84
121-050-03	1.14	1,666	588	2,254	3.07
121-050-02	1.18	2,115	1,217	3,332	3.00
121-280-09	1.23	2,600	908	3,508	8.10
121-280-11	1.31	3,267	1,044	4,311	5.30
121-280-07	1.41	2,016	576	2,592	3.72
121-280-06	1.45	4,163	600	4,763	6.10
Averages	0.58	2,546	526	3,072	3.55
Proposed Project	0	2,638	487	3,125	2.00

Notes: Information provided by Mr. Bret Taber in a letter dated February 24, 2015.

Section 20.368.010 of the MCC states the principally permitted use types in the RR district, which include: single-family residential, vacation home rental, light agriculture, row and field crops, tree crops and passive recreation. Due to the prevalence of ESHA on the parcel, all principally permitted uses would require encroachment into a fifty foot ESHA buffer. The allowed agricultural uses would require substantial site disturbance and clearing and are not a viable way to use the property. Passive recreation use would be the only option that would be less impactful than the construction of a single-family residence and possibly not require any activities meeting the definition of development under the Coastal Act. Passive recreation uses include sightseeing, hiking, scuba diving, swimming, sunbathing, jogging, surfing, fishing, bird watching, bicycling, horseback riding, boating, photography nature study and painting. These passive recreation uses do not afford the property owner an economically viable use.

Furthermore, the parcel currently contains an existing single-family residence. The existing residence is unsafe, as it does not conform to County geotechnical standards and setbacks recommended by the Geotechnical Investigation. The applicant claims that the property was purchased with the distinct investment-backed expectation that the owner has the continuing right to ensure that the home will be safe from potential geotechnical hazards, stabilizing the proposed residence within the footprint of existing development.

The project minimizes development to the maximum extent possible while assuring stability of the residence by meeting geotechnical standards and setbacks, locates it in the least sensitive portions of the site by capitalizing on the existing development footprint, and incorporates all feasible mitigation measures, as proposed by the project biologist. The environmental impact mitigation measures specified in recommended **Condition 17** are required to ensure that the project does not have an adverse impact on the sensitive resources at the site.

STAFF RECOMMENDATION: Adopt the Mitigated Negative Declaration and approve the request for Coastal Development Permit CDP_2014-0024 with the recommended Conditions of Approval.

FINDINGS FOR RECOMMENDED APPROVAL:

Environmental Findings: The Coastal Permit Administrator finds that the environmental impacts identified for the project can be adequately mitigated through the conditions of approval or features of the project design so that no significant adverse environmental impacts will result from this project; therefore, a Mitigated Negative Declaration is adopted.

Coastal Development Permit Findings: The Coastal Permit Administrator finds that the application and supporting documents contain information and conditions sufficient to establish, as required by the MCC, that:

1. The proposed development is in conformity with the certified local coastal program, except Section 20.496.020(A)(1) relating to buffer widths from Environmentally Sensitive Habitat Areas, which is specifically addressed by the Supplemental Findings below; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of the MCC and preserves the integrity of the zoning district, except Section 20.496.020(A)(1) relating to buffer widths from Environmentally Sensitive Habitat Areas, which is specifically addressed by the Supplemental Findings below; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.

6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The Environmentally Sensitive Habitat Areas as identified in the report prepared by WRA Environmental Consultants titled *Coastal Act Compliance Report*, as amended, will not be significantly degraded by the proposed development, there is no feasible less environmentally damaging alternative and all feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

SUPPLEMENTAL FINDINGS:

1. The proposed development will occur within the fifty foot buffer of Environmentally Sensitive Habitat Areas; however the following findings are made:
 - a. The resources as identified will not be significantly degraded by the proposed development.
 - b. There is no feasible less environmentally damaging alternative.
 - c. All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.
2. No location exists on the property to site development greater than fifty feet from ESHA. To require development to be completely sited beyond fifty feet of ESHA would eliminate all economically viable use of the property and be considered a regulatory taking. The project has been developed to avoid work within the literal extent of ESHA. Several alternatives were considered to minimize the impact on ESHA and the proposed development represents the least environmentally damaging alternative because it minimizes grading and tree removal within or within fifty feet of ESHA while still meeting the required geologic setbacks from the bluff edge and sea cave. Mitigation measures have been developed with the guidance of a professional biologist and the mitigation measures are included as conditions of approval for this permit.
3. Through February of 2015, the applicant has spent approximately \$864,163 to purchase the property, design the residence and foundation, prepare surveys and geotechnical, biological and botanical studies, and complete the permits necessary for future development of the site (see **Table 2**). The applicant has made this investment based on reasonable investment-backed expectations deriving from the knowledge that residential development is principally permitted in the RR zoning district, and the expectation that the owner has the continuing right to ensure that the home will be safe from potential geotechnical hazards, stabilizing the proposed residence within the footprint of existing development.
4. In order to assess if the applicant's expectation to build a 2,638 square foot home with an existing 487 square foot garage on two acres was similar to comparable single-family homes in the area, thirty-seven comparable single-family residences located within 1.5 miles of the subject property were examined (see **Table 3**). The average square footage is 3,072 square feet (including residence and garage) for the thirty-seven properties, which is comparable to the 3,125 square feet requested by the applicant. Staff finds that the scale of residential development proposed by the applicant is consistent with similar properties in the vicinity.

CONDITIONS OF APPROVAL:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.

2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. This permit shall be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which the permit was granted have been violated.
 - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or 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 such conditions.
7. 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.
8. The recommendations in the Geotechnical Investigation prepared by Brunsing Associates, Inc. dated June 11, 2014 shall be incorporated into the design and construction of the proposed project. Prior to issuance of a building permit in reliance on this Coastal Development Permit, the applicant shall submit evidence that a qualified geotechnical or civil engineer has reviewed the final building plans for consistency with the Geotechnical Investigation. No development shall be permitted within 36 feet of the blufftop edge or within 15 feet of the cave walls.
9. Prior to issuance of a building permit in reliance on this Coastal Development Permit, Brunsing Associates, Inc. shall review the final grading and foundation plans, and soil related specifications for conformance with the recommendations in their Geotechnical Investigation report dated June, 11, 2014.
10. Prior to the issuance of the Coastal Development Permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Coastal Permit Administrator and County Counsel, which shall provide that:
 - a. The landowner understands that the site may be subject to extraordinary geologic and erosion hazards and the landowner assumes the risk from such hazards;
 - b. The landowner agrees to indemnify and hold harmless the County of Mendocino, its successors in interest, advisors, officers, agents and employees against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorneys' fees and costs of the suit) arising out of the design, construction, operation, maintenance, existence or failure of the permitted project. Including, without limitation, all claims made by any individual or entity or arising out of any work performed in connection with the permitted project;

- c. The landowner agrees that any adverse impacts to the property caused by the permitted project shall be fully the responsibility of the applicant;
- d. The landowner shall not construct any bluff or shoreline protective devices to protect the subject single-family residence, garage, septic system, or other improvements in the event that these structures are subject to damage, or other erosional hazards in the future;
- e. The landowner shall remove the house and its foundation when bluff retreat reaches the point where the structure is threatened. In the event that portions of the house, garage, foundations, leach field, septic tank, or other improvements associated with the residence fall to the beach or ocean before they can be removed from the blufftop, the landowner shall remove all recoverable debris associated with these structures from the beach and ocean and lawfully dispose of the material in an approved disposal site. The landowners shall bear all costs associated with such removal;

The document shall run with the land, bind all successors and assigns, and shall be recorded free of all prior liens and encumbrances, except for tax liens.

11. The applicant shall comply with the recommendations in the California Department of Forestry letter dated February 20, 2014 (CDF #17-14), excluding recommended driveway improvement standards, or other alternatives as acceptable to the Department of Forestry. Written verification shall be submitted from the Department of Forestry to the Department of Planning and Building Services that this condition has been met to the satisfaction of the Department of Forestry.
12. Prior to final inspection of a building permit in reliance on this Coastal Development Permit, Planning and Building Services shall inspect the construction of the single-family residence and associated development to ensure the utilized materials and colors are consistent with the proposed project materials and colors in **Table 1**.
13. Prior to issuance of a building permit in reliance on this Coastal Development Permit, the applicant shall submit an exterior lighting plan and design details or manufacturer's specifications for all exterior lighting fixtures. Exterior lighting shall be kept to the minimum necessary for safety and security purposes and shall be downcast and shielded, and shall be positioned in a manner that will not shine light or allow light glare to extend beyond the boundaries of the parcel in compliance with Section 20.504.035 of the Mendocino County Code.
14. Prior to final inspection of a building permit in reliance on this Coastal Development permit, the applicant shall install "flow-thru" planters providing a volume based treatment of all of the roof areas. This shall be achieved by routing the roof down drains to the planters prior to discharging to the downstream area. The planters shall be designed to capture the first one inch of runoff, filter it slowly through the planting medium and soils before discharging to the downstream area.
15. Prior to issuance of a building permit in reliance on this Coastal Development Permit, the applicant shall submit for approval by Planning and Building staff a drainage and erosion control plan. The plan shall detail erosion and sediment control Best Management Practices, including concrete wash out area, staging, stockpile locations, and tree protection areas, as necessary.
16. In the event that archaeological resources are encountered during development of the property, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
17. The Environmentally Sensitive Habitat Area recognized by this report and shown in the *Coastal Act Compliance Report* prepared by WRA Environmental Consultants, dated June, 2014, and amended by letters dated December 29, 2014, and February 23, 2015, shall be protected from development and disturbances other than those expressly authorized by this permit in perpetuity. The following mitigation measures represent those presented in the *Coastal Act Compliance Report*.

Mitigation Measure 1-1: Vegetation removal shall be targeted to include only those species that are within the footprint of the proposed updated residence, and shall be identified on a site plan associated with any building permit application in reliance on this Coastal Development Permit to be reviewed by Planning and Building staff. The applicant shall erect and maintain high-visibility construction fencing delineating the boundary between selected vegetation removal/ground-disturbance and non-removal areas throughout the construction period.

Mitigation Measure 1-2: All construction materials and staging shall utilize existing landscaped or developed areas.

Mitigation Measure 1-3: The applicant shall reseed and/or replant with fast-growing native herbaceous species to reinforce areas of loosened soil.

Mitigation Measure 1-4: Prior to issuance of a building permit in reliance on this Coastal Development Permit, the applicant shall develop a native plant landscaping plan to address compensation for impacts to the 100 and 50 foot ESHA buffer, to be submitted for approval to Planning and Building Services. The plan should include selected sites for planting native trees, shrubs, and herbs that will enhance the shore pine forest and coastal terrace prairie (wetland) ESHA on site as well as provide visual screening from neighboring properties. Locally sourced beach pine and Pacific reed grass shall be procured to be planted in areas depicted in Figure 5 of the *Coastal Act Compliance Report* prepared by WRA Environmental Consultants dated June 2014, as amended. Planting areas shall total a minimum of 0.32 acres. Plant spacing, irrigation, maintenance, site preparation, and other landscape features will be addressed under a separate landscape plan document.

Mitigation Measure 1-5: A split rail fence shall be erected that extends from the northwestern and southwestern corner of the replacement residence to prevent access into the onsite ESHA as depicted in Figure 5 of the *Coastal Act Compliance Report* prepared by WRA Environmental Consultants dated June 2014, as amended.

Mitigation Measure 2-1: Prior to issuance of a building permit in reliance on this Coastal Development Permit, the applicant shall submit a Stormwater and Erosion Control Plan implementing standard erosion best management practices such as straw wattles, silt fencing, etc. to prevent sediment migration, to be reviewed and approved by Planning and Building Services. Where feasible, work shall commence during the dry season to reduce sediment migration.

Mitigation Measure 2-2: The applicant shall reseed and/or replant with fast-growing, native herbaceous species atop the septic and leach lines.

Mitigation Measure 2-3: During construction, materials, including but not limited to lumber, concrete, finishwares, hand tools, power tools, generators, vehicles, heavy equipment, shall be lain down in non-ESHA areas such as the existing driveway which are clearly designated by high visibility construction fencing or other signage. Spill prevention devices should be utilized for all toxic liquids including but not limited to gasoline, diesel, motor oil, solvents, paints, and herbicides.

Mitigation Measure 2-4: The septic pressure line shall be sited to the eastern side of the driveway and the driveway shall act as a buffer. The leach lines shall be hand dug to avoid impacts to tree roots.

Mitigation Measure 3-1: If feasible, clearing of vegetation and the initiation of construction should be done in the non-breeding season between September 1 and January 31. If these activities cannot be done in the non-breeding season, a qualified biologist shall perform pre-construction breeding bird surveys within 14 days of the onset of construction or clearing of vegetation. If active breeding bird nests are observed, no ground disturbance activities shall occur within a minimum 100-foot exclusion zone. These exclusion zones may vary depending on species, habitat and level of disturbance. The exclusion zone shall remain in place around the active nest until all young are no longer dependent upon the nest. A biologist shall monitor the nest site weekly during the breeding season to ensure the buffer is sufficient to protect the nest site from potential disturbances.

18. The access road, driveway and interior circulation routes shall be maintained in such a manner as to ensure minimum dust generation subject to Air Quality Management District Regulations, Rule 430. All grading must comply with Air Quality Management District Regulations, Rule 430. Any rock material, including natural rock from the property, used for surfacing must comply with Air Quality Management District regulations regarding asbestos content.

DATE

SCOTT PERKINS
PLANNER I

SMP/at
May 11, 2015

Mitigated Negative Declaration

Appeal Fee - \$945.00 (For an appeal to the Mendocino County Board of Supervisors.)

Appeal Period - Ten (10) calendar days for the Mendocino County Board of Supervisors, followed by ten (10) working days for the California Coastal Commission following the Commission's receipt of the Notice of Final Action from the County.

ATTACHMENTS:

A – Coastal Permit Approval Checklist
B – Initial Study
C – Geotechnical Investigation
D – Coastal Act Compliance Report (WRA)
E – Response Letter dated February 23, 2015
F – Excerpt from Applicant's letter
G – Location Map
H – Aerial
I – Zoning Map
J – General Plan
K – LCP Map
L – Adjacent Parcels
M – Fire Hazard Zones & Responsibility
N – Coastal Groundwater Resources
O – Highly Scenic & Tree Removal
P – Slope
Q – Soils
R – Wetland Types
S – Site Plan
T – Site Plan Detail
U – Elevation (1)
V – Elevation (2)
W – Floor Plan
X – Foundation Plan
Y – Demolition Plan
Z – Geotechnical Setback Map
AA – ESHA Map
BB – Restoration Plan