

## CALIFORNIA COASTAL COMMISSION

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# W15b

DATE: Prepared May 20, 2010 for the June 9, 2010 hearing

TO: Coastal Commissioners and Interested Parties

FROM: Peter Douglas, Executive Director  
Robert Merrill, North Coast District Manager  
Tamara L. Gedik, Coastal Program Analyst

SUBJECT: **Appeal No. A-1-MEN-10-015 (Bethel & Hupp**, local permit #CDPM-98-2001 (2009)), Appeal by Commissioners Mary Shallenberger and Richard Bloom of Mendocino County decision approving a coastal development permit modification to local permit #CDPM98-2001 (2005) granted with conditions for a single-family residence and guest cottage to Barbara Bethel and John Hupp, the permit modification alters the 2005-approved building footprint: attaches the guest cottage to the residence (creating a guest bedroom), and adds windows to all elevations of the residence. The permit modification also authorizes temporary occupancy of a travel trailer during construction. The project site is located at 9401 Brewery Gulch Road (Road 500B), Mendocino (Mendocino County), APN 119-320-04.

Appeal filed: April 21, 2010; 49<sup>th</sup> day: June 9, 2010.

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**Recommendation:**

Staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds on which Appeal No. A-1-MEN-10-015 has been filed and that the Commission hold a *de novo* hearing.

**Staff recommends a NO vote on the following motion and resolution:**

**Motion & Resolution.** *I move that the Commission determine and resolve that: Appeal No. A-1-MEN-10-015 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

Following the staff recommendation by voting no will result in the Commission conducting a *de novo* review of the application, and adoption of the following findings. Passage of this motion via a yes vote, thereby rejecting the staff recommendation, will

result in a finding of No Substantial Issue, and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners.

The Coastal Act presumes that an appeal raises a substantial issue of conformity of the approved project with the certified LCP, unless the Commission decides to take public testimony and vote on the question of substantial issue.

**IMPORTANT NOTE:**  
THE COMMISSION WILL NOT TAKE PUBLIC TESTIMONY DURING THE  
SUBSTANTIAL ISSUE PHASE OF THE APPEAL HEARING UNLESS  
THREE COMMISSIONERS REQUEST IT.

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**Findings:**

On March 25, 2010 the County of Mendocino approved Coastal Development Permit Modification (CDPM) #98-2001(2009) for a material modification to the previously-approved CDPM # 98-2001(2005). The previously-approved CDPM from 2005 allowed construction of a 2,900 square-foot single-family residence with an attached 689-square-foot garage and a maximum average height of 18 feet above natural grade, plus a 640-square-foot detached guest cottage with a maximum height of 18 feet above natural grade, for a total of 4,229 square feet. The 2005 modification also allowed grading associated with lot development, installation of a well and septic system and connection to utilities at the edge of the parcel, and installation of a driveway and retaining wall. The 2005 modification followed the 2002 approval of Coastal Development Permit #98-01 that expired on October 28, 2005.

The new owner and applicant began building using the previously-approved CDPM#98-2001(2005), but significantly modified the design during the construction process and without prior approval. A partially-built structure is currently developed at the site that deviates from the 2005 CDPM. An after-the-fact application was submitted as CDPM #98-2001(2009) to alter the 2005-approved building footprint by attaching the guest cottage to the residence (creating a guest bedroom and hallway), enclosing a portion of the previously-approved patio into living space, installing additional windows to all elevations of the residence, modifying house and roof materials, and adding trim colors not previously reviewed under the 2005 modification. The proposed modifications result in an enlarged house footprint from 2,900 square feet to 3,988 square feet with a reduced garage space from 689 square feet to 575 square feet, resulting in an increase in total development from 4,229 square feet to 4,563 total square feet. In addition, there is an increase in windows on the western elevation from the previously-approved 18 (plus a gable end window) to 28 (plus a gable end window). The window changes result in an approximate

100% increase in window glazing on the western elevation, which is the side of the house visible from Headlands State Park and the Town of Mendocino.

The approved amended development is located approximately 1.5 miles south of the Town of Mendocino, on the east side of Frontage Road 500B (county road #500B), approximately 50 feet southeast of its intersection with Highway One at 9401 Road 500B Road (APN 119-320-04), in a designated Highly Scenic Area (HSA).

Pursuant to Coastal Act Section 30603, this approval is appealable to the Commission because the approved development is located (1) within a designated “highly scenic area,” which is a type of sensitive coastal resource area; and (2) within 300 feet of the top of the seaward face of a coastal bluff (see Appendix A).

The appellant (Commissioners Mary Shallenberger and Richard Bloom) claims that the approved project is inconsistent with the policies and standards of the Mendocino County certified Local Coastal Program (LCP) relating to protection of visual resources.

Coastal Act Section 30625(b) requires the Commission to hear an appeal unless it determined that no substantial issue exists with respect to the grounds on which the appeal has been filed.<sup>1</sup> Commission staff has analyzed the county’s Final Local Action Notice for the development (Exhibit No. 9), appellant’s claims (Exhibit No. 8), and the relevant requirements of the LCP (Appendix B). Staff recommends that the Commission find that the appeal raises a substantial issue of conformance of the approved amended development with respect to the provisions of the certified LCP regarding protection of visual resources as explained below.

### **Substantial Issue With Respect to Visual Resource Policies of the Certified LCP**

The appellants allege that the approved amended development is inconsistent with LCP provisions pertaining to the protection of visual resources (see Appendix B). The project site is located within a designated “highly scenic area” as described in LUP Policy 3.5-3 and as mapped on LUP Map No. 17. The primary visual issues raised by the appeal are whether the development would visually blend with the surrounding areas such that it would be compatible with and subordinate to the character of the surrounding area.

LUP Visual Resources Policy No. 3.5-1 and CZC Section 20.504.015 state that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas; furthermore, new development in Highly Scenic Areas (HSAs) shall be subordinate to the character of the setting. LUP Policy No. 3.5-3 reiterates

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<sup>1</sup> The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government’s decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government’s decision for future interpretations of its LCP; and, whether the appeal raises only local issues, or those of regional or statewide significance.

that new development in highly scenic areas shall be subordinate to the character of its setting.

The appeal raises a substantial issue of whether the approved amended development is subordinate to the character of its setting. The County noted the residence is visible from the Town of Mendocino, Mendocino Headlands State Park, turnouts on Highway 1, and a portion of Van Damme State Park at Brewery Gulch. As noted above, the Coastal Development Permit Modification was submitted after the fact and a partially built structure is currently developed at the site. The development site is particularly prominent from major viewing areas, especially looking south across Mendocino Bay from the historic Town of Mendocino and the adjoining Mendocino Headlands State Park, which are major visitor destinations along the Mendocino coast. These viewing areas are visited by many thousands of visitors every year.

The County staff report notes “The proposed modification includes a significant increase in glazing from the 2005 modification, as well as enclosure of a portion of the previously approved patio and attachment of the previously approved guest cottage. These proposed modifications significantly alter the western elevation as visible from the public viewing points mentioned above.” The modifications increased the number of windows on the western elevation from 18 (plus a gable end window) to 28 (plus a gable end window). The change from the 2005-approved 426 square feet of windows to the current 839 square feet of windows results in an approximate 100% increase in window glazing on the western elevation. The windows are a much more reflective surface than siding material and greatly affect the visual prominence of the development. The partially-built structure is visible in the 2009 California Coastal Records Project images numbered 20093160 and 20093159, available at <http://www.californiacoastline.org>.

The County approved modified final conditions requiring planting of vegetation to screen the structure with a requirement that a minimum of 50% of all required landscaping be planted, staked and fenced for protection prior to a building inspection. Conditions also include requirements to achieve 60% vegetative screening of the structure, but did not impose timeframes for this success criterion. Conditions also include increased tree replacement ratios from the 2005 approved modification to account for trees that have been removed without prior County approval- and that were not replanted- pursuant to the 2005 permit requirements. The County also required submittal of a 200% performance deposit to encourage fulfillment of all vegetation screening conditions.

While vegetative screening may aid in buffering the view of the approved amended development, no screening vegetation currently exists to visually buffer the development. Furthermore, due to the location within 300 feet of the top of the seaward face of the coastal bluff, strong winds and salt spray may inhibit or delay the successful growth of vegetation. If successful at all, planted vegetation may take a few years to a decade or more to fully achieve a height that functions as screening. Therefore, even if vegetation is planted immediately, it will not fully mitigate the visual impacts that continue to occur, and if the vegetation is unsuccessful, there will be no other recourse to ensure conformance with LUP Policy 3.5-1 and CZC Section 20504.015.

In addition to increases in window number and surface area that affect whether the development is subordinate to the character of the setting, the County staff report notes that the trim and window frame color chosen by the applicant and described as “Mendocino Blond” “contrasts with the siding and is a prominent feature visible from the Town of Mendocino and Headlands State Park.”

County staff had recommended a condition requiring (1) that the applicant “submit an alternative window frame and trim color that is dark and minimizes contrast, such as a color that matches the hue and brightness of the siding, and (2) submit a revised west elevation which eliminates the stone veneer siding. However, the condition was not adopted.

As the approved development as amended will not visually blend with its surroundings, the appeal raises a substantial issue as to whether the amended development is subordinate to the character of its setting. As noted above, the approved amended development would be visible from the Town of Mendocino and adjoining Mendocino Headlands State Park, perhaps the most-visited locations along the Mendocino Coast. These locations draw visitors from throughout the region, state, and world to enjoy the historic town and the beauty of Mendocino Bay and the surrounding coastline. Thus, the appeal raises issues of regional and statewide significance. Therefore, the Commission finds that the appeal raises a substantial issue with respect to conformance of the amended development as approved by the County with LCP policies regarding the protection of visual resources including, but not limited to LUP Policy 3.5-1 and CZC Section 20.504.015.

### **Information Needed for *De Novo* Review of Application**

Section 30621 of the Coastal Act instructs the Commission to provide for a *de novo* hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the *de novo* hearing to a subsequent date. The *de novo* portion of the appeal must be continued because the Commission does not have sufficient information to determine what, if any, development can be approved, consistent with the certified LCP.

Given that the project the Commission will be considering *de novo* has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP. Following is a discussion of the information needed to evaluate the development.

#### **1) Alternatives Analysis for Reducing Visual Impacts to Previously-Approved Levels**

As discussed above, the approved development as amended will not visually blend with its surroundings due to light trim colors, an approximately 100% increase in glazing surface area, and an increase in total number of windows on all elevations. LUP Policies 3.5-1 and 3.5-3 and Coastal Zoning Code (CZC) Section 20.504.015(C)(3) require that new development shall be subordinate to the natural setting and minimize reflective surfaces. In

addition, CZC Section 20.504.015(C)(3) requires that building materials be selected to blend in hue and brightness with their surroundings.

The County's findings do not fully address whether redesigning the development with fewer windows and darker trim colors would reduce visual impacts to a greater degree than the approved project. A visual analysis using composite photos, computer simulation, or equivalent methods needs to be provided that examines the visual effects on public views during the time period prior to establishment and maturity of vegetative screening and the feasibility of at least the following alternatives: (a) reconstructing the residence to include the original number, size, and approximate placement of windows and trim colors (or lack thereof) from the 2005 County-approved CDP; and (b) reducing the windows in different portions of the western and northern elevations and/or relocating the windows from the western and northern elevations to other elevations of the structure; and (c) modifying trim colors to a darker color that blends in hue and brightness with the dominant darker colors of the surrounding landscape (such as the dark browns and greens of the conifer trees and associated areas of shadow). The alternatives analysis should examine which alternative or a combination of alternatives best achieves a project design that is subordinate to the character of the project setting.

## **2) Adequate Septic Capacity and Replacement Area**

LUP Policy 3.8-1 requires that the adequacy of water and sewage disposal services be evaluated when coastal development permit applications are granted or modified. Coastal Zoning Coastal Zoning Code Section 20.532.095 states that the granting of any coastal development permit by the approving authority shall be supported by findings which establish that the proposed development will be provided with adequate utilities. According to the local record, the previously-approved CDPM#98-2001(2005) initially was not cleared by Mendocino County Department of Environmental Health (DEH) because the structure appeared to be a two-bedroom single-family residence with a one-bedroom guest cottage (for a total of three bedrooms), but the septic system (primary and replacement) was sized for only two bedrooms. According to a May 18, 2005 letter by Mendocino County, DEH has a Bedroom Addition Policy that would allow for the addition of one bedroom to a septic system at a residence provided 2 things:

1. The existing system is working.
2. Adequate replacement area exists for the total number of bedrooms (3).

While Provision 1 was met, Provision 2 could not be met at the site. On May 21, 2005, Ms. Bethel clarified the proposed development consists of a one-bedroom main home and a one-bedroom guest cottage, which was subsequently approved by DEH on May 31, 2005. The 2009 approved amended development includes a floor plan that shows a 420-square-foot office with a full bathroom, in addition to the guest room with full bathroom and master bathroom and bedroom. While the office space may not be currently intended for additional bedroom use, there appears nothing to preclude such a use of this space. Therefore, the applicant shall submit evidence of adequate septic capacity and replacement area to support what effectively amounts to three bedrooms. The evaluation should include a preliminary review by the County Department of Environmental Health Department as to whether or not the septic system would meet County standards if the office space later was

used as a bedroom. If DEH cannot give clearance to the approved amended development, then revised project plans shall be submitted that sufficiently reduce the number of rooms that could support a bedroom use to ensure that the sewage demands of the development do not exceed available septic capacity and that the amended development satisfy County septic requirements.

### **APPENDICES**

APPENDIX A: Commission's Appeal Jurisdiction Over Project

APPENDIX B: Excerpts from the Humboldt County Local Coastal Program

### **EXHIBITS**

1. Regional Location Map
2. Vicinity Map
3. Assessor's Parcel Map
4. Aerial photo
5. September 2009 Coastal Records Project Aerial Photo, Copyright (C) 2002-2010 Kenneth & Gabrielle Adelman, California Coastal Records Project, [www.Californiacoastline.org](http://www.Californiacoastline.org)
6. Approved Amended Development Plans, CDPM# 98-2001(2009)
7. Western Elevation of Approved 2005 permit modification CDPM# 98-2001(2005)
8. Appeal
9. Notice of Final Local Action and Findings for Approval

## **APPENDIX A**

### **COMMISSION'S APPEAL JURISDICTION OVER THE PROJECT**

On March 25, 2010 the County of Mendocino approved Coastal Development Permit Modification (CDPM) #98-2001(2009) for a material modification to the previously-approved CDPM # 98-2001(2005). The previously-approved CDPM from 2005 allowed construction of a 2,900 square-foot single-family residence with an attached 689-square-foot garage and a maximum average height of 18 feet above natural grade, plus a 640-square-foot detached guest cottage with a maximum height of 18 feet above natural grade, for a total of 4,229 square feet. The 2005 modification also allowed grading associated with lot development, installation of a well and septic system and connection to utilities at the edge of the parcel, and installation of a driveway and retaining wall. The 2005 modification followed the 2002 approval of Coastal Development Permit #98-01 that expired on October 28, 2005.

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603). Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within 100 feet of any wetland or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because the approved development is located (1) within a designated "highly scenic area," which is a type of sensitive coastal resource area; and (2) within 300 feet of the top of the seaward face of a coastal bluff.

#### **Within a Sensitive Coastal Resource Area**

Section 30116 of the Coastal Act defines Sensitive Coastal Resource Areas as follows:

*"Sensitive coastal resource areas" means those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity. "Sensitive coastal resource areas" include the following:*

- (a) Special marine and land habitat areas, wetlands, lagoons, and estuaries as mapped and designated in Part 4 of the coastal plan.*

- (b) Areas possessing significant recreational value.*
- (c) Highly scenic areas. (emphasis added)*
- (d) Archaeological sites referenced in the California Coastline and Recreation Plan or as designated by the State Historic Preservation Officer.*
- (e) Special communities or neighborhoods which are significant visitor destination areas.*
- (f) Areas that provide existing coastal housing or recreational opportunities for low- and moderate-income persons.*
- (g) Areas where divisions of land could substantially impair or restrict coastal access.*

Section 30502 of the Coastal Act indicates that sensitive coastal resource areas are areas within the coastal zone where the protection of coastal resources and public access requires, in addition to the review and approval of zoning ordinances, the review and approval by the Commission of other implementing actions to protect coastal resources. Sensitive coastal resource areas (SCRAs) can be designated either by the Commission pursuant to Section 30502 of the Coastal Act, or by local government by including such a designation in its Local Coastal Program (LCP).

Section 30502 directs the Commission to designate SCRAs not later than September 1, 1977, pursuant to a report which must contain the following information:

- (1) A description of the coastal resources to be protected and the reasons why the area has been designated as a sensitive coastal resource area;*
- (2) A specific determination that the designated area is of regional or statewide significance;*
- (3) A specific list of significant adverse impacts that could result from development where zoning regulations alone may not adequately protect coastal resources or access;*
- (4) A map of the area indicating its size and location.*

The Commission did not ultimately designate SCRAs or make recommendations to the Legislature, as contemplated by Section 30502 and 30502.5. Because it did not designate SCRAs, the Commission does not have the authority to require local governments to adopt such additional implementing actions. Nothing in Sections 30502 or 30502.5, however, overrides other provisions in the Coastal Act that assign primary responsibility to local governments for determining the contents of LCPs and that authorize local governments to take actions that are more protective of coastal resources than required by the Coastal Act. Such Coastal Act provisions support the position that the Commission does not have the exclusive authority to designate SCRAs. In 1977, the Attorney General's Office advised the Commission that if the Commission decided not to designate SCRAs, local government

approvals of development located in SCRAs delineated in LCPs would nonetheless be appealable to the Commission.

The ability of local governments to designate SCRAs in LCPs is further supported by the legislative history of changes to Section 30603. In 1982, after the 1978 deadline for the Commission to designate SCRAs, the Legislature amended the provisions of Section 30603 that relate to appeals of development located in SCRAs. (Cal. Stats. 1982, c. 43, sec. 19 (AB 321 - Hannigan).) The Legislature's 1982 revisions to the SCRA appeal process demonstrate that the Commission's decision not to designate SCRAs did not have the effect of preventing local governments from designating SCRAs through the LCP process. If the Commission's decision not to designate SCRAs rendered the Coastal Act provisions that relate to SCRAs moot, the Legislature's action in 1982 would have been a futile and meaningless exercise. Instead, by deliberately refining the SCRA appeal process, the Legislature confirmed that local governments continue to have the authority to designate SCRAs.

Although a city or county is not required to designate SCRAs in their LCP, at least four local governments have chosen to do so. The Commission has certified LCP's that contain SCRA designations from the City of Grover Beach (1982), San Luis Obispo County (1987), the City of Dana Point (1989) and the segment of Mendocino County's LCP that covers areas outside of the Town of Mendocino (1992).

Designation of SCRAs in this manner is consistent with the reservation of local authority, under Section 30005, to enact certain regulations more protective of coastal resources than what is required by the Act. As noted above, the Coastal Act does not require local governments to designate SCRAs, but local governments are allowed to designate such areas.

The appeal of Mendocino County Coastal Development Permit Modification (CDPM) No. 98-2001(2009) was accepted by the Commission in part, on the basis that the project site is located in a sensitive coastal resource area designated by Mendocino County and certified by the Commission when the County's LCP was certified in 1992.

The applicable designation of sensitive coastal resource areas was accomplished in the LCP by defining sensitive coastal resource areas within the LCP to include "highly scenic areas," and by mapping specific geographic areas on the certified Land Use Maps as "highly scenic." Chapter 5 of the Mendocino County General Plan Coastal Element (the certified Land Use Plan) and Division II of Title 20, Section 20.308.105(6) of the Mendocino County Coastal Zoning Code (CZC), both define "Sensitive Coastal Resource Areas" to mean "those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity." Subparts (c) of these sections include "highly scenic areas." This definition closely parallels the definition of SCRA contained in Section 30116 of the Coastal Act. Mendocino LUP Policy 3.5 defines highly scenic areas to include, in applicable part, "those [areas] identified on the Land Use Maps as they are adopted." Adopted Land Use Map No. 17 designates the area inclusive of the site that is the subject of Mendocino County CDPM No. 98-2001(2009) as highly scenic. Therefore, it is clear that by defining sensitive coastal resource areas to include highly scenic areas, and by then mapping designated highly scenic areas on the adopted Land Use

Maps, the County intended that highly scenic areas be considered sensitive coastal resource areas.

Section 30603 of the Coastal Act states that “after certification of its local coastal program, an action taken by a local government on a coastal development permit may be appealed to the Commission...” Included in the list of appealable developments are developments approved within sensitive coastal resource areas. Additionally, Division II of Title 20, Section 20.544.020(B)(6) of the certified Mendocino County Coastal Zoning Code specifically includes developments approved “located in a sensitive coastal resource area” as among the types of developments appealable to the Coastal Commission.

Therefore, for all of the above reasons, the Commission finds that as (1) highly scenic areas are designated and mapped in the certified LCP as a sensitive coastal resource area, and (2) approved development located in a sensitive coastal resource area is specifically included among the types of development appealable to the Commission in the certified LCP, Mendocino County’s approval of local CDPM No. 98-2001(2009) is appealable to the Commission under Section 30603(a)(3) of the Coastal Act and Section 20.544.020(B)(6) of the certified Mendocino County Coastal Zoning Code.

The decision of the Planning Commission was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received at the Commission’s North Coast District Office on April 7, 2010 (Exhibit No. 9). Section 13573 of the Commission’s regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals.

One appeal was filed with the Commission’s North Coast District Office on April 21, 2010 from Commissioners Mary Shallenberger and Richard Bloom (Exhibit No. 8). The appeal was filed in a timely manner, within 10 working days of receipt by the Commission of the County's Notice of Final Action.

## **APPENDIX B**

### **EXCERPTS FROM THE MENDOCINO COUNTY CERTIFIED LOCAL COASTAL PROGRAM**

#### **Summary of Applicable LCP Policies Relating to the Protection of Visual Resources:**

Land Use Plan (LUP) Policy 3.5-1 states, in applicable part, as follows:

...

*The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. [Emphasis added]*

LUP Policy 3.5-3 states, in applicable part, as follows:

*The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as “highly scenic areas,” within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. ...*

- *Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.*

*In addition to other visual policy requirements, new development west of Highway One in designated “highly scenic areas” is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within “highly scenic areas” will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies.*

LUP Policy 3.5-4 states in applicable part (emphasis added):

*Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.*

...

*Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline,*

*development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; (3) prohibiting removal of tree masses which destroy the ridgeline silhouette. Nothing in this policy shall preclude the development of a legally existing parcel.*

LUP Policy 3.5-5 states as follows:

*Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged. In specific areas, identified and adopted on the land use plan maps, trees currently blocking views to and along the coast shall be required to be removed or thinned as a condition of new development in those specific areas. New development shall not allow trees to block ocean views.*

Section 20.504.015, “Highly Scenic Areas,” of the Coastal Zoning Code (CZC) states, in applicable part, as follows:

...  
**(C) Development Criteria.**

*(1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.*

*(2) In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) 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.*

*(3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.*

...  
*(5) Buildings and building groups that must be sited in highly scenic areas shall be sited:*

- (a) Near the toe of a slope;*
- (b) Below rather than on a ridge; and*
- (c) In or near a wooded area.*

...  
*(8) Minimize visual impact of development on ridges by the following criteria:*

- (a) Prohibiting development that projects above the ridgeline;*
- (b) If no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation;*
- (c) Prohibiting removal of tree masses which destroy the ridgeline silhouette.*

...

*(10) Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas.*

*(11) Power transmission lines shall be located along established corridors where possible and where the corridors are not visually intrusive.*

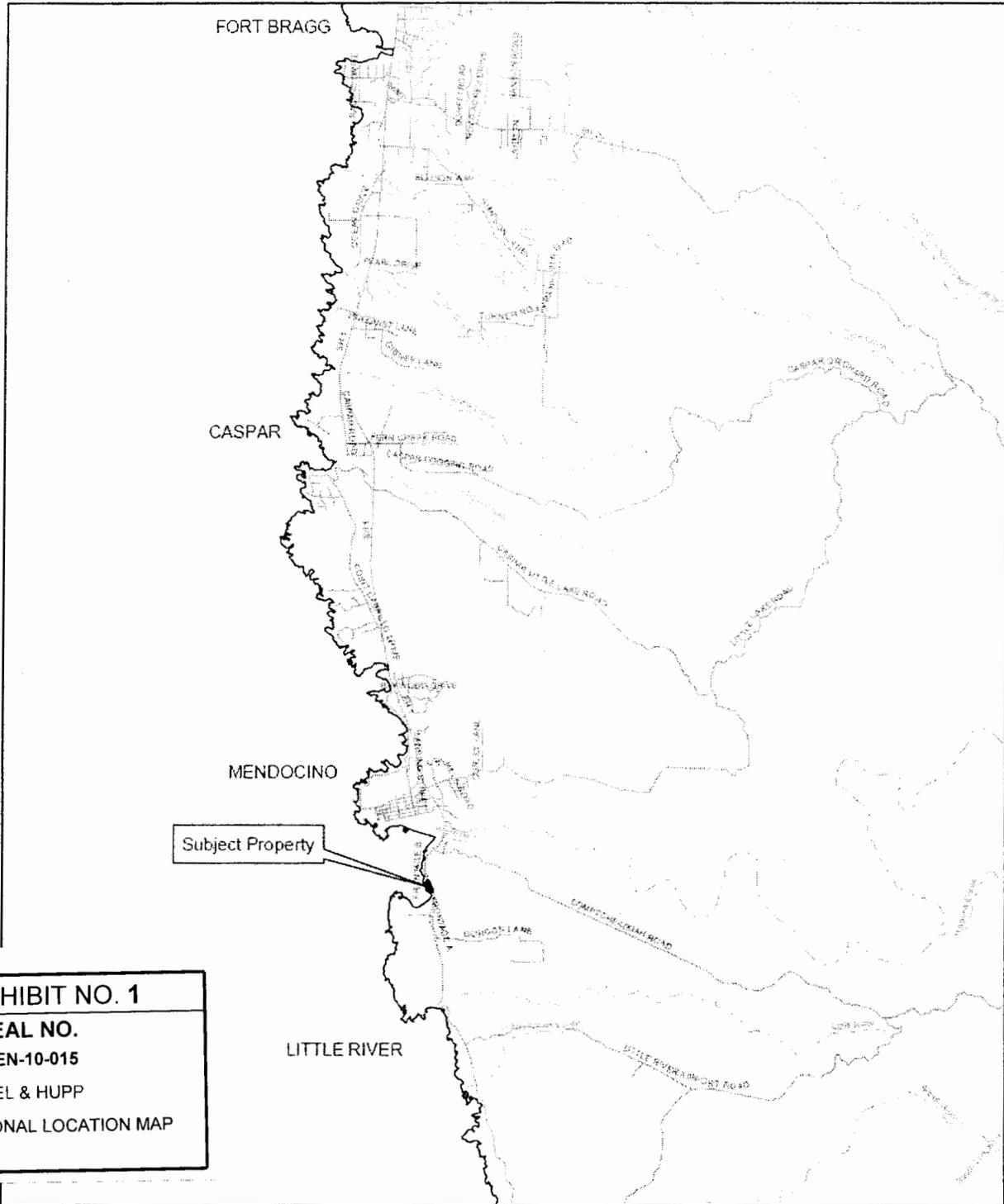
*(12) Power distribution lines shall be placed underground in designated "highly scenic areas" west of Highway 1 and in new subdivisions. East of Highway 1, power lines shall be placed below ridgelines if technically feasible.*

*(13) Access roads and driveways shall be sited such that they cause minimum visual disturbance and shall not directly access Highway 1 where an alternate configuration is feasible. (Ord. No. 3785 (part), adopted 1991) [emphasis added].*

CZC Section 20.504.020 states, in applicable part, as follows:

...

*(D) The scenic and visual qualities of Mendocino County Coastal Areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. (Ord. No. 3785 (part), adopted 1991)*



**EXHIBIT NO. 1**  
**APPEAL NO.**  
**A-1-MEN-10-015**  
**BETHEL & HUPP**  
**REGIONAL LOCATION MAP**

OWNER: HUPP, John  
APPLICANT: BETHEL, Barbara  
AGENT: WHYNN, Amy  
CASE: CDPM 98-2001 / 2009  
APNs: 119-320-04

**LOCATION MAP**

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES. They are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of December 2008)

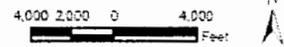


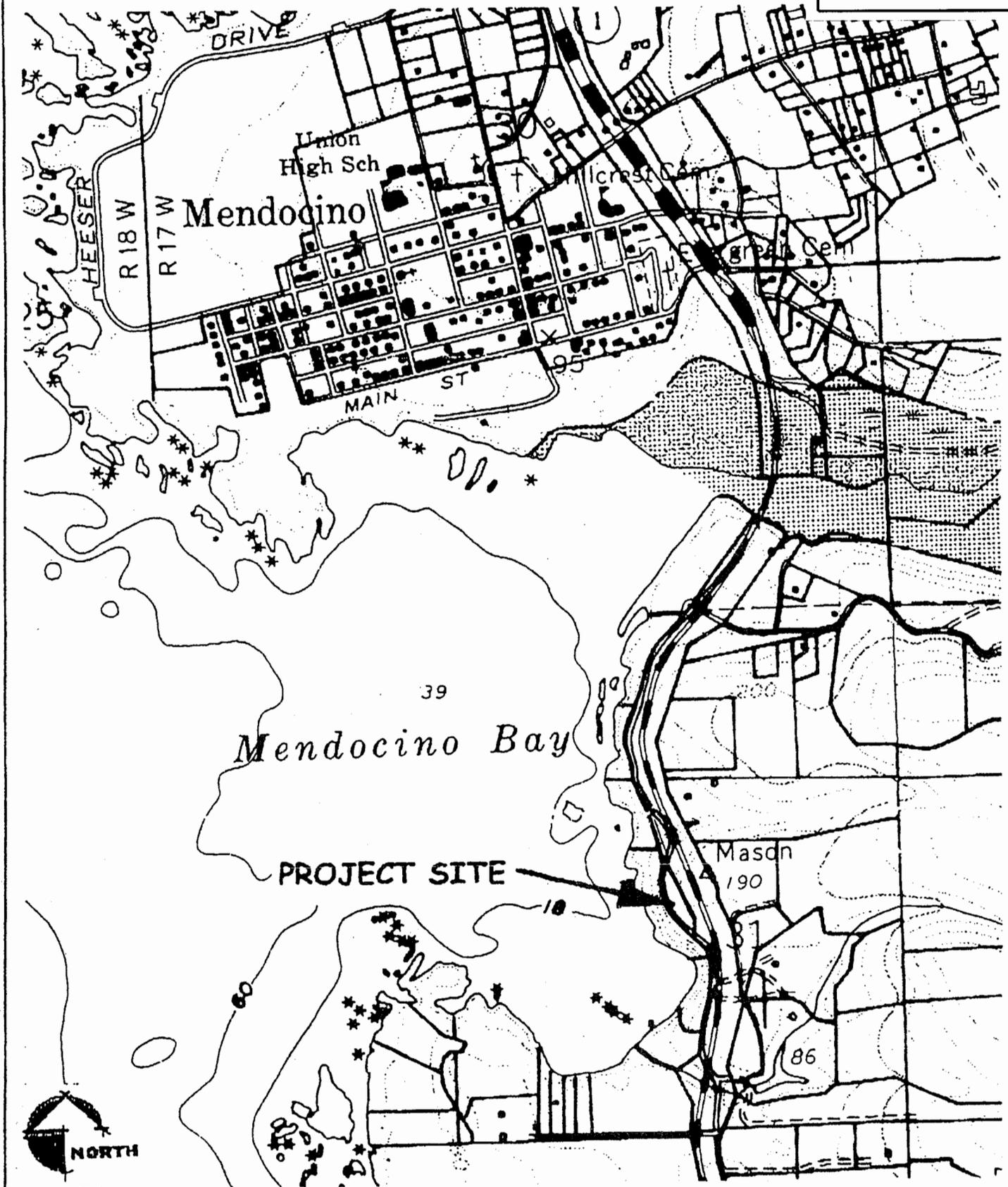
EXHIBIT NO. 2

APPEAL NO.

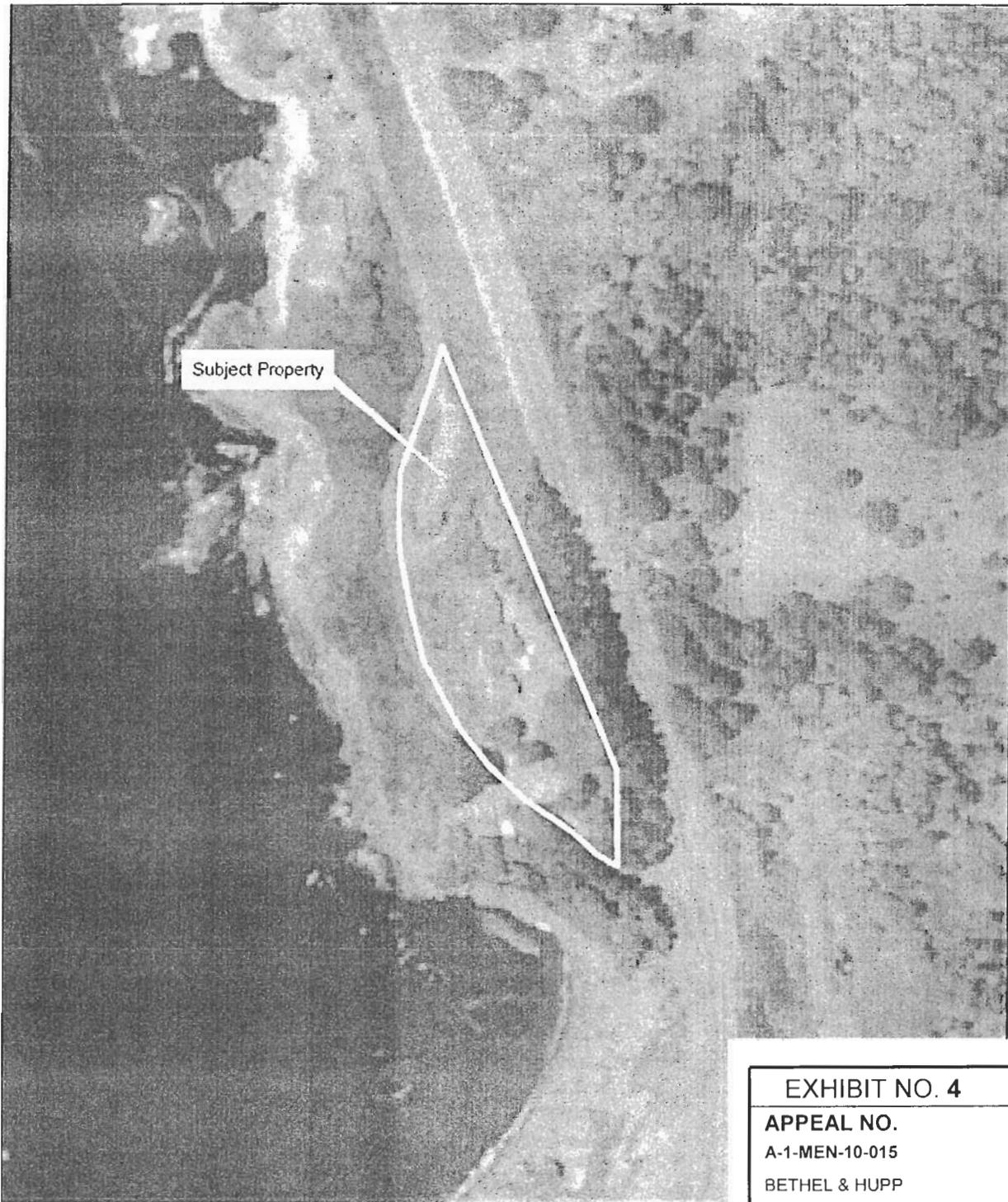
A-1-MEN-10-015

BETHEL & HUPP

VICINITY MAP







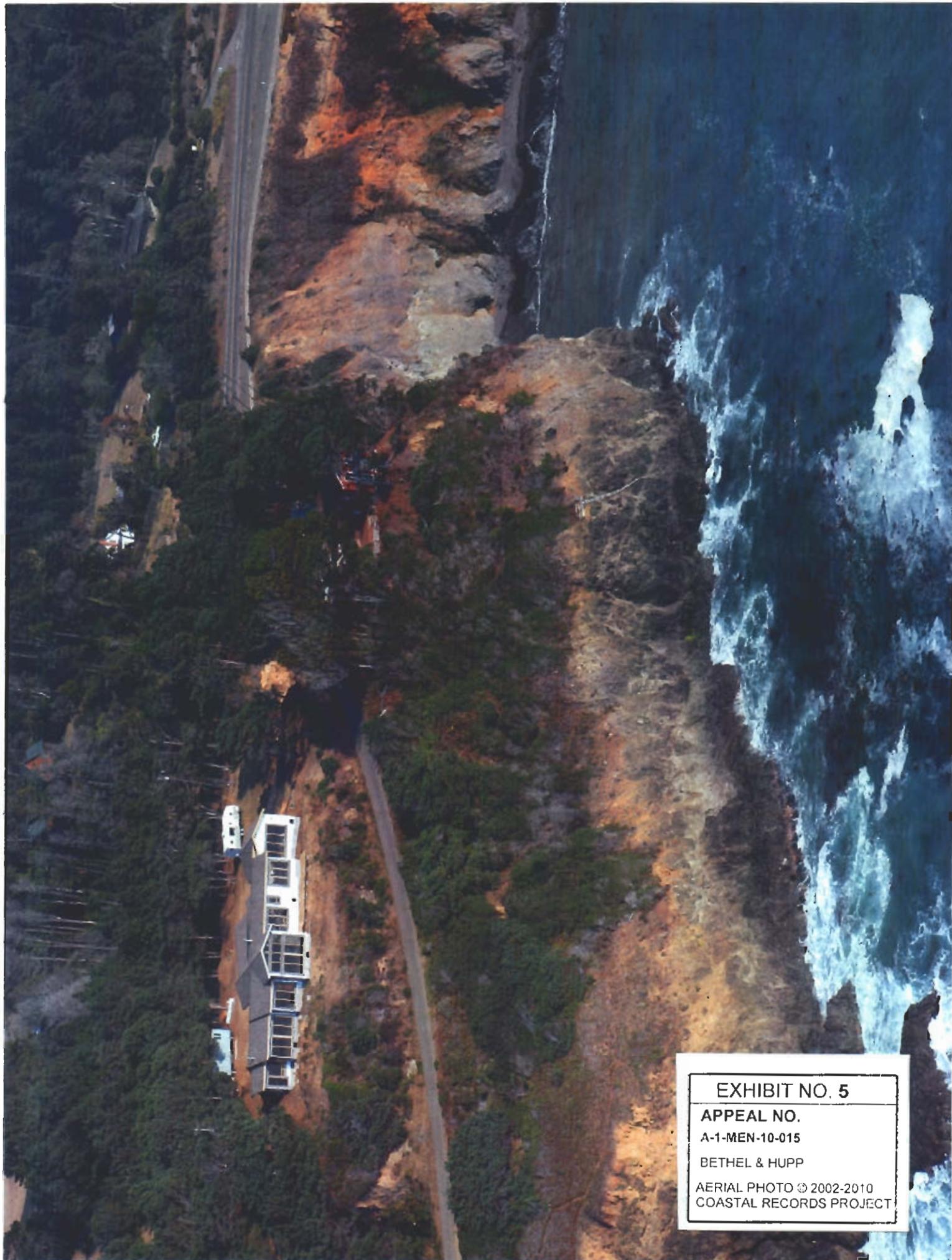
**EXHIBIT NO. 4**  
**APPEAL NO.**  
A-1-MEN-10-015  
BETHEL & HUPP  
AERIAL PHOTO OF SITE

OWNER: HUPP, John  
APPLICANT: BETHEL, Barbara  
AGENT: WHYNN, Amy  
CASE: CDPM 98-2001 / 2009  
APNs: 119-320-04

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES. They are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of December 2007)

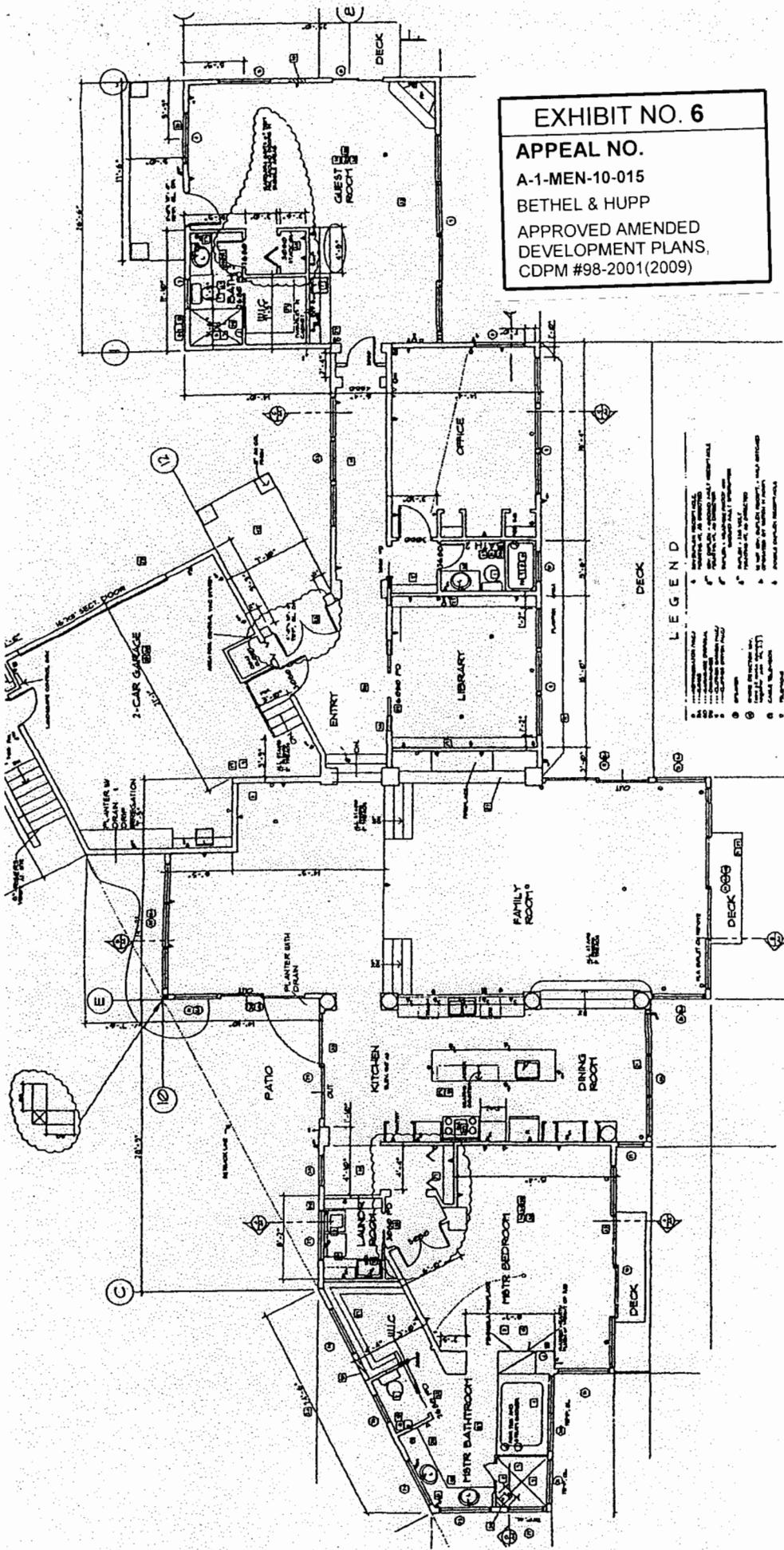


Exhibit D

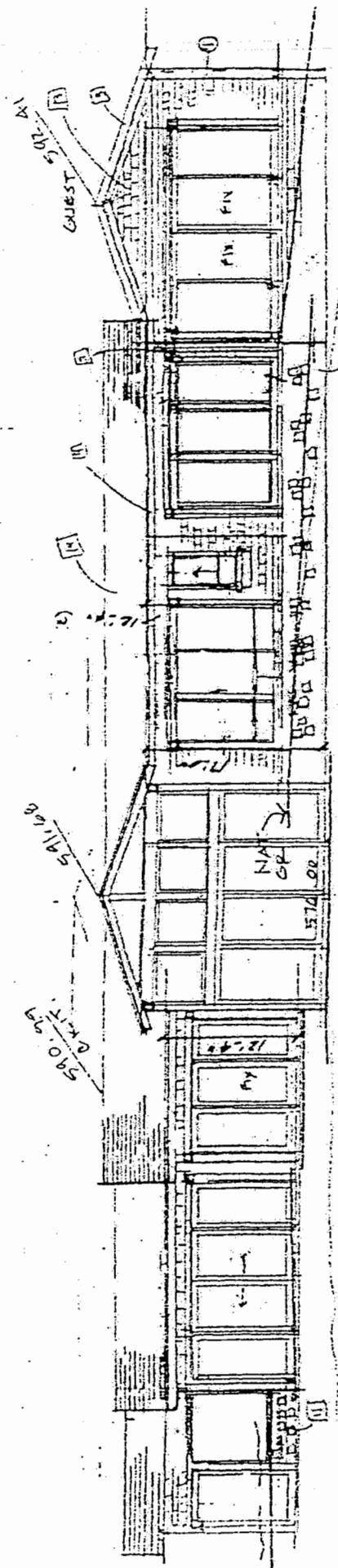


**EXHIBIT NO. 5**  
**APPEAL NO.**  
A-1-MEN-10-015  
BETHEL & HUPP  
AERIAL PHOTO © 2002-2010  
COASTAL RECORDS PROJECT

**EXHIBIT NO. 6**  
**APPEAL NO.**  
 A-1-MEN-10-015  
 BETHEL & HUPP  
 APPROVED AMENDED  
 DEVELOPMENT PLANS,  
 CDPM #98-2001(2009)



- LEGEND**
- 1. INTERIOR FINISHES
  - 2. EXTERIOR FINISHES
  - 3. FLOORING
  - 4. CEILING
  - 5. WALLS
  - 6. DOORS
  - 7. WINDOWS
  - 8. LIGHTING
  - 9. MECHANICAL
  - 10. PLUMBING
  - 11. ELECTRICAL
  - 12. PAINT
  - 13. GLASS
  - 14. METAL
  - 15. WOOD
  - 16. STONE
  - 17. BRICK
  - 18. CONCRETE
  - 19. ASPHALT
  - 20. GRAVEL
  - 21. LANDSCAPE
  - 22. FURNITURE
  - 23. APPLIANCES
  - 24. FIXTURES
  - 25. OTHER



**WEST ELEVATION**



CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET, SUITE 200
EUREKA, CA 95501
VOICE (707) 445-7833 FAX (707) 445-7877



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: SEE ATTACHMENT A
Mailing Address:
City: Zip Code: Phone:

EXHIBIT NO. 8
APPEAL NO.
A-1-MEN-10-015
BETHEL & HUPP
APPEAL (1 of 12)

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Mendocino

2. Brief description of development being appealed:

Material modification to CDPM #98-2001(2005) to remove the guest cottage creating guest bedroom, alter the approved building footprint, and add additional windows to all elevations of the residence.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

Approximately 1.5 miles south of the Town of Mendocino, on the east side of Frontage Road 500B (county road #500B), approximately 50 feet southeast of its intersection with Highway One at 9401 Road 500B Road (APN 119-320-04)

4. Description of decision being appealed (check one.):

- Approval; no special conditions
Approval with special conditions:
Denial

RECEIVED
APR 21 2010
CALIFORNIA COASTAL COMMISSION

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:
APPEAL NO: A-1-MEN-10-015
DATE FILED: 4/21/10
DISTRICT: North Coast

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: March 25, 2010

7. Local government's file number (if any): CDP-98-2001(2009)

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Barbara Bethel  
P.O. Box 1688  
Mendocino, CA 95460

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Amy Wynn, Agent  
Amy Wynn Coastal Development Permits  
703 North Main Street  
Fort Bragg, CA 95437

(2) John Hupp, Owner  
P.O. Box 932  
Pismo Beach, CA 93448

(3)

(4)

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

See Attachment B.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 4

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

-SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Ms Signature on File Bergin  
Appellant or Agent \_\_\_\_\_

Date: April 21, 2010

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 4

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: \_\_\_\_\_ **Signature on File**  
Appellant or \_\_\_\_\_

Dated: April 21, 2010

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

ATTACHMENT A

SECTION I. Appellant(s)

1. Mary K. Shallenberger  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105  
  
(415) 904-5200
  
2. Richard Bloom  
City of Santa Monica  
P. O. Box 2200  
Santa Monica, CA 90407-2200  
  
(415) 904-5200

## ATTACHMENT B

### **APPEALABLE PROJECT:**

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603). Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within 100 feet of any wetland or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act because the approved development is located (1) within a designated "highly scenic area," which is a type of sensitive coastal resource area; and (2) within 300 feet of the top of the seaward face of a coastal bluff.

### **BACKGROUND:**

The County of Mendocino approved Coastal Development Permit Modification (CDPM) #98-2001(2009) for a material modification to the previously-approved CDPM # 98-2001(2005). The previously-approved CDPM from 2005 allowed construction of a 2,900 square-foot single-family residence with an attached 689-square-foot garage and a maximum average height of 18 feet above natural grade, plus the addition of a 640-square-foot detached guest cottage with a maximum height of 18 feet above natural grade, for a total of 4,229 square feet. The 2005 modification also allowed grading associated with lot development, installation of a well and septic system and connection to utilities at the edge of the parcel, and installation of a driveway and retaining wall. The 2005 modification followed the 2002 approval of Coastal Development Permit #98-01 and upon a change in ownership of the parcel, a 2004 renewal of the original permit was approved, which expired on October 28, 2005.

The new owner and applicant began building using the previously-approved CDPM#98-2001(2005), but significantly modified the design during the construction process and without prior approval. A partially-built structure is currently developed at the site that deviates from the 2005 CDPM. An after-the-fact application was submitted as CDPM #98-2001(2009) to alter the 2005-approved building footprint by attaching the guest cottage to the residence (creating a guest bedroom and hallway), enclosing a portion of the previously-approved patio into living space, installing additional windows to all elevations of the residence, modifying house and roof

materials, and adding trim colors not previously reviewed under the 2005 modification. The proposed modifications result in an enlarged house footprint from 2,900 square feet to 3,988 square feet with a reduced garage space from 689 square feet to 575 square feet, resulting in an increase in total development from 4,229 square feet to 4,563 total square feet. In addition, there is an increase in windows on the western elevation from the previously-approved 18 (plus a gable end window) to 28 (plus a gable end window). The window changes result in an approximate 100% increase in window glazing on the western elevation, which is the side of the house visible from Headlands State Park and the Town of Mendocino.

The approved development is located approximately 1.5 miles south of the Town of Mendocino, on the east side of Frontage Road 500B (county road #500B), approximately 50 feet southeast of its intersection with Highway One at 9401 Road 500B Road (APN 119-320-04), in a designated Highly Scenic Area (HSA).

### **REASONS FOR APPEAL:**

The approved development is inconsistent with the certified LCP, including but not limited to the policies contained in the Visual Resources sub-section of Section 3: Resources and Development Issues and Policies of the Land Use Plan, and the development regulations and standards of Section 20.504 and Section 20.496.020 of the Mendocino County Coastal Zoning Code (herein "Coastal Zoning Code" or "CZC"), for the following reasons:

- A. Inconsistencies with LUP Visual Resources Policies and Coastal Zoning Code Regulations Regarding Visual Resources and Highly Scenic Areas

### **LCP Policies on the Protection of Visual Resources:**

Land Use Plan (LUP) Policy 3.5-1 states, in applicable part, as follows:

*The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. [Emphasis added]*

LUP Policy 3.5-3 states, in applicable part, as follows:

*The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. ...*

- *Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.*

*In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within "highly scenic areas" will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies.*

LUP Policy 3.5-4 states in applicable part (emphasis added):

*Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.*

...

*Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; (3) prohibiting removal of tree masses which destroy the ridgeline silhouette. Nothing in this policy shall preclude the development of a legally existing parcel.*

LUP Policy 3.5-5 states as follows:

*Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged. In specific areas, identified and adopted on the land use plan maps, trees currently blocking views to and along the coast shall be required to be removed or thinned as a condition of new development in those specific areas. New development shall not allow trees to block ocean views.*

Section 20.504.015, "Highly Scenic Areas," of the Coastal Zoning Code (CZC) states, in applicable part, as follows:

...

**(C) Development Criteria.**

*(1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.*

*(2) In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) 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.*

*(3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.*

...

*(5) Buildings and building groups that must be sited in highly scenic areas shall be sited:*

*(a) Near the toe of a slope;*

(b) *Below rather than on a ridge; and*

(c) *In or near a wooded area.*

...

(8) *Minimize visual impact of development on ridges by the following criteria:*

(a) *Prohibiting development that projects above the ridgeline;*

(b) *If no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation;*

(c) *Prohibiting removal of tree masses which destroy the ridgeline silhouette.*

...

(10) *Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas.*

(11) *Power transmission lines shall be located along established corridors where possible and where the corridors are not visually intrusive.*

(12) *Power distribution lines shall be placed underground in designated "highly scenic areas" west of Highway 1 and in new subdivisions. East of Highway 1, power lines shall be placed below ridgelines if technically feasible.*

(13) *Access roads and driveways shall be sited such that they cause minimum visual disturbance and shall not directly access Highway 1 where an alternate configuration is feasible. (Ord. No. 3785 (part), adopted 1991) [emphasis added].*

CZC Section 20.504.020 states, in applicable part, as follows:

...

*(D) The scenic and visual qualities of Mendocino County Coastal Areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. (Ord. No. 3785 (part), adopted 1991)*

### **Discussion:**

LUP Visual Resources Policy No. 3.5-1 and CZC Section 20.504.015 state that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas; furthermore, new development in Highly Scenic Areas (HSAs) shall be subordinate to the character of the setting. LUP Policy No. 3.5-3 reiterates that new development in highly scenic areas shall be subordinate to the character of its setting.

The development conditionally approved by the County is inconsistent with the above cited LUP Visual Resources policies and Coastal Zoning Code Regulation standards, because the development is within a designated highly scenic area and the development is not subordinate to the character of the setting. The county noted the proposed residence is visible from the Town of

Mendocino, Mendocino Headlands State Park, turnouts on Highway 1, and a portion of Van Damme State Park at Brewery Gulch. As noted above, the Coastal Development Permit Modification was submitted after the fact and a partially built structure is currently developed at the site. The development site is particularly prominent from major viewing areas, especially looking south across Mendocino Bay from the historic Town of Mendocino and the adjoining Mendocino Headlands State Park, which are major visitor destinations along the Mendocino coast. These viewing areas are visited by many thousands of visitors every year.

The county notes "The proposed modification includes a significant increase in glazing from the 2005 modification, as well as enclosure of a portion of the previously approved patio and attachment of the previously approved guest cottage. These proposed modifications significantly alter the western elevation as visible from the public viewing points mentioned above." The modifications to windows on the western elevation increased the number from 18 (plus a gable end window) to 28 (plus a gable end window). The change from the 2005-approved 426 square feet of windows to the current 839 square feet of windows results in an approximate 100% increase in window glazing on the western elevation. The windows are a much more reflective surface than siding material and greatly affect the visual prominence of the development. The partially-built structure is visible in the 2009 California Coastal Records Project images numbered 20093160 and 20093159, available at <http://www.californiacoastline.org>.

County staff approved modified final conditions requiring planting of vegetation to screen the structure with a requirement that a minimum of 50% of all required landscaping be planted, staked and fenced for protection prior to a building inspection. Conditions also included requirements to achieve 60% vegetative screening of the structure, but did not impose timeframes for this success criterion. Conditions also included increased tree replacement ratios from the 2005 approved modification to account for trees that have been removed without prior County approval- and that were not replanted- pursuant to the 2005 permit requirements. The County also required submittal of a 200% performance deposit to encourage fulfillment of all vegetation screening conditions. Documents submitted by the agent show proposed landscaping includes nonnative *Podocarpus henkelii* ("Long-leafed Yellowwood") and *Cupressus leylandii* ("Leyland Cypress") in addition to the native *Pinus contortus* [sic] ("shore pine").

While vegetative screening may aid in buffering the view of the proposed development, planting vegetation should not be solely relied upon to mitigate visual impacts, particularly at this coastal property where no screening vegetation currently exists to visually buffer the development. Furthermore, due to the location within 300 feet of the top of the seaward face of the coastal bluff, strong winds and salt spray may inhibit growth of vegetation such that it does not succeed at growing, or may take a few years to a decade or more to fully achieve a height that functions as screening. Therefore, even if vegetation is planted immediately, it will not fully mitigate the visual impacts that continue to occur, and if the vegetation is unsuccessful, there will be no other recourse to ensure consistency with LUP Policy 3.5-1 and CZC Section 20504.015.

In addition to increases in window number and surface area that are not subordinate to the character of the setting, the County staff report notes that the proposed trim and window frame color chosen by the applicant and described as "Mendocino Blond" "contrasts with the siding and is a prominent feature visible from the Town of Mendocino and Headlands State Park."

County staff had recommended a condition requiring that the applicant “submit an alternative window frame and trim color that is dark and minimizes contrast, such as a color that matches the hue and brightness of the siding. A revised west elevation shall be submitted which illustrates the elimination of the stone veneer siding. Prior to the final building inspection, the revised trim and window frame color shall be painted.” However, the condition was deleted from the approved project, without any findings justifying this action.

As the project as approved will not visually blend with its surroundings, it is not subordinate to the character of its setting and is therefore inconsistent with LCP policies regarding the protection of visual resources including, but not limited to LUP Policy 3.5-1 and CZC Section 20.504.015.

## CALIFORNIA COASTAL COMMISSION

10TH COAST DISTRICT OFFICE  
1000 E STREET, SUITE 200  
REKA, CA 95501  
707 445-7833 FAX (707) 445-7877  
www.coastal.ca.gov



## NOTIFICATION OF APPEAL PERIOD

DATE: April 12, 2010  
TO: Abbey Stockwell, Project Coordinator  
County of Mendocino, Department of Planning and Building Services  
790 South Franklin Street  
Fort Bragg, CA 95437  
FROM: Tamara Gedik, Coastal Program Analyst   
RE: Application No. 1-MEN-09-157

Please be advised that on April 7, 2010 our office received notice of local action on the coastal development permit described below:

Local Permit #: CDPM #98-2001(2009)

Applicant(s): Barbara Bethel; John Hupp

Description: Material modification to CDPM ~~98~~<sup>98</sup>-2001(2005) to alter the approved building footprint: attaching the guest cottage to the residence (creating a guest bedroom), and additional windows to all elevations of the residence. Request for temporary occupancy of a travel trailer during construction.

Location: 9490 North Highway One, Mendocino (Mendocino County) (APN(s) 119-320-04)

Unless an appeal is filed with the Coastal Commission, the action will become final at the end of the Commission appeal period. The appeal period will end at 5:00 PM on April 21, 2010.

Our office will notify you if an appeal is filed.

If you have any questions, please contact me at the address and telephone number shown above.

cc: Barbara Bethel  
John Hupp

## EXHIBIT NO. 9

## APPEAL NO.

A-1-MEN-10-015

BETHEL &amp; HUPP

NOTICE OF FINAL LOCAL  
ACTION & FINDINGS FOR  
APPROVAL (1 of 31)

INTEROFFICE MEMORANDUM

TO: CALIFORNIA COASTAL COMMISSION  
FROM:  ANN, MENDOCINO COUNTY PBS, FORT BRAGG  
SUBJECT: NOTICE OF FINAL ACTION, 3/25/2010 CPA AGENDA  
DATE: 4/5/2010

Enclosed please find the Notice of Final Action, action sheet, and modified conditions for the following item heard at the March 25, 2010, Coastal Permit Administrator hearing:

CDPM #98-2001(2009) (Hupp/Bethel)

RECEIVED  
APR 07 2010  
CALIFORNIA  
COASTAL COMMISSION



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

790 SOUTH FRANKLIN STREET · FORT BRAGG · CALIFORNIA · 95437

IGNACIO GONZALEZ, DIRECTOR

Telephone 707-964-5379

FAX 707-961-2427

www.co.mendocino.ca.us/planning

RECEIVED  
APR 07 2010  
CALIFORNIA  
COASTAL COMMISSION

April 5, 2010

### NOTICE OF FINAL ACTION

Action has been completed by the County of Mendocino on the below described project located within the Coastal Zone.

**CASE#:** CDPM #98-2001(2009)

**OWNER:** John Hupp

**APPLICANT:** Barbara Bethel

**AGENT:** Amy Wynn

**REQUEST:** Material modification to CDPM 98-2001(2005) to alter the approved building footprint: attaching the guest cottage to the residence (creating a guest bedroom), and additional windows to all elevations of the residence. Request for temporary occupancy of a travel trailer during construction.

**LOCATION:** In the Coastal Zone, approx. 1.5 miles south of the Town of Mendocino, on the east side of Frontage Road 500B (CR# 500B) approx. 50 feet southeast of its intersection with Highway 1, at 9401 Road 500B (APN: 119-320-04).

**PROJECT COORDINATOR:** Abbey Stockwell

**HEARING DATE:** March 25, 2010

**APPROVING AUTHORITY:** Coastal Permit Administrator

**ACTION:** Approved with Conditions.

See staff report for the findings and conditions in support of this decision.

The project was not appealed at the local level.

The project is appealable to the Coastal Commission pursuant to Public Resources Code, Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission district office.

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: CDPM 98-2001(2009) HEARING DATE: March 25, 2010

OWNER: Hupp AGENT: Bethel

ENVIRONMENTAL CONSIDERATIONS:

- [x] Categorically Exempt
Negative Declaration
EIR

FINDINGS:

- [x] Per staff report
Modifications and/or additions

ACTION:

- [x] Approved
Denied
Continued

CONDITIONS:

- Per staff report
[x] Modifications and/or additions

Special Condition 3: DELETED

Special Condition 7: To state:

7. Prior to a building inspection, a minimum of 50% of all required landscaping shall be planted, staked, and fenced for protection; the majority of these plantings shall be placed west of the residence. The mature and sapling trees on the parcel which do and may provide visual buffering between the proposed development and public view areas along Highway One, in the Town of Mendocino, and from Mendocino Headlands State Park shall be maintained in perpetuity, for the life of the development. Saplings or trees adjacent to the construction site shall be fenced for protection. No limbing or removal of buffering trees shall occur. Replacement trees shall be native, drought resistant and site appropriate (adaptable to the salt wind

incurred by the County (based on a minimum of 8 hours per year for a Planner II. This security shall be with the County for a minimum of five year period. The security shall not be released until such time as a professional botanist, landscape architect or other qualified individual approved by the County has submitted a report acceptable to the County that the vegetative screen has been successfully established to 90% of the desired vegetative structure i.e. the 60% screening goal.

Special Condition 8: DELETED

Special Condition 9 to state:

9. Prior to issuance of the new building permit, the applicant shall submit an exterior lighting plan, **including number of lights** and design details or manufacturer's specifications for all the exterior lighting fixtures. Exterior lighting shall be kept to the minimum necessary for safety and security purposes and shall be downcast and shielded in compliance with Section 20.504.035 of the MCCZC.

*(see attached for signature)*

Signed: Coastal Permit Administrator

**MENDOCINO COUNTY COASTAL PERMIT ADMINISTRATOR  
COASTAL DEVELOPMENT PERMITS  
AGENDA**

**DATE:** March 25, 2010  
**TIME:** 10:00 a.m.  
**PLACE:** Mendocino County Department of Planning and Building Services  
Conference Room, 790 South Franklin Street, Fort Bragg, California

- A. **Determination of Noticing.**
- B. **Public Hearing Items.**

**RECEIVED**  
MAR 15 2010  
CALIFORNIA  
COASTAL COMMISSION

- 1. **CASE#:** CDPM #98-2001(2009)  
**DATE FILED:** 10/6/2009  
**OWNER:** John Hupp  
**APPLICANT:** Barbara Bethel  
**AGENT:** Amy Wynn  
**REQUEST:** Material modification to CDPM 98-2001(2005) to alter the approved building footprint: attaching the guest cottage to the residence (creating a guest bedroom), and additional windows to all elevations of the residence. Request for temporary occupancy of a travel trailer during construction.  
**LOCATION:** In the Coastal Zone, approx. 1.5 miles south of the Town of Mendocino, on the east side of Frontage Road 500B (CR# 500B) approx. 50 feet southeast of its intersection with Highway 1, at 9401 Road 500B (APN: 119-320-04).  
**PROJECT COORDINATOR:** Abbey Stockwell

- C. **Matters from the Public.** The Coastal Permit Administrator welcomes participation in meetings. This item is limited to matters under the jurisdiction of the Coastal Permit Administrator which are not on the posted agenda and items which have not already been considered by the Coastal Permit Administrator. No action will be taken.
- D. **Adjournment.**

**Appeal Process.** Applicants or other persons who are dissatisfied with a decision of the Coastal Permit Administrator may appeal the action to the Board of Supervisors. An appeal must be made in writing along with the applicable fee to the Clerk of the Board within 10 calendar days of the Administrator's decision. The appeal of the decision will be placed on the next available Board of Supervisors agenda for consideration and the appellant will be notified of the time, date and place. Appeals to the Board of Supervisors do not necessarily guarantee that the Coastal Permit Administrator's decision will be overturned. In some cases, the Board of Supervisors may not have the legal authority to overturn the decision of the Coastal Permit Administrator.



RECEIVED

MAR 15 2010

CALIFORNIA  
COASTAL COMMISSION

March 12, 2010

**PUBLIC NOTICE OF PENDING ACTION  
STANDARD COASTAL DEVELOPMENT PERMIT**

The Mendocino County Coastal Permit Administrator, at a regular meeting to be held Thursday, March 25, 2010 in the Planning and Building Services Conference Room, 790 South Franklin Street, Fort Bragg, at 10:00 a.m. or as soon thereafter as the item may be heard, will hear the below described project that is located in the Coastal Zone.

**CASE #:** CDPM #98-2001(2009)  
**DATE FILED:** 10/6/2009  
**OWNER:** John Hupp  
**APPLICANT:** Barbara Bethel  
**AGENT:** Amy Wynn  
**REQUEST:** Material modification to CDPM 98-2001(2005) to alter the approved building footprint: attaching the guest cottage to the residence (creating a guest bedroom), and additional windows to all elevations of the residence. Request for temporary occupancy of a travel trailer during construction.  
**LOCATION:** In the Coastal Zone, approx. 1.5 miles south of the Town of Mendocino, on the east side of Frontage Road 500B (CR# 500B) approx. 50 feet southeast of its intersection with Highway 1, at 9401 Road 500B (APN: 119-320-04).  
**PROJECT COORDINATOR:** Abbey Stockwell

As you are an adjacent property owner and/or interested party, you are invited to appear at the hearing, or to direct written comments to this office at the above address. If you would like to be notified of the Coastal Permit Administrator's action, please submit a written request to this office. All correspondence should contain reference to the above noted case number.

The decision of the Coastal Permit Administrator shall be final unless a written appeal is submitted to the Board of Supervisors with a filing fee within 10 calendar days thereafter. If appealed, the decision of the Board of Supervisors to approve the project shall be final unless appealed to the Coastal Commission in writing within 10 working days following Coastal Commission receipt of a Notice of Final Action on this project.

If you challenge the above case in court, you may be limited to raising only those issues described in this notice or that you or someone else raised at the public hearing, or in written correspondence delivered to the Coastal Permit Administrator at or prior to, the public hearing.

Additional information regarding the above noted case may be obtained by calling the Planning and Building Services Department at 964-5379, Monday through Friday.

*Staff reports for agenda items may be accessed and printed from the County website. Go to [www.co.mendocino.ca.us/planning](http://www.co.mendocino.ca.us/planning)*

*Click on the Boards and Commissions link, click on Coastal Permit Administrator, click on the hearing date*

Frank Lynch, Coastal Permit Administrator

STAFF REPORT FOR COASTAL DEVELOPMENT  
STANDARD PERMIT

CDPM# 98-2001(2009)  
March 25, 2010  
CPA-1

**OWNER:** John Hupp  
Po Box 932  
Pismo Beach, CA 93448

**AGENT:** Amy Wynn  
703 N. Main St  
Fort Bragg, CA 95437

**APPLICANT:** Barbara Bethel  
Po Box 1688  
Mendocino, CA 95460

**REQUEST:** Material modification to CDPM 98-2001(2005) to alter the approved building footprint: attaching the guest cottage to the residence (creating a guest bedroom), and additional windows to all elevations of the residence. Request for temporary occupancy of a travel trailer during construction.

**LOCATION:** In the Coastal Zone, approx. 1.5 miles south of the Town of Mendocino, on the east side of Frontage Road 500B (CR# 500B) approx. 50 feet southeast of its intersection with Highway 1, at 9401 Road 500B (APN: 119-320-04).

**APPEALABLE AREA:** Yes – Highly Scenic Area

**PERMIT TYPE:** Standard

**TOTAL ACREAGE:** ~1.06 acre

**GENERAL PLAN:** RR-5

**ZONING:** RR:L-5

**EXISTING USES:** Residential

**ADJACENT ZONING:** North, East, South: RR:L-5  
West: RR:L-5 [\*5C]

**SURROUNDING LAND USES:** North, East, South, West: Residential

**SUPERVISORIAL DISTRICT:** 5

**CA COASTAL RECORDS PROJECT:** Image 200903160 & Image 200903159

**ENVIRONMENTAL DETERMINATION:** Categorically exempt from CEQA Class 3(a)

**OTHER RELATED APPLICATIONS:** CDP 98-2001 SFR; CDPM 98-2001(2005) material modification to SFR; BF 2006-1024 SFR; CE 42-01 test well.

**PROJECT BACKGROUND:** CDP 98-01 was issued 5/30/03 for the construction of a 3,900 square foot residence with an average maximum height of ~16', and an attached 600 square foot garage for a total of 4,500 square feet of development, installation of a well and a septic system, grading and vegetation removal and installation of a driveway. CDPM 98-01(05) approved a material modification for the construction of a 2,900 square foot single-family residence with an attached 689 square foot garage with a maximum height of 18' from average natural grade. The 2005 application also included the construction of a 640 square foot guest cottage with a maximum height of 18' from average natural grade. The total amount of development approved was 4,229 square feet. Also approved was grading associated with lot development and the installation of a well and septic system, driveway, retaining wall, and connection to utilities.

The subject material modifications to the approved CDPM 98-01(05) have already taken place, subsequent to the approved Building Permit (BF 2006-1024). The Building Permit that was signed off by Planning Staff substantially deviates from approved CDPM 98-01(05). There is a letter, dated December 21, 2006, in the file from Planning staff which describes how the submitted building plan fails to meet the approved CDP plans. Subsequent to this letter, Planning signed off on the submitted building plans without a record as to how the deviations from the CDP plans were rectified. As construction progressed it became clear to PBS that what was being built deviated further from what was submitted on the building plans. The changes in construction design prompted the applicant to apply for the subject modification in order to complete construction.

**PROJECT DESCRIPTION:** The applicant requests a material modification to CDPM 98-2001(2005) to alter the approved building footprint. The footprint alteration includes attaching the previously approved guest cottage to the residence creating a guest bedroom and hallway and enclosing a portion of the previously approved patio into living space, enlarging the footprint from ~2900 ft<sup>2</sup> to ~3,988 ft<sup>2</sup>. Also proposed are additional windows to all elevations of the residence. The following lists the numbers of windows, including doors, between the CDPM 98-01(2005) and the subject modification. The following are close approximations as the changes in footprint slightly altered the elevations.

Elevation	2005	2009
West	18(+ gable end window)	28(+ gable end window)
South	4	10
East	12	21
North	6	17

The applicant also requests temporary occupancy of a travel trailer during construction.

The subject parcel is located in a Highly Scenic Area west of Highway 1, and is visible from the Town of Mendocino, Mendocino Headlands State Park, turnouts on Highway 1, and a portion of Van Damme State Park at Brewery Gulch.

**LOCAL COASTAL PROGRAM CONSISTENCY RECOMMENDATION:** The proposed project is consistent with the applicable goals and policies of the Local Coastal Program (LCP) as described below.

#### Land Use

The parcel is classified on the Coastal Plan Map as Rural Residential Five Acres Minimum. The parcel is similarly zoned; RR:L-5. The proposed single family residence and associated development are permitted uses within the Rural Residential Zoning District, and are consistent with the Rural Residential land use classification. Brewery Gulch Road (Frontage Road 500 B) is shown on the Land Use Map as existing shoreline access. The Land Use Map also indicates the subject parcel is within a Special Treatment Area.

The required yard setbacks for a one acre parcel in an RR-5 zone are 20 feet from front, side, and rear property lines. A corridor preservation setback of 25 feet applies along Frontage Road 500 B, resulting in a front yard setback of either 45 feet from the road corridor centerline or 20 feet from the property line, whichever is greater. A corridor preservation setback of 40 feet would apply along State Highway One, resulting in a front yard setback of either 60 feet from the highway corridor centerline or 20 feet from the property line, whichever is greater. As shown on the Site Plan, a corner of the proposed deck is within the setback on the western elevation. Additionally, there is a water feature and water storage tank within the setback on the eastern property line. **Special Condition 1** is recommended to require a revised site plan which shows that the portion of the deck within the setback be removed, or the deck should be shown to be less than 30" from the ground and therefore would not be required to meet setbacks. The water feature and water storage tank shall be removed or relocated to conform with the setback requirement. In addition, the revised site is required to illustrate the setback from Highway 1 is met.

The site is within a designated highly scenic area, therefore the height limit is 18 feet above average natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. The proposed ~18.5 foot height above natural grade of the residence does not comply with the height limit. **Special Condition 2** is recommended to require that the residence conforms to the height limit.

Maximum lot coverage for a lot less than 2 acres in size in an RR zone is 20%. Lot coverage is the percentage of the gross lot area covered by structures, including roads. The lot is approximately 1.06 acres, or 46,173 square feet. The Site Plan shows approximately 7,400 square feet of coverage, or 16%. The project complies with lot coverage limits.

The approved guest house of the 2005 modification has been attached to the residence for the 2009 proposed modification. The guest room shows a wet bar on the proposed floor plan. **Special Condition 3** is recommended to remove the sink to ensure that the guest room would not be used as a separate residential unit as the guest room would have its own entrance.

Senior Building Inspector, Michael Oliphant, responded to Staff's request for comments that a structural engineer shall submit calculations and plans for all changes to the proposed building. **Special Condition 4** complies with this request.

Temporary use of a trailer coach for occupancy while constructing a dwelling is an allowable temporary use, permitted upon issuance of an administrative permit, per Section 20.460.035(D) of the Mendocino County Coastal Zoning Code. Currently, two travel trailers are present onsite, although only one is illustrated on the submitted site plan in the project file. The trailer that is illustrated would be placed within the 20 foot setback and on top of a portion of the existing leach fields. The Division of Environmental Health (DEH) reviewed the location of the proposed travel coach and cannot give clearance to temporary occupancy at this time. DEH did offer an alternative that would allow for temporary occupancy of the travel coach. In addition, the proposed location must also meet County setback requirements. **Special Condition 5** is added to ensure compliance with applicable temporary occupancy policies should the applicant revise the location and comply with DEH requirements. Otherwise, the travel trailer shall be removed from the project site, or placed in dead storage prior to issuance of the building permit. In addition, the second trailer shall be removed from the project site.

#### Public Access

The project site is located west of Highway 1, but is not designated as a potential public access trail location on the LUP maps. Brewery Gulch Road is depicted on the Land Use Map as existing shoreline

access. There is no evidence of prescriptive access on the developed site. The project would have no effect on public access to the coast.

### Hazards

The property is in an area that has a "moderate" fire hazard severity rating as determined by the California Department of Forestry and Fire Prevention. The Department of Forestry has submitted recommended conditions of approval (CDF# 486-06) for address standards, driveway standards, and defensible space standards. The defensible space setback allows for the 20 foot setback to be mitigated with use of a fire resistive siding such as hardi-plank or construction of a one hour firewall. Standard Condition #4 is recommended to achieve compliance with CDF fire safe standards.

Regarding geologic hazards Sec. 20.500.020 of the MCCZC provides Siting and Land Use Restrictions (pertinent part):

*(B) Bluffs: (1) New structures shall be setback a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (seventy-five (75) years). New development shall be setback from the edge of bluffs a distance determined from information derived from the required geologic investigation and the setback formula as follows:*

*Setback (meters) = structure life (75 years) x retreat rate (meters/year)*

*Note: The retreat rate shall be determined from historical observation (aerial photos) and/or from a complete geotechnical investigation.*

The project site is not a bluff top parcel, however it is the policy of Planning and Building to require a geotechnical investigation when development is proposed within 125' from the bluff edge. The project site's western property boundary is quite steep leading to Frontage Road 500 B, the western edge of the road leads again to another steep slope. As the building footprint was altered and development is proposed slightly closer to the western property edge, Staff felt it was prudent to evaluate slope and geologic conditions of the project site. The applicant submitted a *Geologic Constraints Evaluation* authored by Jim Glomb, a geotechnical and environmental consultant, dated January 11, 2010. Mr. Glomb concluded that the geotechnical setback is 37.5' for the 75 year economic lifespan. In addition, Mr. Glomb states that the proposed development is 165' from the bluff edge and therefore would not be affected by the bluff retreat rate for the determined economic lifespan.

The proposed development would be located on slopes which are less than 20% and the development does not present any issues relative to erosion and/or slope failure. There are no known faults within close proximity to the proposed project.

### Grading, Erosion and Runoff

Regarding grading, Section 20.492.010 of the MCCZC states:

*(A) Grading shall not significantly disrupt natural drainage patterns and shall not significantly increase volumes of surface runoff unless adequate measures are taken to provide for the increase in surface runoff.*

*(B) Development shall be planned to fit the topography, soils, geology, hydrology, and other conditions existing on the site so that grading is kept to an absolute minimum.*

*(C) Essential grading shall complement the natural land forms. At the intersection of a manufactured cut or fill slope and a natural slope, a gradual transition or rounding of contours shall be provided.*

*(D) The cut face of earth excavations and fills shall not be steeper than the safe angle of repose for materials encountered. Where consistent with the recommendations of a soils engineer or engineering geologist, a variety of slope ratios shall be applied to any cut or fill slope in excess of two hundred (200) feet in length or ten (10) feet in height. For individually developed lots, a variety of slope ratios shall be applied to all cut or fill slopes when a building pad area exceeds four thousand five hundred (4,500) square feet, or when the total graded area of the lot exceeds nine thousand (9,000) square feet. The steepest permissible slope ratio shall be two to one (2:1), corresponding to a fifty (50) percent slope.*

*(E) The permanently exposed faces of earth cuts and fills shall be stabilized and revegetated, or otherwise protected from erosion.*

*(F) Adjoining property shall be protected from excavation and filling operations and potential soil erosion.*

A grading plan was submitted and approved with the 2005 modification for the proposed building site and driveway. Staff requested the project engineer to review current site conditions to ensure compliance with the approved grading plan. Professional Engineer, Eric Jahelka, responded in a letter dated January 14, 2010 and with an updated grading plan. Mr. Jahelka approximates that ~270 yards of excavation was added to step the interior levels. He also approximates that 90 yards would be replaced and used along the western elevation of the proposed residence as well as under the added parking to the southern elevation.

Regarding stormwater runoff, Section 20.492.025 of the MCCZC states in pertinent part:

*(A) Water flows in excess of natural flows resulting from project development shall be mitigated.*

*(C) The acceptability of alternative methods of storm water retention shall be based on appropriate engineering studies. Control methods to regulate the rate of storm water discharge that may be acceptable include retention of water on level surfaces, the use of grass areas, underground storage, and oversized storm drains with restricted outlets or energy dissipaters.*

*(D) Retention facilities and drainage structures shall, where possible, use natural topography and natural vegetation. In other situations, planted trees and vegetation such as shrubs and permanent ground cover shall be maintained by the owner.*

*(E) Provisions shall be made to infiltrate and/or safely conduct surface water to storm drains or suitable watercourses and to prevent surface runoff from damaging faces of cut and fill slopes.*

The updated grading plan submitted by Mr. Jahelka illustrates two french drains to manage stormwater runoff from the proposed development in front of the western elevation of the proposed residence. Mr. Jahelka also states that the previous erosion control plan is still valid as long as the systems are installed and maintained. **Special Condition 6** is recommended to require compliance with the submitted grading and erosion control plan.

### Visual Resources

The parcel is located in a designated "Highly Scenic Area" west of Hwy 1 and the proposed project is subject to the following development criteria:

Coastal Element Policy 3.5-1 provides general guidelines for all development in the coastal zone, requiring that:

*The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.*

Policy 3.5-3 of the Coastal Element states:

*Any development permitted in (highly scenic) areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.*

*In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.*

Section 20.504.015(C)(2) of the Coastal Zoning Code requires:

*In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) 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.*

Section 20.504.015(C)(3) also requires:

*New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof material shall be selected to blend in hue and brightness with their surroundings.*

The proposed residence has an average maximum height of ~18.5' and is visible from the Town of Mendocino, Mendocino Headlands State Park, turnouts on Highway 1, and a portion of Van Damme State Park at Brewery Gulch. The approved residence from the 2005 modification had an average height of ~18'. Special Condition 2 is offered to rectify the deviation in the height of the structure to comply with County Code. The proposed modification includes a significant increase in glazing from the 2005 modification, as well as enclosure of a portion of the previously approved patio and attachment of the previously approved guest cottage. These proposed modifications significantly alter the western elevation as visible from the public viewing points mentioned above. Specifically, the 2005 modification approved approximately 426 ft<sup>2</sup> of glazing on the western elevation; the subject modification proposes approximately 839 ft<sup>2</sup> of glazing, an approximate 100% increase. Both estimates do not include the gable end windows of either modification. Staff has spent a substantial amount of time viewing the project site from the Town of Mendocino and Headlands State Park and has observed the proposed windows (which

are existing) to be dark and not very reflective, however, this observation occurred during the winter months and prior to occupancy.

The comments garnered during the comment period and notification period for the **original** permit CDP 98-01 resulted in comments from the following entities and individuals:

**State Parks:** A response to the original referral expressed concern that the development may be visible from State Park property, specifically the Mendocino Headlands State Park from Portuguese Beach to Heeser Drive, and from Van Damme State Park at Brewery Gulch, on the east side of Highway One. Their recommendation was that a landscape plan be prepared by a landscape architect to assure sufficient vegetative screening, as well as the concern that all visual resource conditions be recorded in perpetuity to assure that any future owners of the property follow these requirements.

Staff followed up with Morgan Zeitler of State Parks and he confirmed the previous comments as applicable for the subject project.

**Sierra Club:** A response to the original referral expressed concern regarding the amount of trees that have been or are to be cut. Their recommendation was for staff to pay special attention to landscaping and color choice concerns; also to exterior lighting details. Further definition of the "existing rock quarry" was requested for clarification purposes. They also stated that it is unclear as to how the slope is determined for the purpose of determining the height of the proposed development.

These concerns were addressed in the initial CDP 98-01. Several Special Conditions were required that covered landscaping, building materials and colors and the approved grading plan. The approved 2005 modification continued the requirements imposed by the original approval however, these conditions were slightly altered to accommodate the modified proposal.

A landscape plan has been updated to account for additional trees removed subsequent to the 2005 modification and the proposed additional glazing. The landscaping requirement of the 2005 permit orders a 3:1 replacement and prior approval to remove additional trees from the project site. Prior approval was not requested, and trees were removed without additional review. The grading plan supplied in the 2005 proposal, site views, and aerial photos were used to assess the amount of trees approved for removal and the additional trees removed. The project Agent also supplied an assessment of the trees removed. Fourteen trees were removed in addition to those approved for the 2005 modification. Staff's assessment of the number and location of trees removed largely agrees with the assessment provided by the project Agent. However, Staff determined that eight trees were removed along the west and southwestern elevation. In addition, the leach field location likely removed all the existing trees, but to compensate several trees that were proposed to be removed to install the driveway remain. The 2005 grading plan and approved landscape plan show discrepancies between the number of trees removed, thus staff relied mainly on the grading plan.

To address the additional trees removed without approval and the existing that remain, **Special Condition 7** is recommended to require replacement and retention of trees, as well as an approved landscaping plan. Staff recommends that the 8 trees removed on the west and southwest elevation be replaced at a 5:1 replacement rate with shore and/or bishop pines and planted as close to the original tree location as feasible and positioned to maximize screening of the proposed residence from the Town of Mendocino, Headlands State Park and Highway 1 turnout. The replacement rate is increased from the 2005 requirement due to the pattern of disregard for County requirements and to ensure that landscape screening is established and maintained. The remaining six of the 14 trees should be replaced at a 3:1 replacement rate. All existing trees are to be photo-documented and adequately inventoried, including the

4-5 saplings Staff observed (and visible in the 2009 California Coastal Records photo Image #200903160) at the southwestern elevation.

The proposed exterior colors and materials are listed in Table 1.

**Table 1.** Proposed exterior materials and colors.

	Material	Color
Siding	Fiber cement, stone veneer	Maple simulated natural stain, Mendocino Blond
Trim	Composite	Custom color to match native rock
Roofing	Composite Shingle	Cedar
Window Frames	Aluminum	Custom color to match native rock
Doors	Glass	

The trim and window frame color contrasts with the siding, and is a prominent feature visible from the Town of Mendocino and Headlands State Park. **Special Condition 8** is recommended to require a darker trim and window frame color, such as a color that matches the hue and brightness of the siding. This condition is appropriate as the number, and size of the windows has increased since the 2005 modification. In addition, the stone veneer would not be compatible on the western elevation, as the color is light and contrasts with the siding. This condition would also require that colors or materials would not be changed without further review.

Section 20.504.035 of the Coastal Zoning Code (Exterior Lighting Regulations) states:

- (A) *Essential criteria for the development of night lighting for any purpose shall take into consideration the impact of light intrusion upon the sparsely developed region of the highly scenic coastal zone.*
- (2) *Where possible, all lights, whether installed for security, safety, or landscape design purposes, shall be shielded or shall be positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel on which it is placed.*
- (5) *No lights shall be installed so that they distract motorists.*

Exterior lighting is proposed as recessed cans in soffits/eaves. Although the application indicated the use recessed lights, staff recommends adding **Special Condition 9** because no specific details have been presented. The condition would allow the Planning Division to review the specific exterior light fixtures and locations prior to issuing the building permit.

**Natural Resources**

With the original Coastal Development Permit #98-01, the applicant submitted a botanical survey of the parcel prepared by the late Dr. Gordon McBride, Ph.D. and the results were discussed in a report dated July 2, 2001. According to the report, no rare plants were discovered on the subject site, and there are no environmentally sensitive habitat areas located within 100 feet of the proposed development.

The project site has been significantly disturbed in order to prepare the building site and to install the associated developments. As a significant amount of development had been completed at the time of the recent submittal, staff did not request an updated botanical report based on the previous findings.

### Archaeological/Cultural Resources

With the original application, CDP 98-01, an archaeological survey was submitted (prepared by Thad Van Bueren, dated August 25, 2001). No archaeological resources were found. The survey was accepted by the Mendocino County Archaeological Commission at the December 12, 2001 meeting.

However, the applicant is advised by Standard Condition #8 of the County's "discovery clause" which establishes procedures to follow should archaeological materials be unearthed during project construction.

### Groundwater Resources

The parcel is located in a Marginal Water Resources Area (MWR) as designated on the Coastal Groundwater Study.

The proposed development would be served by an existing on-site water source (test well authorized by Categorical Exclusion CE# 42-01). This permit would serve to authorize the conversion of the existing test well into a production well and would not adversely affect groundwater resources.

Carly Williams of the Division of Environmental Health (DEH) gave clearance to the proposed building modifications, however clearance was not granted for temporary occupancy of the travel trailer (see discussion under Land Use).

### Transportation/Circulation

The driveway encroachment improvements were approved by the Mendocino County Department of Transportation in the original CDP, the applicant maintains a valid encroachment permit with DOT. Standard Condition 4 is applicable to ensure that all the requirements of the encroachment permit are complied with.

The project will contribute incrementally to traffic volumes on local and regional roadways, however such incremental increases were considered when the Local Coastal Plan land use designations were assigned to the site.

### Zoning Requirements

The project complies with the zoning requirements for the Rural Residential District set forth in 20.376, et.seq., and with all other zoning requirements of Division II of Title 20 of the Mendocino County Code.

**PROJECT FINDINGS AND CONDITIONS:** Pursuant to the provisions of Chapter 20.532 and Chapter 20.536 of the Mendocino County Code, the Coastal Permit Administrator approves the proposed project, and adopts the following findings and conditions.

### **FINDINGS:**

1. The proposed development is in conformity with the certified Local Coastal Program;  
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 applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
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 proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.

**STANDARD CONDITIONS:**

1. This action shall become final on the 11<sup>th</sup> 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. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

**SPECIAL CONDITIONS:**

1. Prior to issuance of the Coastal Development Permit, the applicant shall submit a revised site plan which shows the deck on the western elevation meets the required setback, currently the site plan depicts a corner of this deck within the setback. Alternatively, the applicant shall submit verification if the deck is to be less than 30" from the existing grade and therefore would not be required to meet setbacks. The water feature and water storage tank shall be removed or relocated to conform with the setback requirement. In addition, the revised site shall illustrate the 60' setback from Highway 1 is met.
2. Prior to issuance of the Coastal Development Permit, the applicant shall submit revised elevations which indicate that the height of the residence is reduced to meet the required 18 foot height limit above natural grade. The applicant shall also submit an explanation as to how this height reduction will be accomplished on the ground. Prior to the final building inspection, the building inspector shall verify the height of the structure.
3. Prior to issuance of the Coastal Development Permit, the applicant shall submit a revised floor plan that does not include a sink in the bar of the guest room. The intent of this condition is to ensure that the guest room would not be used as a separate residential unit as the guest room would have its own entrance.
4. All modifications from the 2005 approved residence shall be submitted in a new building permit application. A structural engineer shall submit calculations and plans to the building inspector of all changes to the residence.
5. Prior to issuance of an administrative permit for temporary occupancy, the applicant shall meet DEH requirements and submit a revised site plan which places the travel trailer outside of the 20 foot setback. Once these requirements have been met, an administrative permit may

be granted for temporary occupancy of the travel trailer while constructing the single-family residence, subject to the following conditions of approval:

- a. The term of this administrative permit is valid for the period required to complete construction of the primary dwelling, but shall not exceed two years unless renewed. The administrative permit shall be effective on the effective date of CDPM #98-2001(05)(2009) and shall expire two years henceforth.
- b. A valid building permit for a permanent dwelling on the premises must be in effect.
- c. All utility connections to the travel trailer shall be disconnected and the trailer shall be removed from the property or placed in dead storage per Section 20.456.015(J) of the MCC prior to the final building inspection or occupancy of the permanent dwelling, whichever comes first.
- d. The second trailer shall be removed from the project site.

If the applicant does not proceed with temporary occupancy of the travel trailer, prior to issuance of the building permit, both travel trailers located onsite shall be removed, or one may be placed in dead storage onsite.

6. The applicant, and all contractors working on the project site shall comply with the requirements and guidelines set forth in the grading and erosion control plan submitted by Mr. Eric Jahelka. The installation of the proposed french drains shall not disturb existing trees or saplings. A copy of this staff report shall be supplied to the contractor(s) and remain onsite.
7. Prior to a building inspection, a minimum of 50% of all required landscaping shall be planted, staked, and fenced for protection; the majority of these plantings shall be placed west of the residence. The mature and sapling trees on the parcel which provide visual buffering between the proposed development and public view areas along Highway One, in the Town of Mendocino, and from Mendocino Headlands State Park shall be maintained in perpetuity, for the life of the development. Saplings or trees adjacent to the construction site shall be fenced for protection. No limbing or removal of buffering trees shall occur. Replacement trees shall be native, drought resistant and site appropriate (adaptable to the salt wind conditions of the bluff). Replacement trees shall be protected with fencing and irrigated for at least the first year, until well-established. Any replacement trees that die shall be replaced.
  - a) Prior to the issuance of the coastal development permit, a detailed landscape inventory shall be submitted documenting through both a site plan and photographic record all vegetation which provides visual screening of the building site from the public areas described above. This inventory shall include height, diameter at breast height, and dimension of visual canopy. Any loss of this vegetation shall be replaced at a minimum ratio of 5:1, with a minimum of 15 gallon pot size specimens in the same location. Any replacement planting shall be monitored annually by a professional botanist to assess the success rate. This review shall continue for that period it takes to achieve success. "Success" shall be judged by the both the plants health and the effect of visual screening in comparison to that which exists at the time of granting this entitlement. Overall, full success may be accepted with a ratio of 1:1 when the vegetative screen matures and fully replaces the visual screen to the standard which exists at the time of granting of this entitlement.

- b) The fourteen trees that were removed without prior approval shall be replaced as close to the original tree location as feasible and positioned to maximize screening of the proposed residence from the Town of Mendocino, Headlands State Park and Highway 1 turnout. Of the fourteen, the eight that were removed on the west and southwestern elevation of the residence shall be replaced at a minimum ratio of 5:1, and replaced with shore and/or bishop pine (*Pinus contorta* or *Pinus muricata*). In addition to planting the replacement trees as close to the original tree location as feasible, replacement trees may be planted to supplement the required screening trees along the northwest portion of the landscape plan. The remaining trees to be replaced shall be replaced at a 3:1 ratio. All replaced trees shall be of 15 gallon size (five gallon size may be used if 15 gallons are unavailable), fertilized, irrigated, staked, and fenced for wind protection and maintained in a healthy condition. Replacement planting shall be monitored annually by a professional botanist to assess the success rate. This review shall continue for that period it takes to achieve success (defined above). A copy of the monitoring report shall be sent Planning by April 1 of each year.
  - c) As an exception to the above, once vegetation is established, discrete, minimal limbing to open up a private view from the development site that does not impact any public view to development, may be accepted however the **owner must acknowledge this limitation in writing prior to any limbing or trimming activities**. A before and proposed "after" exhibit of the limbing to be done must be submitted to the Coastal Permit Administrator for review and approval prior to any limbing.
  - d) Prior to issuance of the Coastal Development Permit, the landscape plan submitted by Agent Amy Wynn in submittal package dated February 9, 2010, shall be updated to include the above required number of replacement trees. Prior to final building inspection or occupancy, whichever comes first, the landscape plan, including all replacement trees shall be planted and verified in the field by Planning.
  - d) All costs for monitoring condition compliance and/or enforcement actions that may result from any violation of this condition or its intent shall be at the owner's expense. In the event that such violation occurs, the property owner shall submit to the County of Mendocino a security in the form of cash, performance bond, irrevocable letter of credit, or other instrument of credit as approved by the County, in an amount equal to 200% of the total value of remediation, including but not limited to plant materials, irrigation, installation, and maintenance to be posted with the County for a minimum of five year period. The security shall not be released until such time as a professional botanist, landscape architect or other qualified individual approved by the County has submitted a report acceptable to the County that the vegetative screen has been successfully re-established to 75% of the existing baseline plant structure.
8. Prior to issuance of the Coastal Development Permit, applicant shall submit an alternative window frame and trim color that is dark and minimizes contrast, such as a color that matches the hue and brightness of the siding. A revised west elevation shall be submitted which illustrates the elimination of the stone veneer siding. Prior to the final building inspection, the revised trim and window frame color shall be painted.
9. Prior to issuance of the new building permit, the applicant shall submit an exterior lighting plan and design details or manufacturer's specifications for all the exterior lighting fixtures. Exterior lighting shall be kept to the minimum necessary for safety and security purposes and shall be downcast and shielded in compliance with Section 20.504.035 of the MCCZC.

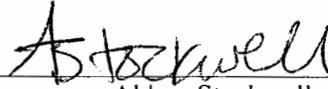
STAFF REPORT FOR COASTAL DEVELOPMENT  
STANDARD PERMIT

CDPM# 98-2001(2009)  
March 25, 2010  
CPA-14

Staff Report Prepared By:

3.12.10

Date



Abbey Stockwell  
Planner I

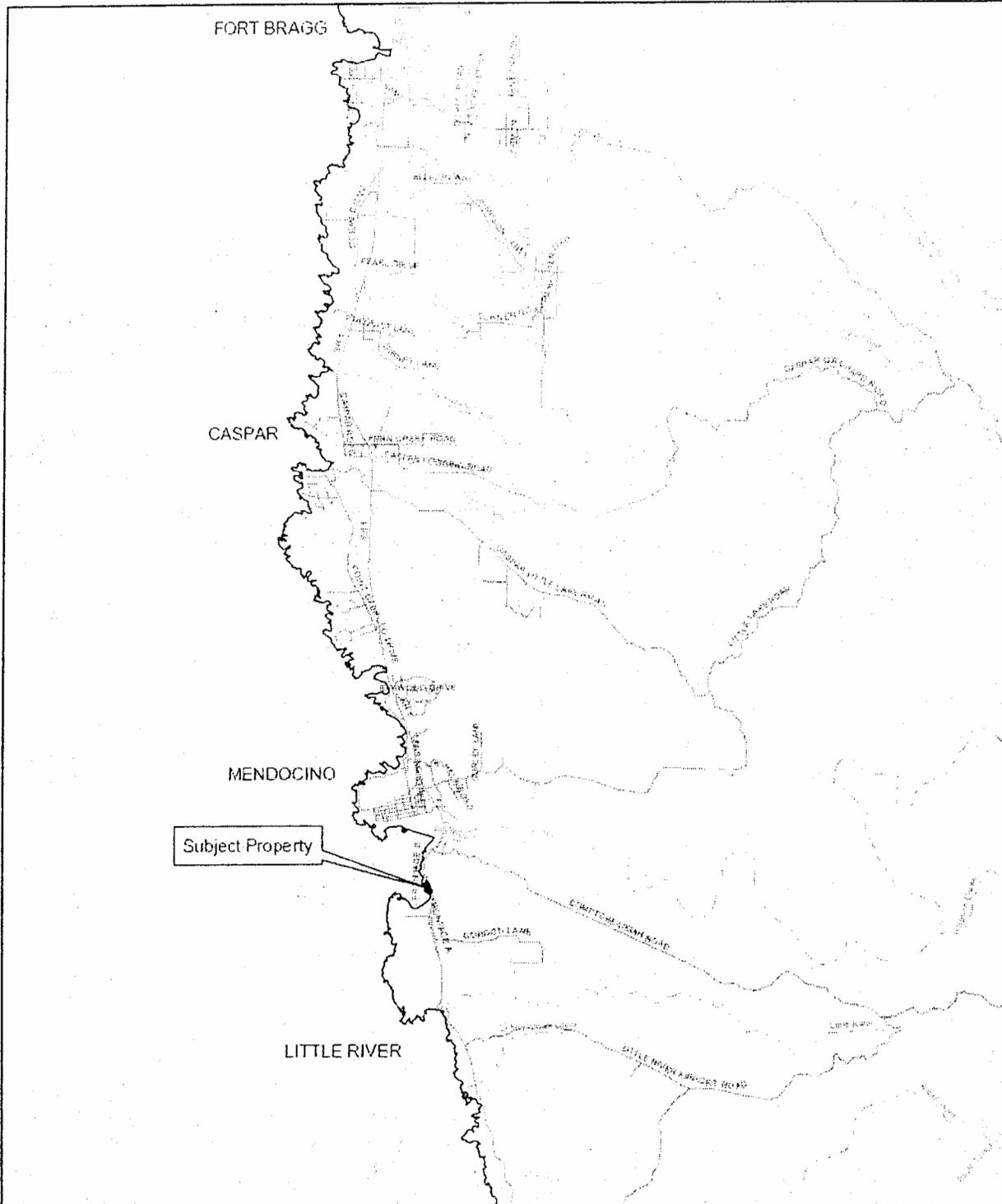
Attachments:	Exhibit A	Location Map
	Exhibit B	Coastal Records Photo 2009
	Exhibit C	Zoning Map
	Exhibit D	Orthophoto
	Exhibit E	Groundwater Resources Map
	Exhibit F	Rarefind Map
	Exhibit G	Site Plan
	Exhibit H	Floor Plan
	Exhibit I	Elevations
	Exhibit J	Elevations

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

Appeal Fee: \$945 (For an appeal to the Mendocino County Board of Supervisors.)

**SUMMARY OF REFERRAL AGENCY COMMENTS:**

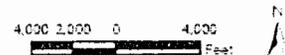
Planning – Ukiah	No response
Department of Transportation	Encroachment permit is valid.
Environmental Health – Fort Bragg	Clearance can be granted for alternative building plans, temporary occupancy is not approved at this time.
Building Inspection – Fort Bragg	Structural engineer must submit calculations and plans for all changes.
Assessor	No response.
Coastal Commission	No response.
Mendocino Fire Dept	No response.

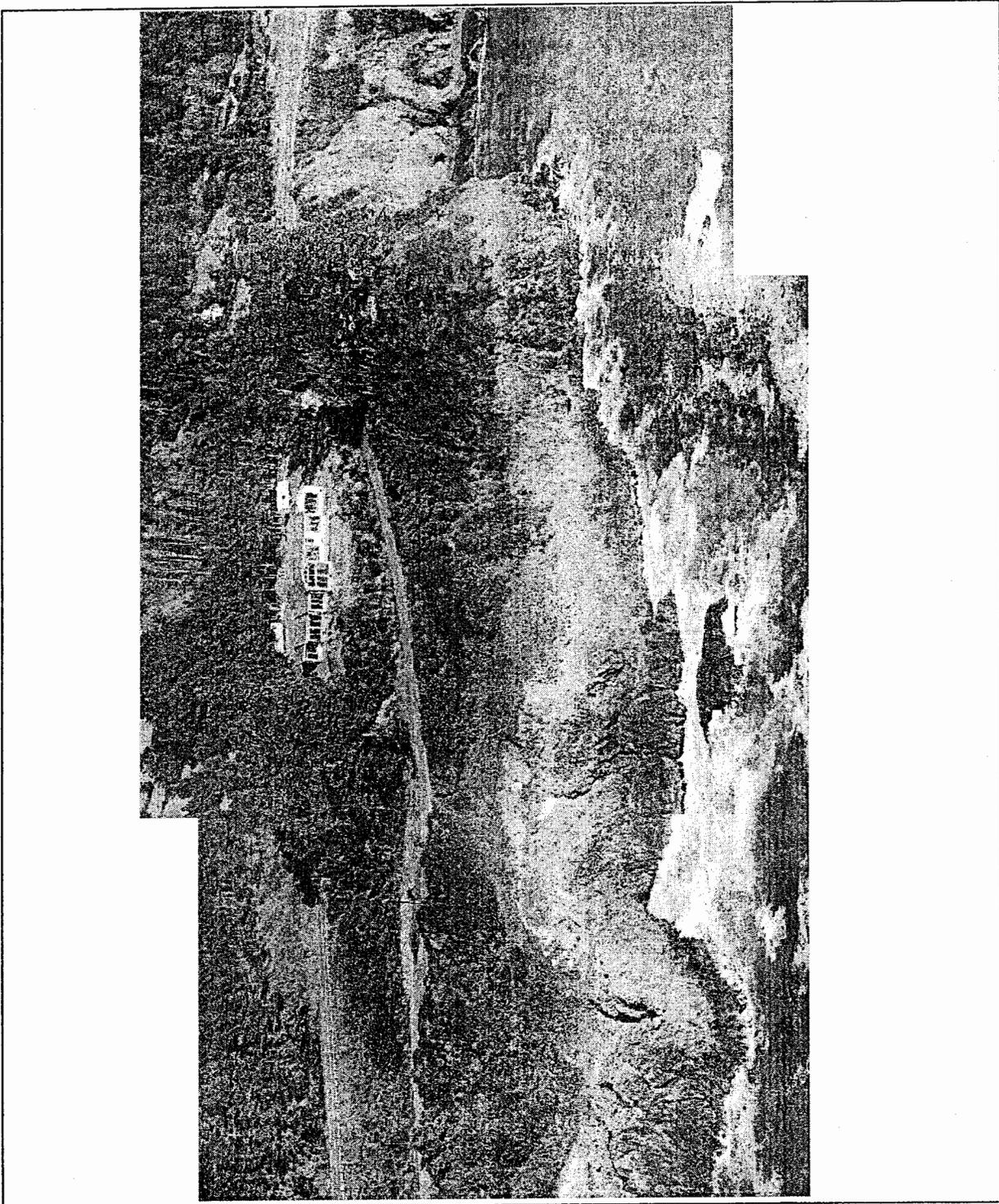


OWNER: HUPP, John  
APPLICANT: BETHEL, Barbara  
AGENT: WHYNN, Amy  
CASE: CDPM 98-2001 / 2009  
APNs: 119-320-04

LOCATION MAP

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of December 2009)

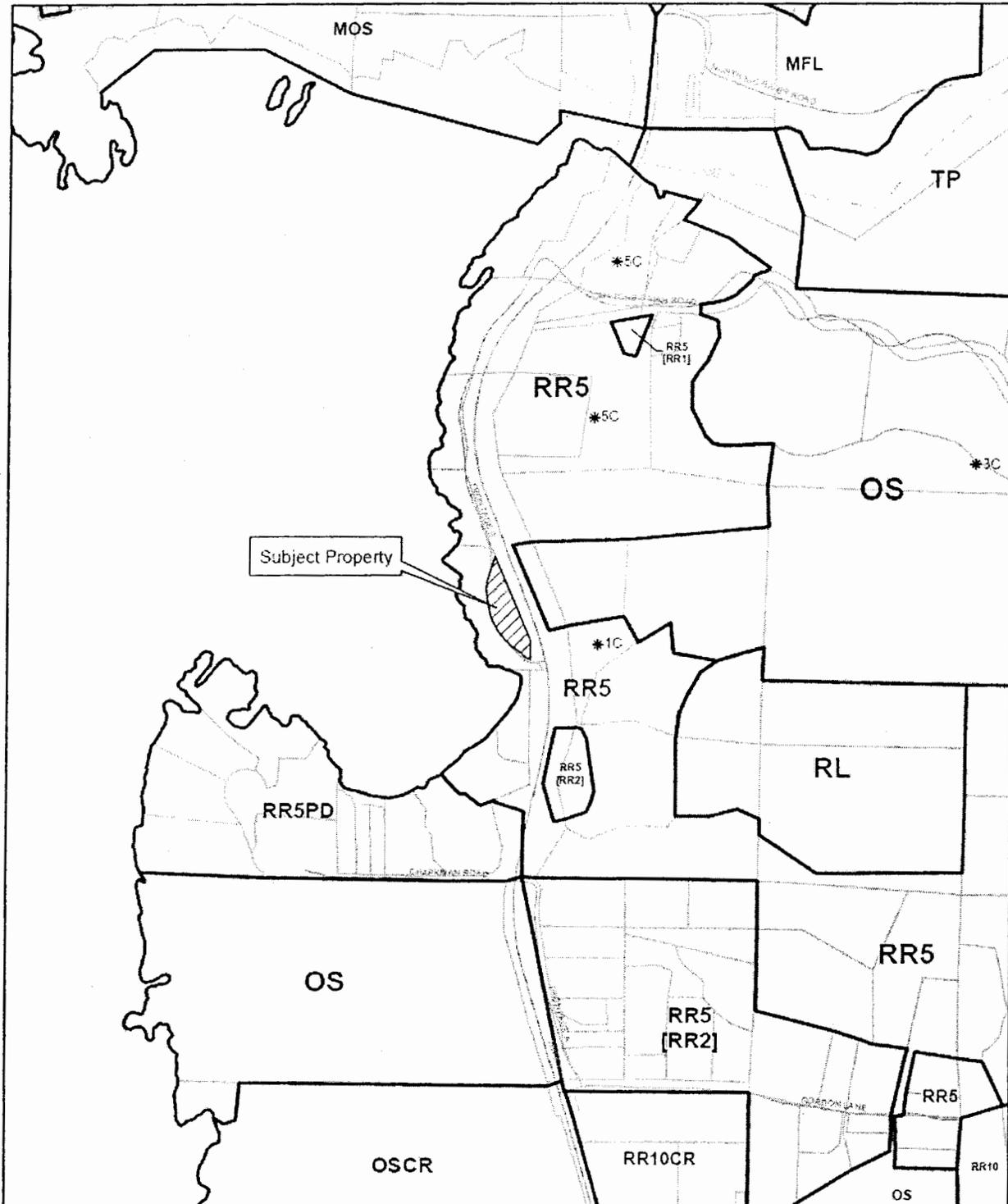




OWNER: HUPP, John  
APPLICANT: BETHEL, Barbara  
AGENT: WHYNN, Amy  
CASE: CDPM 98-2001 / 2009  
APNs: 119-320-04

**PHOTO SEPTEMBER 27, 2009**  
CALIFORNIA COASTAL RECORDS PROJECT  
COPYRIGHT resourcestrategies@usa.net

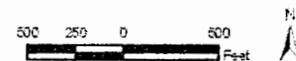
Not To Scale 

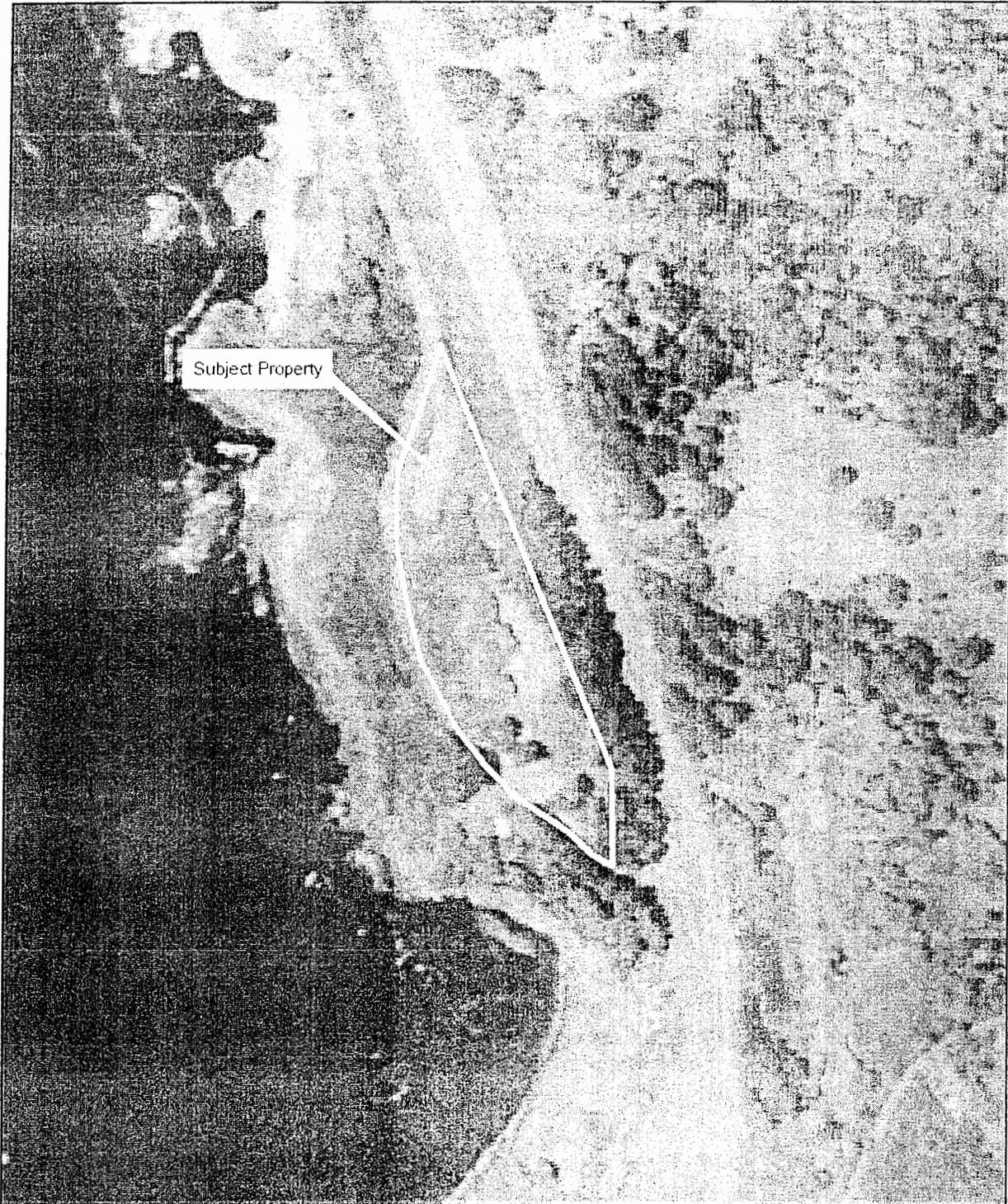


ZONING DISPLAY MAP

OWNER: HUPP, John  
 APPLICANT: BETHEL, Barbara  
 AGENT: WYNN, Amy  
 CASE: CDPM 98-2001 / 2009  
 APNs: 119-320-04

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of December 2008)





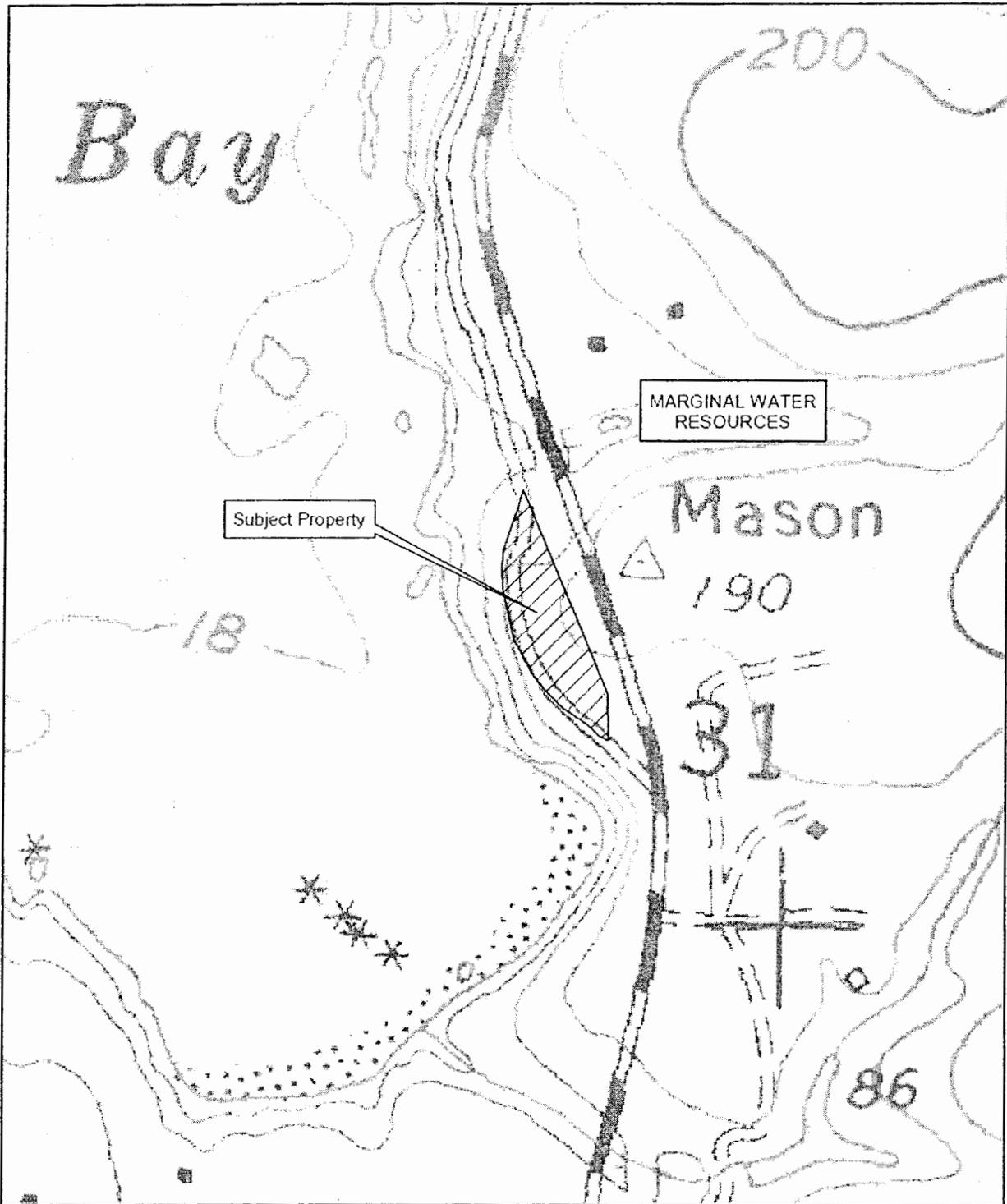
OWNER: HUPP, John  
APPLICANT: BETHEL, Barbara  
AGENT: WHYNN, Amy  
CASE: CDPM 98-2001 / 2009  
APNs: 119-320-04

ORTHOPHOTO - June 2009

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES. They are for viewing purposes only and should not be used to determine legal boundary lines. Parcel lines can be over 200 feet off. (Parcel lines are as of December 2003)



Exhibit D



OWNER: HUPP, John  
APPLICANT: BETHEL, Barbara  
AGENT: WHYNN, Amy  
CASE: CDPM 98-2001 / 2009  
APNs: 119-320-04

**COASTAL GROUND WATER RESOURCES**

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of December 2009)

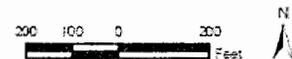
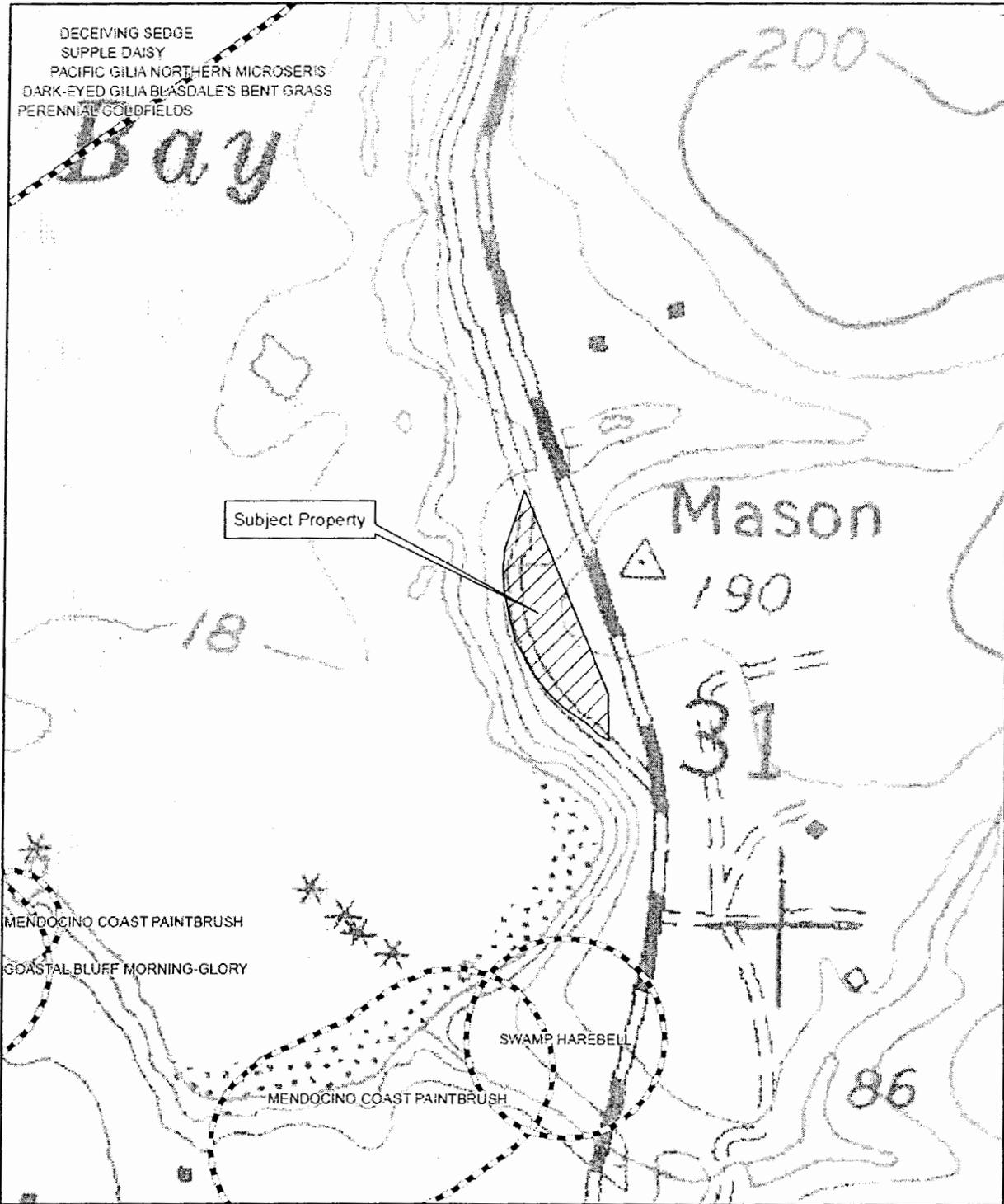


Exhibit E



OWNER: HUPP, John  
APPLICANT: BETHEL, Barbara  
AGENT: WHYNN, Amy  
CASE: CDPM 98-2001 / 2009  
APNs: 119-320-04

CALIFORNIA NATURAL DIVERSITY  
DATABASE RAREFIND (Jan 2010)

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of December 2008)

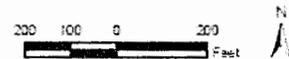
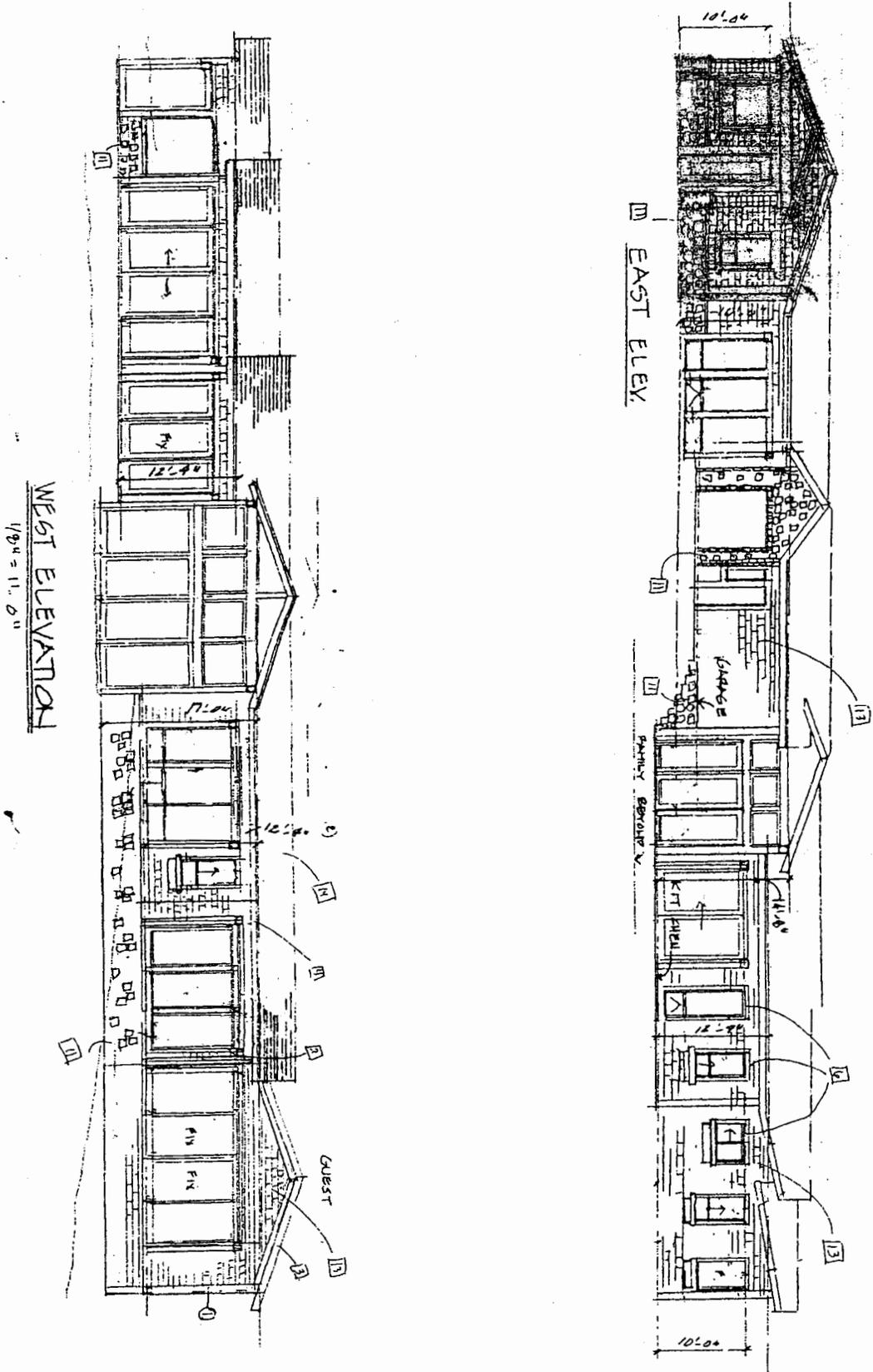
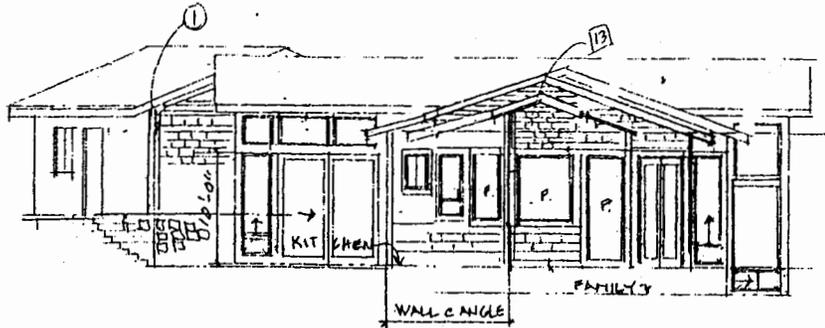


Exhibit F

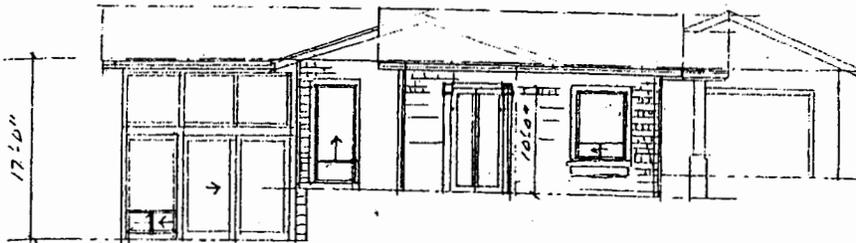








NORTH ELEV.



SOUTH ELEV