



COUNTY OF HUMBOLDT

For the meeting of: 5/2/2024

File #: 24-819

To: Planning Commission

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Nathaniel Ludwig, Special Permit

Assessor's Parcel Numbers: 311-221-026

Record Numbers: PLN-2023-18117

Loleta Area

A Special permit to resolve violations associated with unpermitted development within a Streamside Management Area. The project includes revegetation, building removal, a reduction to the Streamside Management Area setback around the residences and paved areas, and after the fact approval of various activities.

RECOMMENDATION(S):

That the Planning Commission:

1. Adopt resolutions (Resolution 24-__) (Attachment 1) which does the following:
 - a. Finds the project is exempt from environmental review per Section 15304 and 15333 of the CEQA Guidelines; and
 - b. Finds the proposed projects comply with the General Plan and Zoning Ordinance; and
 - c. Approves the Nathaniel Ludwig Special Permit subject to the recommended conditions of approval (Attachments 1A).

DISCUSSION:

Project Location:

The project is in the Loleta area, on the North side of Tompkins Hill Road, approximately 400 feet East from the intersection of Braun Lane and Tompkins Hill Road, on the property known as 7035 Tompkins Hill Road.

Present General Plan Land Use Designation:

Rural Residential Agriculture 2017 General Plan; Density: 5 to 20 acres per dwelling unit; Slope

Stability: Moderate Instability (2).

Present Zoning:

Agriculture General (AG-B-5(5)).

Environmental Review:

The project is exempt from environmental review per Section 15304 and 15333 of the CEQA Guidelines.

State Appeal:

Project is NOT appealable to the California Coastal Commission.

Major Concerns:

Development in Streamside Management Areas

Executive Summary:

The subject property was the site of a series of ground disturbances and unpermitted development. Starting in mid-2020 the existing primary residence was completely remodeled, and its footprint expanded. The secondary residence was also redone. The surface area adjoining the residences was graded and an impervious blacktop installed within streamside management areas. A third structure, a shop type building, was also constructed without permits within a streamside management area. Code Enforcement case CE20-0646 was opened August 17, 202 for the residential remodels. Sometime between 2021 and 2022 the primary driveway was realigned along the edge of the property following a historic logging road. Concrete from the top of the former driveway was removed and placed as fill on the property within streamside management areas. On December 21, 2022, the Humboldt County Sheriff's Office served a search warrant on the property. The Code Enforcement Unit also participated in the search which documented that the shop building was configured and operating as an illegal indoor cannabis cultivation operation. Code Enforcement also identified major vegetation removal along Willow Brook, a Class I perennial stream, during its search. A second Code Enforcement case, CE22-1861, was opened on December 21, 2022. On January 13, 2023, the California Department of Fish and Wildlife (CDFW) issued a Notice of Violation.

In response to the Code Enforcement cases, between January and June 2023, the Planning and Building Department received after-the-fact building permit and Special Permit applications. Building permits for the residences have been issued and case CE20-0646 has been closed. Case CE22-1861 remains open subject to a code enforcement compliance agreement and the issuance of this Special Permit and associated conditions of approval. In December 2023 the property was sold from Ryan Hedding to Nathaniel Ludwig. Though the current owner did not conduct the violations, Ludwig has assumed responsibility for the compliance agreement and the Special Permit going forward.

Follow up inspections by staff and CDFW identified additional stream channels not shown on the site plan provided by the original applicant as well as additional vegetation removal and development related to the realignment of the driveway. The violations and development addressed by this Special Permit fall into four categories: 1) Vegetation Removal and Restoration; 2) Driveway Realignment; 3) Construction of Shop Building / Unpermitted Cannabis Cultivation; and 4) Grading, Paving, and Expansion of Structures.

Consultation with CDFW has resulted in the recommendation to remove the shop building and to amend the proposed restoration plans to include more proactive planting of riparian species and a specific plan for managing the slash piles along with other measures. These have been incorporated into the Special Permit Conditions of Approval and discussed in more detail below. Consultation with Bear River Band resulted in a request for the standard inadvertent discovery protocol condition of approval (**Condition of Approval 10**).

To facilitate effective development of supplemental restoration plans and future monitoring and inspection of the property, the owner is required to provide a professionally prepared site plan that accurately depicts all constructed and natural features as well as restoration and streamside management areas (**Condition of Approval 2**).

The Special Permit will require the production of a professionally prepared Development Plan that clearly depicts streamside management areas (**Condition of Approval 9**). The recordation of a Notice of Development plan will alert any future purchaser or owner conducting a title search of the development restrictions on the parcel.

Vegetation Removal and Restoration:

This Special Permit authorizes all the necessary restoration work in the streamside management areas. There was major vegetation and tree removal along the named Class I perennial stream known as Willow Brook in area of approximately 2.46 acres. The vegetation removal resulted in the creation of multiple slash piles. A revised Restoration Plan dated April 20, 2023, conducted by Timberland Resource Consultant was provided by the original applicant. The restoration plan makes three recommendations: 1) Planting redwood trees in the area depicted on page 11 in the restoration plan; 2) Application of a native seed mix for erosion control; and 3) Placing straw waddles in designated locations. The restoration plan also recommends a mitigation monitoring plan. The monitoring plan recommends a five-year monitoring period and a 55% survival rate with an assessment by an RPF after one year. The waddles shall be maintained until such a time the streamside management area is deemed revegetated to the extent that concentrated turbid surface runoff is not entering Willow Brook. The recommendations of the Restoration Plan have been incorporated into the conditions of approval (**Condition of Approval 7**).

A Revegetation Analysis dated April 15, 2023, conducted by Timberland Resource Consultants was also provided by the original applicant. The Revegetation Analysis observed that riparian species like

Willow and Red Alder saplings were regenerating in the disturbed area. The Revegetation Analysis concluded that artificial regeneration was not required due to natural regeneration. However, site inspection and comment from CDFW resulted in a request for proactive planting of riparian species. Therefore, additional conditions of approval have been added to the project requiring an amendment to the restoration plan by a qualified professional to include more diverse and proactive plantings (**Condition of Approval 5**).

A revised Biological Assessment received on August 24, 2023, conducted by O'Brien Biological Consultants recommends that a qualified professional assess the various vegetation debris piles (slash piles) and provide recommendations for treatment. Based on onsite consultations with the Biologist and CDFW during a site visit, it was determined that all the slash piles within the streamside management areas (SMA) must be moved outside of the buffer zone which is measured as 100 feet from the edge of the previous riparian drip line prior to the unauthorized vegetation and tree removal. Slash piles located or moved outside the SMA could potentially remain as wildlife habitat or harborage. Alternatively, slash piles could be burned if done in conformance with applicable state and local regulations if a suitable location is identified. The project includes a condition of approval requiring a qualified professional to evaluate and identify all the slash piles and provide recommendations for management and removal from the SMA. The slash pile management plan must be reviewed and approved by the Planning and Building Department in consultation with CDFW before implementation (**Condition of Approval 3**). Also, at the request of CDFW, the restoration of the area around Willow Brook will include removal of a buried culvert and restoration of stream channel and banks (**Condition of Approval 7d**). The landowner shall notify CDFW of all culverts and diversion infrastructure and restoration per Fish and Game code (**Condition of Approval 1**).

Additional amendments to the restoration plan shall also include removal of trash and artificial debris and items from within the stream channels including but not limited to water lines. (**Condition of Approval 7e**).

Driveway Realignment:

This Special Permit authorizes the realignment and ongoing maintenance of the driveway following the historic logging road as primary access because of the significant safety benefits. A portion of the original driveway was straight up a steep incline mapped as 15% to 30% slope. This posed safety issues for emergency vehicle access and for residents during winter seasons. A pre-existing logging road following contours wrapping along the edge of the property predates the Streamside Management Area Ordinance. Primary access to the residences shifted to the logging road between 2021 and 2022. The road was improved and some vegetation and trees were removed. Portions of these activities took place within streamside management areas without the benefit of county review.

A qualified professional must evaluate and recommend measures, if any, to address the vegetation and tree removal within the streamside management areas affected by the road improvement. This could include replanting portions of the streamside management areas elsewhere on the property

such as by the shop building area (**Condition of Approval 4**). All culverts and stream crossing must be maintained consistent with a Lake and Streambed Alteration Agreement from CDFW (**Condition of Approval 1**).

Concrete from portions of the previous driveway were placed as fill in two locations on the property within streamside management areas. One by the shop building and one below the second dwelling unit. A qualified professional must evaluate the presence of this fill and determine if it can remain without impacting water quality or habitat (**Condition of Approval 4**). If it cannot remain without causing ongoing or long-term impacts, the concrete fill will need to be removed.

Construction of Shop Building / Unpermitted Cannabis Cultivation:

This Special Permit authorizes and requires the removal of the unpermitted shop building. The shop building constructed in 2020 was configured and operated as an illegal indoor cannabis cultivation operation. The Biological Assessment recommends that the building remain because demolition of the structure will cause short-term impacts to the streamside management area and unnamed tributary of Willow Brook. CDFW recommends removal of the structure. Humboldt County Code 314-61.1.7.6.3 allows for the reduction of the streamside management area if certain criteria are met. The applicable standard is whether the reduction will not significantly affect the biological resources of the streamside management area on the property. The edge of the structure is within the riparian drip line therefore a reduction of the buffer to less than zero would be required. The unnamed tributary adjacent to the shop building provides migration habitat for sensitive species as well as temperature regulation for Willow Brook. The unnamed tributary is spring fed and perennial. Insufficient evidence has been provided to demonstrate there will be no significant effect on resources other than the temporary effect of demolition. The temporary effect of structure removal objectively outweighs the ongoing, long-term impacts of allowing the structure and uses within its curtilage such as parking and storage to remain. The landowner has up to one year to obtain a demolition permit and one year from the issuance of the demolition permit to complete the removal of the building (**Condition of Approval 8**). The area occupied by the shop building is a pre-existing flat, likely a former log deck. Once the structure is removed, this area may be an appropriate planting site for any recommended revegetation associated with the driveway realignment.

Grading, Paving and Expansion of Structures:

This Special Permit authorizes a reduction of streamside management area setbacks to the edge of the paved area and primary and second residences. In 2020 the primary residence was completely rebuilt and the footprint increased. The second unit was also rebuilt but the footprint remained the same. An existing flat adjacent to the residences was graded and paved. The paved area is the terminus of the realigned driveway that serves the primary residence and second unit. Most of the footprint of the two residential structures remain the same and the flat that was paved was pre-existing and free of vegetation. Reducing the adjacent streamside management area buffers to conform with the edge of structures and paved area does not represent an impact and after-the-fact building permits for the two residential structures have already been issued. The owner must notify

CDFW of all culverts including those running under the paved area (**Condition of Approval 1**). The owner must also generate and provide a stormwater runoff plan to ensure runoff from the structures and paved area do not discharge directly into streams (**Condition of Approval 6**).

Environmental Review:

The project is exempt from environmental review per Section 15304 (Minor Alterations to Land) and 15333 (Small Habitat Restoration) of the CEQA Guidelines.

OTHER AGENCY INVOLVEMENT:

The project was referred to responsible agencies and all responding agencies have either responded with no comments, comments, or recommended approval or conditional approval. (Attachment 4)

ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. The Planning Commission could elect to add or delete other conditions of approval. The Planning Commission could deny approval if unable to make all the required findings. Staff has concluded the required findings in support of the proposal can be made. Consequently, Staff does not recommend further consideration of these alternatives.

ATTACHMENTS:

1. Draft Resolution
 - A. Conditions of Approval
 - B. Site Plan
2. Location Map
3. Applicant's Evidence in Support of the Required Findings
 - A. Revised Biological Assessment August 24, 2023
 - B. Revised Restoration Plan April 20, 2023
 - C. Revegetation Analysis April 20, 2023
4. Referral Agency Comments and Recommendations
 - A. California Department of Fish and Wildlife (CDFW)
 - B. CDFW Notice of Violation
5. Applicant Correspondence April 25, 2024

Applicant

Nathaniel Ludwig
7031 Tompkins Hill Road
Loleta CA 95551

Owner

Same as applicant

File #: 24-819

Agent

None

Please contact Steven A. Santos, Senior Planner, at sasantos@co.humboldt.ca.us or 707-445-7541 for questions about the scheduled item.