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DATE: Prepared January 20, 2012 for the February 10, 2012 hearing

TO: Coastal Commissioners and Interested Parties

FROM: Charles Lester, Executive Director
Robert Merrill, North Coast District Manager
Melissa B. Kraemer, Coastal Program Analyst
Tamara L. Gedik, Coastal Program Analyst

SUBJECT: **Appeal No. A-1-MEN-09-051 (Aron Yasskin & Laviva Dakers and Colin Drake & Sasha Graham, local permit # CDMS-23-2008), 44401 Gordon Lane, Mendocino County.** Appeal by Commissioners Sara Wan and Patrick Kruer of Mendocino County decision approving a coastal development permit for a land division of an approximately 22.82-acre parcel to create two parcels of approximately 10.9 acres and 11.93 acres in size. The approved development includes an identified building site on the subdivided parcel which is described as "Parcel 2" and an existing single-family residential development on the portion described as "Parcel 1." The parcel is located approximately one mile northeast of Little River, on the south side of Gordon Lane, approximately 0.5-mile east of its intersection with State Highway One, at 44401 Gordon Lane (APN 121-070-22).

Appeal filed: December 21, 2009; 49th day: February 8, 2010.

Recommendation:

Staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds on which Appeal No. A-1-MEN-09-051 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-09-051 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 present.

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.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review at the same or subsequent meeting. The Commission will not take public testimony during this phase of the appeal hearing unless three Commissioners request it.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicants, the appellant and persons who made their views known to the local government (or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

Unless it is determined that there is no substantial issue, the Commission will proceed to the *de novo* portion of the appeal hearing and review the merits of the proposed project. Oral and written public testimony will be taken during this *de novo* review which may occur at the same or subsequent meeting.

STAFF NOTES:

1. Background on Commission Review of Appeal No. A-1-MEN-09-051

The appeal was filed on December 21, 2009. Commission staff published and mailed a staff report and Notice of Hearing on December 23, 2009 for the subject appeal. The public hearing was scheduled for January 15, 2010. On January 7, 2010, the applicant's agent faxed a signed 49-day waiver to the North Coast District Office and requested a postponement of the hearing. The hearing was postponed and the Commission has not yet acted on the appeal.

During the time that has transpired since the applicant signed the 49-day waiver, the applicants have provided some additional information for purposes of the Commission's *de novo* review of the project. Among other information, the applicants identified an alternate building site to that which was approved by the County of Mendocino. The building site approved by the County is located within ESHA and ESHA buffer, and the inconsistency of the approved development with the ESHA protection policies of the LCP is one of the contentions raised in the appeal. The alternate building site appears to be located outside of rare plant ESHA; however, the matter before the Commission during the substantial issue phase of the Commission's review of the appeal is whether or not the appeal of the project as approved by the County, including the County approved building site, raises a substantial issue of conformance with the certified policies of the Mendocino County local coastal program (LCP).

In addition to the appeal contention related to the appropriateness of the approved building site for Parcel 2, other issues are raised by the approved project's conformance with the certified LCP. For example, the project as approved by the County includes creating an access road to the subdivided and currently unimproved Parcel 2 by converting a previously used logging road that crosses both Beal Creek and an unnamed spring/tributary, to meet residential driveway standards (which at minimum will require grading, rocking, culvert installation, streambed alterations, and in some areas possible road bed widening and cutting into a portion of the adjacent cut bank). Conversion of the previously used logging road would require encroachment into wetland features and rare plants located within and adjacent to the formerly used "road bed" that will require additional analysis to evaluate consistency with the County's LCP.

Commission staff met with the applicants onsite in March 2010 and again in November 2010 and has had several conference calls with the applicants to discuss the LCP consistency issues raised by the projects. However, the issues associated with the access road encroachment into wetland and rare plant ESHA remain unresolved. In addition, while the applicants have provided some of the information originally identified in the December 23, 2009 staff report, the applicants' submittals do not entirely address the information that Commission staff requested. For example, the applicants have not yet provided an alternatives analysis that addresses in part the different access alternatives for the site (including alternatives that avoid access through riparian habitat and the "no project" alternative), as previously requested. The outstanding information needs are addressed in detail below under "Information needed for *de novo* review."

Commission staff has rescheduled the Commission hearing on whether the appeal raises a substantial issue in part to move the Commission's review of the appeal forward, but also to afford the applicants with some options to decide how they may wish to proceed following the Commission's determination. The County's approval of the project is suspended until the Commission makes a determination regarding whether the appeal raises a substantial issue of conformance with the County's certified LCP. If the Commission determines that a substantial issue exists, the applicants may elect to provide the additional information staff needs for *de novo* review.

Alternatively, if the issues associated with the access road encroachment into wetland and rare plant ESHA or other issues do not appear to be resolvable, the applicants would be afforded the opportunity to withdraw their application if they so desire. Once the Commission takes up review of the project *de novo* by finding substantial issue, it is not possible for the applicants to withdraw the appeal without the need for the County to hold additional local hearings on the project or rescind its approval of the project.

Findings:

1. Project and Site Description

On November 19, 2009, the Mendocino County Planning Commission approved Coastal Development Permit No. CDMS 23-2008 for a minor subdivision of an approximately 22.82-acre parcel to create two parcels of approximately 10.9 acres and 11.93 acres in size. The approved development includes an identified building site on the subdivided parcel which is described as "Parcel 2" and an existing single-family residential development on the portion described as "Parcel 1." The project as approved by the County includes plans to improve what is described as an abandoned logging road to serve as a residential driveway to access the future building site on Parcel 2. The approved development is located approximately one mile northeast of Little River, on the south side of Gordon Lane, approximately 0.5-mile east of its intersection with State Highway One, at 44401 Gordon Lane (APN 121-070-22) (Exhibit Nos. 1 and 2).

Residential uses surround the subject parcel on the north, west, and east sides, and Van Damme State Park adjoins the subject parcel on the southern boundary. In addition to the existing 2,500-square-foot single-family residence located on the parcel near Gordon Lane, the subject parcel also contains a 1,700-square-foot barn, 120-square-foot shed, and 680-square-foot detached garage as shown in Exhibit No. 3. The remainder of the parcel is dominated in part by riparian vegetation, and otherwise largely forested with a mix of Douglas-fir (*Pseudotsuga menziesii*), coast redwood (*Sequoia sempervirens*), Western hemlock (*Tsuga heterophylla*), and Bishop pine (*Pinus muricata*), with some areas dominated by Mendocino Cypress (*Hesperocyparis pygmaea*¹). The County staff report

¹ Mendocino cypress, also commonly known as Pygmy cypress, is treated as *Hesperocyparis pygmaea* in the current taxonomic literature (e.g., http://ucjeps.berkeley.edu/about_ICPN.html). The species was formerly referred to as, and is synonymous with, both *Cupressus goveniana* ssp. *pygmaea* and *Callitropsis pygmaea*.

indicates that Beal Creek intersects the upper one- third of the property and runs northeast to southwest, and that a further watercourse, or “spring area” is located north of Beal Creek. The County staff report also describes an abandoned logging road that extends to the proposed southern parcel while crossing Beal Creek and a seasonal drainage.

The parcels are designated on the Land Use Plan Map as Rural Residential, Ten Acre Minimum (RR-10). The parcels show a similar zoning designation on the Coastal Zoning Map (RR-10).

2. **Appeal**

Pursuant to Coastal Act Section 30603, this approval is appealable to the Commission because (1) the approved development is not designated the “principal permitted use” under the certified LCP, (2) the approved development is located within 100 feet of a wetland or stream, and (3) the approved development is located within a sensitive coastal resource area pursuant to Section 30603(a)(3) of the Coastal Act (see Appendix A for more details).

The appellant, Commissioners Sara Wan and Patrick Kruer, claims that the approved project is inconsistent with the Mendocino County certified Local Coastal Program (LCP) because:

- (1) the configuration of the parcels resulting from the approved minor subdivision would result in the encroachment of the approved building footprint of future residential development on resultant “Parcel 2” within rare plant ESHA and within the minimum 50-foot ESHA buffer area that is required by certified Land Use Plan (LUP) Policy 3.1-7 and Coastal Zoning Code (CZC) Section 20.496.020;
- (2) no alternative sites or project designs were considered in the County’s findings for approval to demonstrate that the approved project was sited and designed in a manner that would best protect the rare plant ESHA, as is required by LUP Policy 3.1-7 and CZC Section 20.496.020; and
- (3) the County’s approval results in a new parcel being created that has not been demonstrated to have an adequate building site which would allow for the development of the building site consistent with LUP Policy 3.1-7, as is required by LUP Policy 3.1-32.

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.² Commission staff has analyzed the county’s Final Local Action Notice for the development (Exhibit 7), appellant’s claims (Exhibit 6), and the relevant requirements of the LCP (Attachment A). Staff recommends that the Commission find that the appeal

² 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.

raises a substantial issue of conformance of the approved project with respect to the ESHA protection provisions of the certified LCP, as explained below.

3. Substantial Issue Analysis

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. Commission staff has analyzed the County's Final Local Action Notice for the development (Exhibit No. 7), appellant's claims (Exhibit No. 6), 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 development with respect to the policies of the certified LCP regarding the protection of ESHA as explained below.

A. Substantial Issue With Respect to ESHA Buffer Policies of the Certified LCP

Rare Plant ESHA

Two rare plant species occur on the subject property: California sedge (*Carex californica*) and Mendocino cypress (*Hesperocyparis pygmaea*). Both species are included on lists of rare, threatened, and endangered species by the California Native Plant Society³ and the Department of Fish and Game.⁴ California sedge has a CNPS listing of "2.3"⁵ and a state/global ranking of "S2?/G5."⁶ Mendocino cypress has a CNPS listing of "1B.2"⁵ and a CNDDDB state/global ranking of "S2/G2."⁶

The County findings (Exhibit No. 7), which summarize the results of a 2008 botanical study prepared by the applicants' botanical consultant, report approximately 100 California sedge plants on approved "Parcel 2" growing within the approved future building envelope and within a formerly used logging road/turnaround area that extends south of the building area. The findings further report approximately 60-70 Mendocino cypress trees along the formerly used logging road north of the approved future building envelope, within the building envelope, and south of the building envelope along the formerly used logging road and turnaround area (Exhibit Nos. 3 and 4). Although numerous Mendocino cypress trees are present on the property, the botanical consultant concludes that "based on personal observation," pygmy forest habitat is not present on the subject property.

³ California Native Plant Society (CNPS). 2009. *Inventory of Rare and Endangered Plants* (online edition, v7-09d). California Native Plant Society. Sacramento, CA. Accessed from <http://www.cnps.org/inventory>.

⁴ California Department of Fish and Game, Natural Diversity Database (NDDB). October 2009. *Special Vascular Plants, Bryophytes, and Lichens List*. Quarterly publication. 71 pp.

⁵ CNPS List 1B plants = rare, threatened, or endangered in California and elsewhere. CNPS List 2 plants = rare, threatened, or endangered in California, but more common elsewhere. Threat code extensions: ".1" = seriously endangered in CA, ".2" = fairly endangered in CA, and ".3" = not very endangered in CA.

⁶ State rank 2 = Imperiled: Imperiled in the state because of rarity due to very restricted range, very few populations (often 20 or fewer), steep declines, or other factors making it very vulnerable to extirpation from the nation or state/province. [By adding a "?" to the rank, this represents more certainty than "S2S3" but less certainty than "S2."] Global rank 2 = Imperiled: At high risk of extinction due to very restricted range, very few populations (often 20 or fewer), steep declines, or other factors. Global rank 5 = Secure: Common; widespread and abundant.

The applicants' botanical consultant prepared an addendum to the botanical report (dated September 27, 2008; Exhibit No. 5), which presents a buffer analysis to address the buffer width [subsections (A)(1)(a)-(g)] and development [subsections (A)(4)(a)-(k)] requirements of CZC Section 20.496 cited above. The buffer analysis also includes several recommended mitigation measures "to protect the rare and endangered plants that are located on site within the proposed building envelope and along portions of the existing logging road." The recommended mitigation measures, which are incorporated into Special Condition No. 9 of the County's approved permit for the subdivision, include (among others) transplanting individual California sedge plants and Mendocino cypress trees "that are 2 feet or smaller" to be impacted by the future development of the new parcel to suitable habitat outside the approved building envelope and driveway alignment. According to the recommended mitigation measure, cypress trees that are larger than 2 feet "would not be suitable for transplanting and would therefore constitute a taking."

As set forth below and in Appendix B, CZC Section 20.496.010 defines environmentally sensitive habitat areas (ESHA) and includes habitats of rare and endangered plants. Therefore, as ESHA, rare plant habitat is subject to the ESHA buffer requirements of LUP Policy 3.1-7 and CZC Section 20.496.020. According to these policies, a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish and Game (CDFG) that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The policies state that in that event, the buffer shall not be less than 50 feet in width. CZC Section 20.496.020 states that the standards for determining the appropriate width of the buffer area are the seven standards of subsections (a) through (g) of subsection (A)(1) of that section, including (a) the biological significance of adjacent lands, (b) sensitivity of species to disturbance, (c) susceptibility of parcel to erosion, (d) use of natural topographic features to locate development, (e) use of existing cultural features to locate buffer zones, (f) lot configuration and location of existing development, and (g) the type and scale of the development proposed. LUP Policy 3.1-7 and CZC Section 20.496.020(A)(4)(b) further require that development permitted within an ESHA buffer area shall generally be the same as those uses permitted in the adjacent ESHA, and that structures are allowable within the buffer area only if there is no other feasible site available on the parcel.

The subject land division as approved by the County raises a substantial issue regarding the ESHA policies of the certified LCP including LUP Policies 3.1-7 and 3.1-32 and CZC Section 20.496.020, because (a) the approved land division will result in future residential development of the new parcel within and directly adjacent to rare plant ESHA without maintaining any buffer, (b) the County did not consider feasible alternative sites or configurations for the development that would avoid locating future development within the ESHA or ESHA buffer, and (c) the approved land division will result in a parcel that has not been demonstrated to have an adequate building site which would allow for the development of the building site consistent with LUP Policy 3.1-7.

The County's approval is based on a determination of the botanical impact analysis prepared for the project that the California sedge habitat and Mendocino cypress habitat on the project site do not constitute ESHA as defined in the LCP (cited above) because "the

habitat [where the rare plants occur] was created artificially due to past logging practices and is currently dying out from the shade caused by natural revegetation in the area.” The County findings conclude that “[g]iven the ESHA determination, the 100 foot buffer requirements would not apply in areas outside of the riparian habitat. However, due to the rare nature of the species identified, protective measures were recommended by both the project botanist and DFG staff which include efforts to relocate or replace healthy specimens which may be damaged by project related development.”

ESHA, as defined in Section 30107.5 of the Coastal Act, Section 3.1 of the certified Mendocino County LUP, and CZC Section 20.308.040(F) is “...*any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities.*” Thus, Coastal Act Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F) set up a two part test for determining an ESHA. The first part is determining whether an area includes plants or animals or their habitats that are either: (a) rare; or (b) especially valuable because of their special nature or role in an ecosystem. If so, then the second part asks whether such plants, animals, or habitats could be easily disturbed or degraded by human activities. If so, then the area where such plants, animals, or habitats are located is deemed ESHA by Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F).

The first test for determining ESHA under Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F) is whether an area including plants or animals or their habitats is either (a) rare, or (b) especially valuable because of its special nature or role in an ecosystem. As discussed above, two rare plant species occur on the subject property: California sedge (*Carex californica*) and Mendocino cypress (*Hesperocyparis pygmaea*). Both species are included on lists of rare, threatened, and endangered species by the California Native Plant Society and the CDFG. California sedge has a CNPS listing of “2.3” and a state/global ranking of “S2?/G5” (see above footnotes for ranking definitions). Mendocino cypress has a CNPS listing of “1B.2” and a state/global ranking of “S2/G2.” Because of their relative rarity at the state and global levels, California sedge and Mendocino cypress as species meet the rarity test for designation as ESHA under the above cited Coastal Act and LCP policies. However, because ESHA refers to an “area” rather than an individual species, one must consider whether or not the proposed driveway and building site of the new parcel to be created constitute “areas” on the property where California sedge and Mendocino cypress ESHA occur.

As discussed above, at least 100 California sedge plants and 60-70 Mendocino cypress trees were documented on the project site. The large concentrations of California sedge and Mendocino cypress suggest that the future building site and driveway do constitute rare plant habitat and therefore meet the first test for determining ESHA under Section 30107.5 of the Coastal Act, LUP Section 3.1, and CZC Section 20.308.040(F).

The second test for determining ESHA under Coastal Act Section 30107.5 (Section 3.1 of the certified LUP) is **whether the habitat could be easily disturbed or degraded by human activities and developments.** The large concentrations of California sedge and Mendocino cypress plants in the proposed driveway and building site of the new parcel to be created could be easily disturbed or degraded by human activities and developments

such as those that would be necessary to develop them for the residential use that would be accommodated by the approved land division including grading, paving, building construction, foot trampling, etc. Such activities would fragment or otherwise demolish the presently intact habitat, reduce habitat size, and degrade and alter habitat quality and conditions that are integral to the “special nature” of the existing habitat area. Therefore, the large concentrations of California sedge and Mendocino cypress in the proposed building site and driveway meet the second test for determining ESHA under Section 30107.5 of the Coastal Act, LUP Section 3.1, and CZC Section 20.308.040(F).

The County’s findings erroneously interpret the definition of ESHA to exclude areas that have been subject to past disturbance. Nothing in the ESHA definitions cited in LUP Section 3.1 or CZC Sections 20.308.040(F) and 20.496.010 state or imply that this is the case. In fact, CZC Sections 20.308.040(F) and 20.496.010 explicitly state that “...*Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals*” (emphasis added). This provision does not in any way exclude habitats of rare and endangered plants that occur in previously disturbed areas. Thus, the County has not adopted findings that provide factual and legal support for determining that no ESHA exists on the property.

By not recognizing two rare plant species on the property as ESHA, the County has not adopted findings that provide factual and legal support for addressing the consistency of the project with the ESHA buffer requirements of LUP Policy 3.1-7 and CZC Section 20.496.020 including (1) why a buffer width less than 100 feet may be appropriate, (2) how a reduced buffer is allowable based on analysis of the seven criteria specified in CZC Section 20.496.020(A)(1) that must be applied in determining whether a potential reduction of the ESHA buffer is warranted, and (3) how a buffer less than the minimum of 50 feet required by LUP Policy 3.1-7 and CZC Section 20.496.020(A)(1) is allowable at all under the LCP. Furthermore, the County’s approval acknowledges that a portion of the future residential development of the newly created parcel would be located within the 50-foot rare plant buffer area proper and that an unspecified number of rare plant individuals would be directly impacted by the development. The protection of ESHA in the coastal zone is an issue of statewide concern addressed by Section 30240 of the Coastal Act. Therefore, the Commission finds that the appeal raises a substantial issue regarding consistency of the approved development with the ESHA buffer policies of the certified LCP.

Land divisions and Residential Development are Not Allowable Uses in ESHA or ESHA buffers

LUP Policy 3.1-7 and CZC Section 20.496.020 (A)(1) allow for development to be permitted within a buffer area if the development is for a use that is the same as those uses permitted in the adjacent environmentally sensitive habitat area, and if the development complies with specified standards as described in subsections (1)-(3) of LUP Policy 3.1-7 and 4(a)-(k) of Section 20.496.020. The LCP sets forth uses permitted in wetland and

riparian ESHAs, but does not specifically identify what uses are allowed within rare plant community ESHA, and by extension, within the rare plant buffer.

Coastal Act Section 30240(a) states that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, only uses dependent on those resources shall be allowed within those areas. Although Section 30240 of the Coastal Act is not listed in the section of the certified Land Use Plan entitled, “Coastal Element Policies: Habitats and Natural Resources,” which contains LUP Policy 3.1-7 and other LUP policies governing the protection of ESHA, Section 30240 is listed and referred to in the narrative for the section of the Land Use Plan containing the other LUP policies governing the protection of ESHA.

Although local governments are responsible for drafting the precise content of their LCPs, the Coastal Act requires that LCPs must, at a minimum, conform to and not conflict with the resource management standards and policies of the Coastal Act. It can be presumed that the County was aware that the Coastal Act established the minimum standards and policies for local coastal programs and knew, that in drafting its local coastal program, it was constrained to incorporate the development restrictions of Section 30240(a) of the Coastal Act, including the restriction that only uses dependent on those resources shall be allowed in those areas. It can also be assumed that in certifying the Mendocino County LCP, the Commission understood and found that the LCP conformed to (i.e. incorporated) the minimum policies and standards of the Coastal Act, including the development restrictions of Section 30240(a).

As noted above, the narrative for the section of the Land Use Plan containing LUP policies governing the protection of ESHA includes Section 30240. In addition, the narrative contains statements that acknowledge the protections afforded by Section 30240 and the County’s commitment to incorporate those protections into the LCP, including the following statements:

- “The Coastal Act mandates the preservation of significant natural resources and habitats;”
- “Throughout all policies pertaining to Habitats and Natural Resources shall run the continuous theme that natural habitat areas constitute significant public resources which shall be protected not only for the wildlife which inhabits those areas but for the enjoyment of present and future populations of the State of California;”
- This Local Coastal Plan represents the commitment of the County of Mendocino to provide continuing protection and enhancement of its coastal resources

The LCP policies do not expressly authorize non-resource dependent uses nor any other uses within rare plant ESHA. The fact that the LCP policies do not specifically state what uses are allowed within rare plant ESHA does not mean the policy is intended to relax the restriction of Section 30240(a) of the Coastal Act that limits uses in habitat areas to those dependent on habitat resources. An LCP policy that allowed non-resource dependent uses

in rare plant ESHA would be inconsistent with and directly conflict with Section 30240(a). Moreover, the provisions in the LCP concerning permissible development in habitat areas are not incompatible with the restrictions in Section 30240(a). These provisions refer generally to maintaining minimum buffers between development and ESHA, which is not inconsistent with restricting development within rare plant ESHA to resource dependent uses. Therefore, the Commission finds that the Mendocino County LCP policies governing rare plant habitat areas restrict development to resource dependent uses that do not significantly disrupt habitat values.

Nonetheless, even if a residential development was considered an allowable use in a rare plant buffer, LUP Policy 3.1-7 and CZC Section 20.496.020(A)(4) require permitted development within an ESHA buffer to comply with several standards. These standards include that structures be allowed within a buffer area only if there is no other feasible site available on the parcel, and that the development be sited and designed to prevent impacts that would significantly degrade the ESHA. The County's findings do not analyze alternative sites or project designs or demonstrate that the project as approved was sited and designed on the 23-acre parcel in a manner that would best protect the rare plant ESHA.

Therefore, because ESHA buffers are not allowed to be reduced to less than 50 feet, and because development is allowed within a buffer area only if it is demonstrated that there is no other feasible site available on the parcel, the Commission finds that the appeal raises a substantial issue regarding consistency of the approved development with the ESHA buffer policies of the certified LCP, including, but not limited to, LUP Policies 3.1-7 and 3.1-32 and CZC Section 20.496.020.

Summary of Findings:

The Commission finds that the appeal raises a substantial issue with respect to conformance of the County-approved land division development with LCP policies relating to protection of environmentally sensitive habitat areas (ESHAs). The Commission finds a substantial issue exists, because (1) the County has not adopted findings that provide factual and legal support for determining that no ESHA exists on the property; (2) the County approved a development for a non-allowable use in ESHA and ESHA buffers without adequate factual or legal findings that justify the action; (3) the County approved a land division that does not provide for a minimum 50-foot buffer between the development and the rare plant ESHA that exists on the site without addressing the consistency of the project with the ESHA buffer requirements of LUP Policies 3.1-7 and 3.1-32, and CZC Section 20.496.020, including how a buffer that is less than the minimum of 50 feet is allowable under the LCP; (4) the land division as approved does not appear to retain the widest and most protective ESHA buffer zone feasible; (5) the County approval does not adequately demonstrate that the land division will not have significant adverse effects, either individually or cumulatively, on ESHAs; (6) the County has not demonstrated there is not a feasible less environmentally damaging alternative to locating the development within the ESHA (including the no-project alternative), inconsistent with the ESHA protection provisions of the certified LCP including, but not limited to, LUP Policies 3.1-7 and 3.1-32, and CZC Section 20.496.020.

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 had 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. After the appeal was filed on December 21, 2009, Commission staff prepared a staff report that requested three items (described below) from the applicant that were necessary to evaluate the development: (1) Alternatives Analysis for the Subdivision; (2) Alternatives Analysis for Proposed Wetland and Riparian Habitat Impacts; and (3) Botanical Analysis Addressing the Presence of “Pygmy Vegetation” and Different Vegetation Types on the Property. While the applicants have provided some of the information originally identified in the December 23, 2009 staff report, the applicants’ submittals do not entirely address the information that Commission staff requested.

Following is a discussion of the information needed to evaluate the development, including updates following site visits and receipt of some submitted information.

1. Alternatives Analysis for the Subdivision

As discussed above, the appeal raises a substantial issue regarding consistency of the approved subdivision with LUP Policy 3.1-32, which requires that land divisions not be permitted if any parcel being created (1) is entirely within an ESHA, or (2) does not have an adequate building site which would allow for the development of the building site consistent with the ESHA buffer policies of the LCP. Thus, the Commission needs to receive an alternatives analysis that addresses alternative subdivision configurations which comply with the Policy 3.1-32. Specifically, for each alternative examined, the analysis should (1) describe what percentage of each parcel being created is occupied by ESHA (including the 100-foot ESHA buffer zone around each identified ESHA); and (2) identify an adequate building site(s) on each proposed new parcel which would allow for the development of the building site(s) (including all necessary development associated with a residence such as septic fields, driveway turnaround areas, vegetation maintenance zones for fire-safety purposes, etc.) consistent with the ESHA buffer policies of the LCP.

On July 29, 2010, Commission staff received a submittal from the botanical consultant that identifies a potential building site and driveway on the currently undeveloped proposed Parcel 2 and that connects to the formerly used logging road (that serves to access proposed Parcel 2 from Gordon Lane). While the identified alternative building site and driveway are located outside ESHA and ESHA buffers, the road that accesses this site still encroaches within (and apparently displaces) ESHA and ESHA buffers, including rare plant and riparian ESHA and possibly wetland ESHA. Therefore, the alternatives analysis

should identify additional building sites (in addition to the no-project alternative) using the criteria described above that also avoid ESHA or ESHA buffers along any access road that must connect to the building sites.

2. Alternatives Analysis for Proposed Wetland and Riparian Habitat Impacts

The County findings discuss the existing old logging road on the property and the need for road improvements to convert the formerly used road to a driveway for the future residential development on proposed Parcel 2. The certified LCP provides for “road crossings” to be developed within riparian areas provided that no less environmentally damaging alternative route is feasible and provided that the development will not degrade the area or diminish its value as a natural resource. Thus, an alternatives analysis must be provided that addresses different access alternatives for the site (including alternatives that avoid access through riparian habitat and the “no project” alternative), a detailed description of what access improvements would be needed for each alternative (e.g., amount of grading and filling, proposed watercourse crossing plans, drainage control measures, etc.), an analysis of riparian and wetland impacts associated with each alternative (e.g., amount of vegetation requiring removal, amount of wetland dredging and/or filling, etc.), and mitigation measures proposed for each alternative to minimize impacts to water quality, natural resources, and sensitive habitats.

While the Commission did receive on October 17, 2011 site plans detailing the proposed conversion of the formerly used logging road into a driveway that depict details related to grading, rocking, culvert installation, streambed alterations, and placement of asphalt concrete, Commission staff has not yet received an analysis that evaluates different access alternatives (including alternatives that avoid access through riparian habitat and the “no project” alternative). Furthermore, the Commission has not yet received any of the following as previously requested: a detailed description of what access improvements would be needed for each alternative (e.g., amount of grading and filling, proposed watercourse crossing plans, drainage control measures, etc.), an analysis of riparian and wetland impacts associated with each alternative (e.g., amount of vegetation requiring removal, amount of wetland dredging and/or filling, etc.), and mitigation measures proposed for each alternative to minimize impacts to water quality, natural resources, and sensitive habitats. Therefore, the applicant must submit these items prior to *de novo* review of the project.

3. Botanical Analysis Addressing the Presence of “Pygmy Vegetation” and Different Vegetation Types on the Property

The County findings quote from the botanical report prepared by the applicants’ consultant stating that “pygmy habitat” is not present on the subject property. However, no explanation for the basis of that conclusion is given. As “pygmy vegetation” is listed in CZC Sections 20.308.040 and 20.496.010 as a type of ESHA, the Commission needs to understand whether or not this type of habitat is present in the area, and if so, how the proposed land division may affect it. Therefore, a detailed botanical analysis must be provided that addresses the presence of “pygmy vegetation” on the subject property, where such vegetation is located on and/or in the vicinity of the subject property, and the basis for the conclusions reached.

In addition, as discussed previously, the project raises a substantial issue of conformance with the policies of the LCP regarding the protection of environmentally sensitive habitat areas (ESHA), as (1) it is unclear why areas containing California sedge and/or Mendocino cypress were excluded from ESHA designation; (2) the fine-scale map included in the County staff report that depicts ESHA features does not appear to designate minimum 50-foot buffers around any ESHA; and (3) it appeared during site visits by Commission staff that wetland features occur within and adjacent to the abandoned logging road proposed for conversion to a residential driveway as access to the County-approved Parcel 2. In addition, it appears that no surveys have been conducted for the special-status northern red-legged frog (*Rana aurora aurora*), although suitable habitat for this species exists on site. Lastly, during recent review of the June 2008 floristic survey that was prepared by the consulting botanist and received as part of the local record, Commission staff observed that another rare plant, swamp harebell (*Campanula californica*) was identified in the CA Natural Diversity Database as occurring in the immediate vicinity (the botanist's submitted map shows the labeling of swamp harebell located in the middle of the subject parcel), however the plant was not included in the botanist's plant scoping list.

Therefore, to determine the presence and extent of all potential sensitive plant community and wetland and riparian habitat at and adjacent to the project site, a current biological survey and wetland delineation prepared consistent with Section 20.532.060 of the Coastal Zoning Ordinance should be provided. The survey and delineation should be prepared by a qualified biologist and should include, but not be limited to: (1) a map of all environmentally sensitive habitat areas (ESHA) identified by the survey that is broad enough to include a detailed description of all of the existing vegetation types and soil types on the property in addition to all species for which suitable habitat exists on site (including, but not limited to swamp harebell and northern red-legged frog); (2) a mapped delineation of all Coastal Commission-jurisdictional wetland and riparian features at a legible scale (typically 1 inch = 200 feet as per CZC Section 20.532.060) that includes all proposed developments superimposed on the map; and (3) copies of all original wetland delineation data forms completed in the field. Each environmentally sensitive habitat area identified should be described in detail and depicted on an ESHA map prepared for the subject site at a minimum size of 11 inches by 17 inches. Additionally, significant site features also should be shown in relation to the mapped vegetation and ESHA types including existing roads and development, existing and proposed property lines, 100-foot ESHA buffer boundaries, proposed future road improvement footprints and "Hammerhead-T" turnaround areas, and proposed future residential development areas and areas subject to associated CalFire (Department of Forestry and Fire Protection) and County Fire District fire regulations, including fire-safety vegetation maintenance zones.

To date, Commission staff has only received the logging road improvement plans that depict the road improvement footprints; however, the other items described above must still be provided.

4. Submittal of Permit Evidence for Previous Road Development and Driveway Fill

As described above, questions remain with regards to the formerly used logging road and whether the development of the formerly used logging road and related timber activity were ever conducted with the benefit of a permit. Upon request by Commission staff of the coastal development- and possible timber harvest- permit history for these allegedly timber-harvest related activities, the applicants submitted information received at the Commission office on October 17, 2011 that includes analysis of the abandoned logging road history prepared by Professional Geologist Elias Steinbuck and dated December 20, 2010 (Exhibit 8). The analysis includes aerial imagery review from 1947; 1963; 1980; 1988; 1996; and 2000. The analysis indicated the following:

No evidence of road construction or timber harvesting planning was found in the public files, indicating the road may have been constructed prior to the advent of the 1973 forest practice rules. The first appearance of the project road on the 1980 aerial photos also suggests that original construction was likely in the late 1960's- early 1970's time period. The early 1990's harvesting, which included grading open and using the project road from Gordon Lane down to Beal Creek, appears to have been conducted for sun improvement as the harvest was limited to a relatively small area immediately below the residence. Additionally, grading of fill material to level an area for a horse corral near the garage along Gordon Lane was evident in the early 1990's. This area is characterized by ~ 8 feet of fill...

Upon receipt of the aerial analysis of previous land use, Commission staff was able to narrow their research of historic timber activity on the site to the time period between 1976 (prior to coastal development permit requirements for sites greater than 1,000 yards from the sea) and 1980, to determine whether historic activity occurred prior to current permitting requirements. Commission staff accessed imagery that was flown for the Coastal Commission (Flight 77-002) and taken on Jan. 4, 1977,⁷ and obtained and reviewed the 1980 aerial imagery⁸ referenced in the Geologist's report. As described by the Geologist, the project road is apparent in the 1980 imagery; however, this feature is not apparent in the 1977 imagery. Furthermore, while the 1990's activity described as harvesting, grading, and placement of fill occurred in a relatively small area (the Geologist report later describes that the activity appears on a 1996 aerial "on a ~2 acre area") and while exemptions exist for timber harvest permits on areas less than 3 acres, an exemption for a timber harvest plan would nonetheless still require a coastal development permit for development activities not governed by the timber harvest plan including but not limited to the harvesting, grading, and placement of fill. Therefore, a question remains whether the formerly used road feature was created without the benefit of permits and whether a violation exists that must be rectified.

As indicated previously, there is no evidence of a permit on file for previous road construction or fill activities. Therefore, the coastal development permit history for these previous roadway construction and fill activities must be provided. The Commission

⁷ NASA-U2 Flight 77-002, Frame number 062 Taken Jan. 4, 1977, original scale 1:32,500.

⁸ Flight CDF-ALL-UK, Frames 6 and 7, black-and-white, 1:20,000

cannot approve new development that is functionally dependent on unauthorized development. Instead, if evidence is not available that demonstrates authorization for previous fill activities, or if timber harvest and road-building activities were conducted without the benefit of a permit, removal of fill and restoration of habitat as part of the revised application *de novo* may be necessary to achieve compliance with coastal development permit requirements.

Without the above information, the Commission cannot reach a final determination concerning the project's consistency with the policies of the LCP. Therefore, before the Commission can act on the proposed project *de novo*, the applicant must submit the above-identified information.

APPENDICES

APPENDIX A: Commission's Appeal Jurisdiction Over Project

APPENDIX B: Excerpts from the Mendocino County Local Coastal Program

EXHIBITS

1. Regional Location Map
2. Vicinity Map
3. Approved Subdivision Map
4. Rare Plant Location Map
5. Botanical Mitigation Measures
6. Appeal
7. Notice of Final Local Action and Findings for Approval
8. Correspondence from Applicants

APPENDIX A

COMMISSION'S APPEAL JURISDICTION OVER THE PROJECT

On November 19, 2009, the Mendocino County Planning Commission conditionally approved Coastal Development Minor Subdivision Permit #CDMS 23-2008 for the minor subdivision of an approximately 22.82-acre parcel to create two parcels of approximately 10.9 acres and 11.93 acres in size. The approved permit imposed 33 special conditions.

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 three hundred 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 one hundred feet of any wetland or stream, or within three hundred feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area, such as designated "special communities." 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 (1) the approved subdivision is a form of development that is not designated as a "principal permitted use" under the certified LCP, (2) the approved development is located within 100 feet of a wetland or stream (see below); and (3) the approved development is located within a sensitive coastal resource area pursuant to Section 30603(a)(3) of the Coastal Act (see below).

The decision of the County 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 December 7, 2009 (Exhibit No. 7). 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 from Commissioners Sara Wan and Patrick Kruer on December 21, 2009 (Exhibit No. 6). The appeal was filed with the Commission in a timely manner,

within 10 working days of receipt by the Commission of the County's Notice of Final Action on December 7, 2009 (Exhibit No. 7).

The Approved Development is Located Within 100 Feet of a Wetland or Stream

The County findings for approval of the subdivision development describe Beal Creek as bisecting approved Parcel 1. An additional seasonal drainage runs parallel to the creek approximately 150 feet to the south within approved Parcel 1. Moreover, a "spring area" is located to the north of Beal Creek within approved Parcel 1. Therefore, as portions of the approved development are located within 100 feet of a wetland or stream, the subject development is appealable to the Commission pursuant to Section 30603 of the Coastal Act.

The Approved Development is Located 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 SCRAAs or make recommendations to the Legislature, as contemplated by Section 30502 and 30502.5. Because it did not designate SCRAAs, 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 SCRAAs. In 1977, the Attorney General's Office advised the Commission that if the Commission decided not to designate SCRAAs, local government approvals of development located in SCRAAs delineated in LCPs would nonetheless be appealable to the Commission.

The ability of local governments to designate SCRAAs 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 SCRAAs, the Legislature amended the provisions of Section 30603 that relate to appeals of development located in SCRAAs. (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 SCRAAs did not have the effect of preventing local governments from designating SCRAAs through the LCP process. If the Commission's decision not to designate SCRAAs rendered the Coastal Act provisions that relate to SCRAAs 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 SCRAAs.

Although a city or county is not required to designate SCRAAs in their LCP, at least four local governments have chosen to do so. The Commission has certified LCPs 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 SCRAAs 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 SCRAAs, but local governments are allowed to designate such areas.

The appeal of Mendocino County Coastal Development Permit CDMS No. 23-2008 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. 18 designates the area inclusive of the site that is the subject of Mendocino County CDP No. 57-2008 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 CDP No. CDMS 23-2008 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.

APPENDIX B

EXCERPTS FROM THE MENDOCINO COUNTY CERTIFIED LCP

Environmentally Sensitive Habitat Areas (ESHA) are defined in **Section 3.1 of the Mendocino County Land Use Plan (LUP)** as follows:

Any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Coastal Zoning Code (CZC) Section 20.308.040 “*Definitions (E)*” defines ESHA as follows (emphasis added):

“Environmentally Sensitive Habitat Area” means any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. In Mendocino County, environmentally sensitive habitat areas include, but are not limited to: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation that contain species of rare or endangered plants, and habitats of rare and endangered plants and animals.

CZC Section 20.496.010 “*Environmentally Sensitive Habitat and other Resource Areas—Purpose*” states the following (emphasis added):

...Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals.

LUP Policy 3.1-7 states the following (emphasis added):

A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:

- 1. It shall be sited and designed to prevent impacts which would significantly degrade such areas;*

2. *It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity; and*
3. *Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*

LUP Policy 3.1-32 states the following (emphasis added):

Land divisions, including lot line adjustments which are located within Environmentally Sensitive Habitat Area boundaries (which are shown on the Land Use Maps, and subject to Policy 3.1-1), will not be permitted if: (1) any parcel being created is entirely within an Environmentally Sensitive Habitat Area; or (2) if any parcel being created does not have an adequate building site which would allow for the development of the building site consistent with Policy 3.1-7.

CZC Section 20.496.020 “Environmentally Sensitive Habitat and other Resource Areas—Development Criteria” states the following (emphasis added):

*(A) **Buffer Areas.** A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.*

*(I) **Width.** The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.*

Standards for determining the appropriate width of the buffer area are as follows:

*(a) **Biological Significance of Adjacent Lands.** Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).*

Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer shall be measured from the edge of the wetland, stream, or riparian habitat that is adjacent to the proposed development.

(b) Sensitivity of Species to Disturbance. *The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a determination shall be based on the following after consultation with the Department of Fish and Game or others with similar expertise:*

- (i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;*
- (ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;*
- (iii) An assessment of the impact and activity levels of the proposed development on the resource.*

(c) Susceptibility of Parcel to Erosion. *The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.*

(d) Use of Natural Topographic Features to Locate Development. *Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.*

(e) Use of Existing Cultural Features to Locate Buffer Zones. *Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA.*

(f) Lot Configuration and Location of Existing Development. *Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.*

(g) Type and Scale of Development Proposed. *The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area...*

(2) Configuration. *The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).*

(3) Land Division. *New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.*

(4) Permitted Development. *Development permitted within the buffer area shall comply at a minimum with the following standards:*

(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.

(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.

(c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.

(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.

(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.

(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.

(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.

(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.

(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.

(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.

(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats. (Ord. No. 3785 (part), adopted 1991)

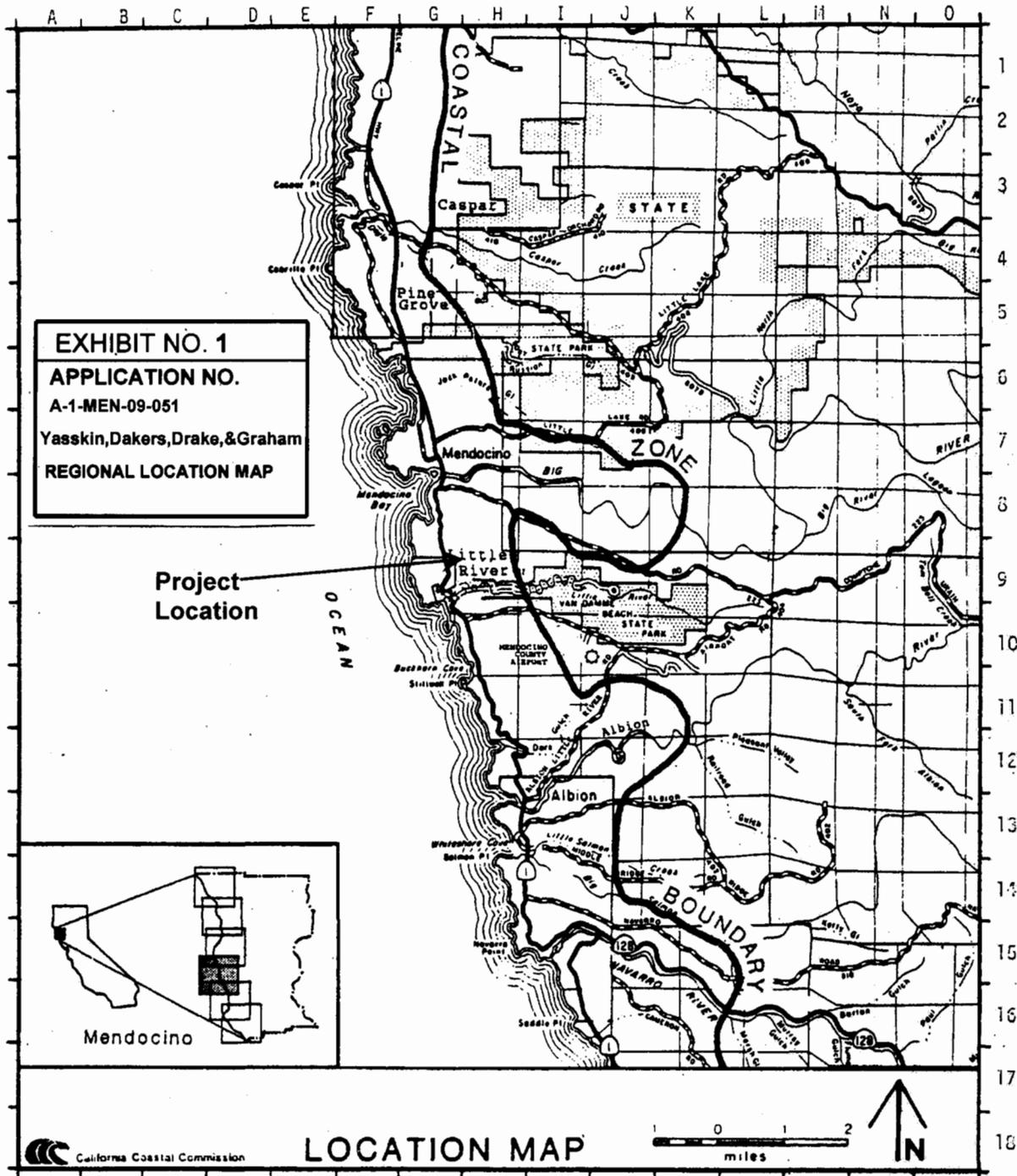
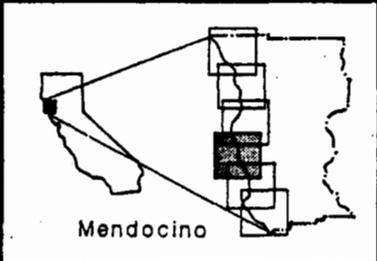


EXHIBIT NO. 1
APPLICATION NO.
A-1-MEN-09-051
Yasskin, Dakers, Drake, & Graham
REGIONAL LOCATION MAP

Project Location



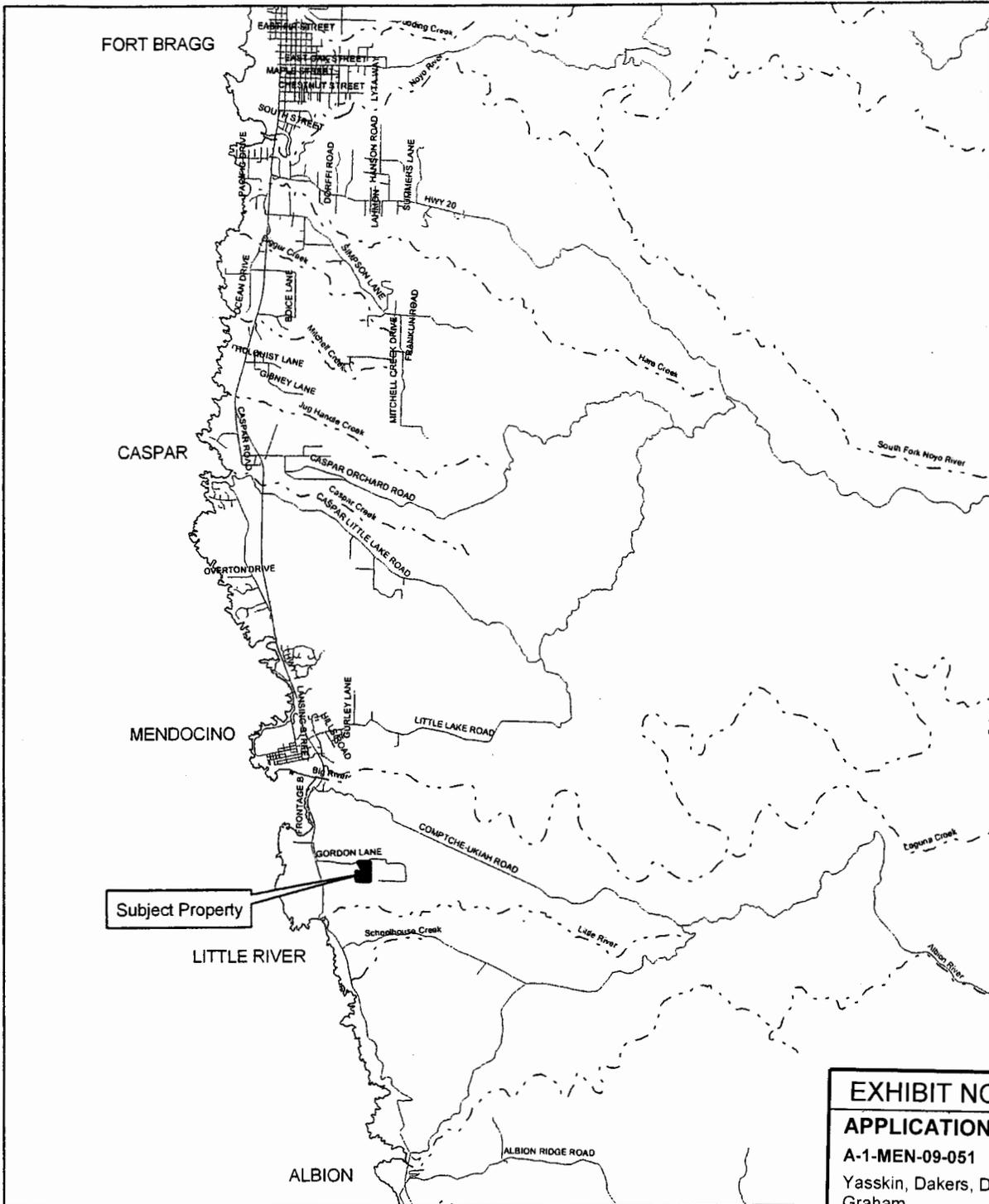
California Coastal Commission

LOCATION MAP

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miles



County of Mendocino



OWNER: YASSKIN, Aron & DAKERS, Laviva
 DRAKE, Colin & GRAHAM, Sasha
 AGENT: WYNN, Amy
 CASE #: CDMS 23-2008
 APN: 121-070-22

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 September 2007)

EXHIBIT NO. 2
APPLICATION NO.
A-1-MEN-09-051
 Yasskin, Dakers, Drake & Graham
VICINITY MAP

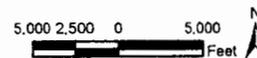


EXHIBIT MAP

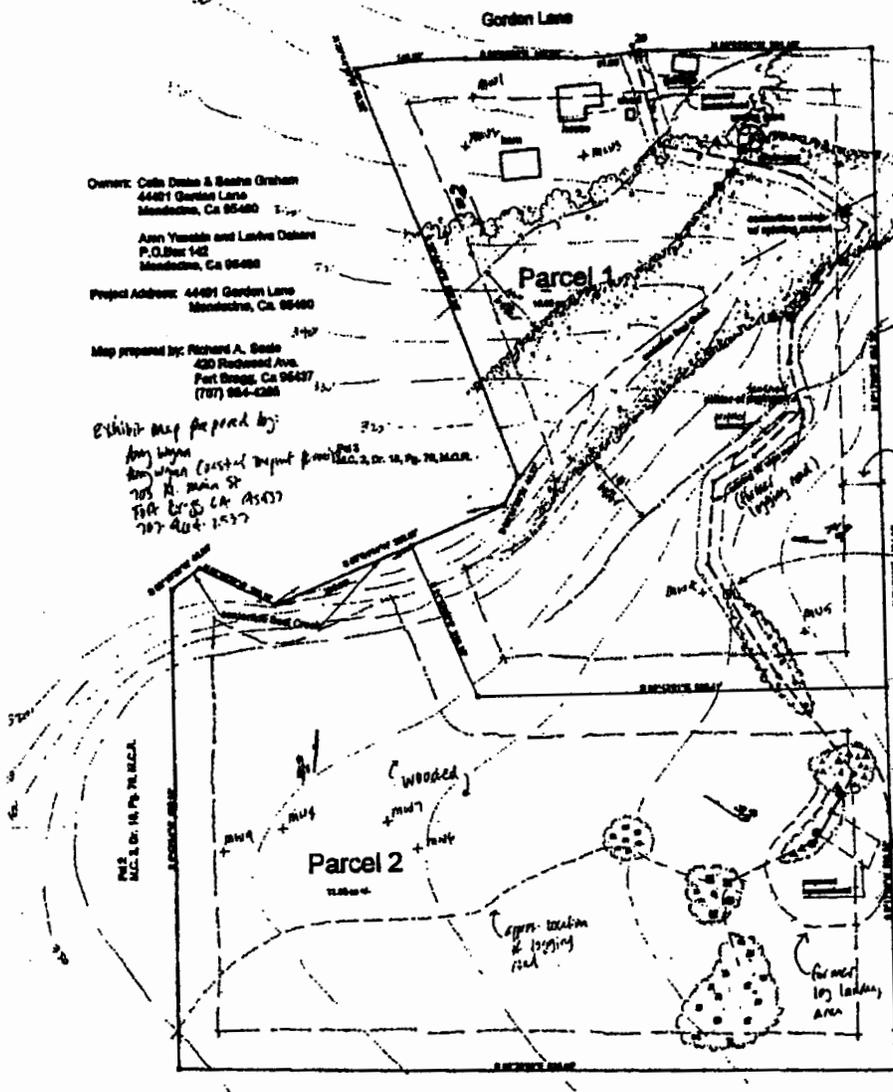
Owner: Colin Drake & Sasha Graham
 44491 Gordon Lane
 Mendocino, Ca 95460

Ann Yasskin and Linda Dakers
 P.O. Box 142
 Mendocino, Ca 95460

Project Address: 44491 Gordon Lane
 Mendocino, Ca 95460

Map prepared by: Richard A. Seale
 420 Redwood Ave.
 Fort Bragg, Ca 96437
 (707) 864-4288

Exhibit map prepared by:
 Amy Wagner
 Amy Wagner Coastal Impact Planning
 705 N. Main St
 Fort Bragg, Ca 95437
 707-464-1537



- LEGEND**
- scattered dying MC
 - traverse points unless noted on map, or exterior boundary
 - CC
 - △ MC
 - scattered MC & CC
 - approx. centerline along old road 12 wide (former logging road)
 - edge of redwood area
 - cc = coast California
 - mc = Mendocino cypress (pygmy cypress)
 - + = most appropriate locations of Septa monitoring wells

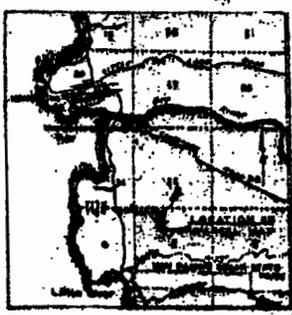


EXHIBIT NO. 4
APPLICATION NO.
 A-1-MEN-09-051
 Yasskin, Dakers, Drake & Graham
RARE PLANT LOCATION MAP

EXHIBIT MAP
TENTATIVE MAP

Proposed Minor Subdivision of A.P. # 121-070-22, being Parcel 1 of that Parcel Map that in Map Case 2, Drawer 16, Page 78, Mendocino County Records and being a portion of Section 8, Township 16 North, Range 17 West, Mount Diablo Base and Meridian.

Mendocino County
 Scale: 1" = 100'

California
 October, 2008
 Sheet one of one

Playalina Nelson, Botanical Consultant
P.O Box 5765
Santa Rosa, CA. 95402
(707) 357-1134
playalina@gmail.com

September 27, 2008

Teresa Spade
Mendocino County Dept. of Planning & Building Services
Coastal Planning Division
790 South Franklin Street
Fort Bragg, CA. 95437

RE: An addendum to the completed botanical report dated June 2008 for the Yasskin property located at 44401 Gordon Lane, Mendocino, Mendocino County APN 121-070-22.

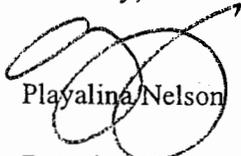
Dear Teresa,

Attached, please find a Buffer Analysis as part of the Coastal Zoning Code section 20.496.020, subparts (A)(1)(a) - (g) and (A)(4)(a) - (k), which is required to address the proposed Minor Subdivision on this parcel. This Minor Subdivision would result in making improvements to the existing logging road (conversion to a driveway) that extends through riparian habitat associated with Beal Creek. This riparian habitat meets the definition of an ESHA according to the Mendocino County LCP, and therefore necessitates being addressed with a Buffer Analysis.

In addition – though not as part of the Buffer Analysis, mitigation measures are being recommended in order to protect the rare and endangered plants that are located on site within the proposed building envelope and along portions of the existing logging road. Based on interpretation of the Mendocino County LCP and feedback from the County, the plants located on site may not meet the definition of an ESHA though they may warrant protections based on CEQA and DFG guidelines.

I believe that the following Buffer Analysis and recommended mitigation measures are sufficient to address guidelines based on the California Coastal Commission, the Mendocino County's Local Coastal Plan, the Department of Fish & Game and. Please let me know if any further analysis is required.

Sincerely,


Playalina Nelson (for Playalina Nelson)

Botanical Consultant
PO Box 5765
Santa Rosa, Ca. 95402

EXHIBIT NO. 5
APPLICATION NO. A-1-MEN-09-051 Yasskin, Dakers, Drake & Graham
BOTANICAL MITIGATION MEASURES (1 of 6)

Mitigation measures to reduce adverse impacts that the proposed improvements to the existing logging road (conversion to a driveway) may have on the riparian habitat associated with Beal Creek, the wetland/spring and the seasonal drainage that flows into Beal Creek based on the Coastal Zoning Code section 20.496.020, subparts (A)(1)(a) through (g) and (A)(4)(a) through (k):

1. The proposed improvements to the existing logging road (conversion to a driveway) may cause the delivery of sediment to enter Beal Creek through erosion and run-off: The conversion of the existing logging road into a driveway will require that it be graveled; however, it is possible that converting the portion of the logging road into a driveway that is just north of the riparian habitat will require that it be paved due to the steepness of its slope in this area.

This conversion will not require that the logging road be widened more than its current 10' width within the riparian habitat or within its buffer. South of the riparian habitat, and beyond its buffer area, a portion of the logging road would need to be widened in order to accommodate a required driveway turnout. There is scattered vegetation within the logging road that has re-vegetated since logging operations have ceased and the road has been under-utilized. Currently, the logging road is 10' wide and does not need to be widened in order to convert it into a driveway; however, according to CalFire requirements, there would be one turnout and two hammer-head Ts. The hammer-head T north of Beal Creek would be located close to Gordon Lane, where a small barn is currently located; the turnout would be located south of Beal Creek and the seasonal drainage that flows into it; the second hammer-head T would be located at the proposed building envelope. The hammer-head Ts and turnout would be at least 100' from the riparian habitat; therefore, outside of the ESHA and its buffer.

Mitigation measure 1a: The conversion of the logging road into a driveway should be designed by a civil engineer based on Best Management Practices (BMPs) in order to minimize sediment delivery into Beal Creek. Specifically, an erosion control plan should be written to include: seasonal restrictions for grading and graveling, the placement of wattles along the slope of the driveway, and the placement of a temporary construction fence along the creek. The construction fence should be placed prior to any development activity that would occur along the edge of the bank.

The driveway conversion should be designed utilizing out-sloping so that stormwater sheets off the road and follows the overall natural topography rather than being directed into ditches, which is currently why there are alders and other hydrophytic vegetation established along the driveway. By having stormwater sheet off of the driveway following the overall natural topography, erosion will be highly reduced and run-off will be more dispersed into the vegetation and the soil.

Mitigation measure 1b: No excess soil as the result of this conversion activity shall be placed down the riparian slope; any excess soil should be taken off site or regraded into the driveway. No gravel, cement or excess soil from grading or other materials should be placed down the riparian slope. A qualified botanist should make a site visit following any future grading, graveling or paving. The purpose of this site visit would be to determine that disturbance to the riparian habitat has not occurred. Particularly, the botanist should inspect for any placement of gravel, cement or other materials down the riparian slope; the

Initials:

(for PH)

Playalina Nelson, Botanical Consultant

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botanist should also inspect for any potential vegetation removal along the existing logging road.

Mitigation measure 1c: Several (3-5) photos points should be established and photos taken from within the gulch in order to monitor potential erosion and any degradation that may occur along the gulch. These photo points should be assessed every 2 years for a period of 4 years. Should erosion be evident, then the driveway should be evaluated for improvements and re-vegetation or other restoration work should be performed.

Mitigation measure 1d: Every two years for a period of 4 years, in conjunction with assessing the photo points, the driveway should be surveyed to ensure that water is not flowing through or along the driveway or causing unnatural drainage patterns. This should be conducted by a qualified professional who can determine what improvements the driveway will need in order to maintain natural hydrology patterns as much as possible and to prevent directing unnatural water into the gulch.

2. The proposed road improvements may cause the removal or disturbance of riparian habitat that is adjacent to the driveway based on the minimal grading that will occur: As previously stated, the driveway will maintain approximately the current width of the logging road, which is 10'; however, it is anticipated that some widening in spots would need to occur that may remove riparian habitat. Also, the driveway will need some grading, which may move soil towards the riparian habitat.

Mitigation measure 2a: A re-vegetation plan should be written based on vegetation that is removed or disturbed as a result of the proposed driveway conversion. Any habitat that is disturbed should be cleaned and restored. Based on the LCP "Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area."

Vegetation that would be removed due to the driveway conversion should be salvaged – potted if necessary – and then transplanted along the slope when the driveway conversion is complete. The most suitable species that is currently growing along the slope is sword fern (*Polystichum munitum*), because it is dominant and can be transplanted. A minimum of 50% of sword fern that is removed shall be salvaged and replanted. This should be overseen by a botanist or qualified restoration biologist as part of a re-vegetation plan; monitoring should be performed in order to ensure that re-vegetation efforts have been successfully implemented and carried out. Prior to driveway conversion, areas that would be impacted should be outlined and plants should be transplanted. Another site visit should be conducted following the conversion in order to determine if further transplanting or restoration is required to replace any riparian habitat that may have been disturbed.

3. A portion of the spring/wetland that is within the riparian area and feeds water into Beal Creek would be partially removed as a result of driveway conversion: Water from the spring feeds into Beal Creek. Currently, there is a ditch across the existing logging road that directs water from the spring to Beal Creek; there is currently a footbridge over this ditch. This ditch and footbridge would need to be replaced with a culvert in order to direct water under the driveway.

Initials:

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Mitigation measure 3a. Measures should be implemented to replace riparian habitat that may be lost through the conversion of the driveway and the installation of the culvert. Based on the LCP "Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area." Based on any feedback from DFG, a larger area of may need to be restored to meet CEQA guidelines.

Efforts should be made to minimize habitat disturbance to the greatest extent possible, avoiding disturbance when possible. A minimum of 50% of the plants that would be impacted shall be salvaged and transplanted in the general vicinity of the disturbance. Most of the plants associated with the spring are suitable for transplanting. Transplanting efforts shall be assessed prior to any driveway conversion activity. Transplanting efforts shall be overseen by a qualified professional and carried out in conjunction with other relevant mitigation measures.

4. Invasive plants may become established as a result of the driveway conversion and associated land disturbance:

Mitigation measure 4a: A site visit should be performed one year following the conversion of the driveway in order to determine if invasive plants have become established as a result of conversion activities. Should invasive plants become established, removal efforts should be conducted in accordance with an invasive plant removal plan.

Mitigation measure 4b: Several invasive species were located on site that include: ivy (*Hedera canariensis*, *Delairea odorata* or *Hedera helix*) and cotoneaster (*Cotoneaster pannosus*). Fox glove (*Digitalis purpurea*) was also found, which is less aggressive; nevertheless, it should be removed. These plants are not wide spread, though they are scattered throughout the project area. These invasive plants are manageable and should be removed as soon as possible.

Basic monitoring should be conducted in conjunction with other relevant mitigation measures in order to determine the scope of the removal efforts. It is expected that if the invasive plants are removed at least once a year for 4 years, their populations will be highly reduced. A basic invasive plant removal plan may need to be written that would include outlining removal objectives, methods for removal and a timeline. This may need to be done in conjunction with *Mitigation measure 4a*.

Mitigation measures recommended in order to reduce adverse impacts that the development may have on the Mendocino cypress and California sedge plants based on the California Environmental Quality Act (CEQA):

5. The proposed development would impact the California sedge (*Carex californica*). Approximately 30-50 plants were located growing within the proposed building envelope on Proposed parcel 2 and would be impacted by future development: Approximately 50 individuals were located growing within the logging road as it extends farther south, below Beal Creek. Additional individuals were located beyond the proposed building area within and along

Initials:

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the logging road. There is highly suitable habitat for transplanting the Carex beyond the proposed building envelope.

Mitigation measure 5a: Prior to any construction activity that would impact the California sedge, all individuals should be flagged, dug up and relocated (i.e., transplanted). All transplanting should be done as part of a transplanting and monitoring plan that should be completed by a qualified professional. Basic components of this plan should include:

A. Transplanting shall occur prior to any development activity that may impact the plants and after the first rains of the year when the ground is sufficiently wet, which is usually by October or November, though sometimes later in the year. If necessary, plants shall be watered after they are planted and until they are established.

B. Transplanted individuals shall be counted and documented in order to create an accurate assessment of their survival rates and to document any natural recruitment. The site shall be evaluated in spring and summer during the flowering period, and the numbers of individuals shall be counted annually in the spring and/or summer for three successive years.

C. Evaluation of the site shall continue for the life of the identified objectives. Threats to the viability of the transplanted plants (i.e., exotic weeds, lack of water, etc.) shall be addressed and documented.

D. Basic Objectives may include:

-One year following re-planting of California sedge, 75% or greater of the individual plants introduced to the restoration sites shall have survived.

-Within 3 years of replanting, the species shall be re-established to a minimum of 90% of its pre-restoration occurrence, as determined through creation of the pre-restoration baseline.

-Within 4 years, or during the life restoration plan, which ever is greater, all exotic weeds identified for eradication shall be removed from the restoration area and shall not be a threat to any of the transplanted individuals.

Mitigation measure 5b: Construction materials and vehicles shall not use occupied California sedge habitat for storage or staging areas. Fluid materials such as concrete rinse water, fuels, and lubricants should not be disposed of onsite and should be stored or confined as necessary to prevent spillage into natural habitats, including the California sedge habitat and the adjacent areas.

As outlined in a recommended transplanting and monitoring plan, all necessary long-term monitoring shall be carried out and the necessary periodic updates shall be provided to either Department of Fish and Game or the County of Mendocino's Planning Department in order to ensure long-term protection of the California sedge and to prevent a net loss of individuals.

Initials: 

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6. *The proposed development would impact the Mendocino Cypress (Cupressus goveniana ssp. pigmaea) located within the proposed building envelope and along the existing logging road:* Approximately 10-15 mature and mostly dying individuals were located along the logging road, north of the proposed building envelope, 10-15 individuals were located within the proposed building envelope, and approximately 40 individuals were located south of the proposed building envelope along the logging road and turnaround. Generally, Mendocino cypress occurs as a key species associated with Pygmy habitat. Pygmy habitat is not present on the subject parcel. Pygmy habitat is present approximately 0.5 miles north, along Gordon Lane. Based on personal observation, isolated cypress trees generally occur within transitional areas between pygmy habitat and other plant communities, such as redwood forest, Bishop-pine forest or associated with disturbed areas within forested plant communities.

Mitigation measure 6a: Cypress trees that are 2 feet or smaller should be transplanted as part of a Transplanting Plan described and outlined as part of *Mitigation measure 5a*. It is expected that trees that are larger than 2 feet would not be suitable for transplanting and would therefore constitute a taking.

Mitigation measure 6b: Seedlings may be able to found at a local nursery for the purposes of planting on the property; however, based on the unnatural conditions and the lack of pygmy habitat, this may not be the best measure to offset the loss of cypress trees. It may be more beneficial and therefore appropriate to complete off-site mitigation measures that may include removing invasive plants that are within pygmy habitat on private property or State Property.

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:

SECTION II. Decision Being Appealed

1. Name of local/port government:

Mendocino County Department of Planning and Building Services

2. Brief description of development being appealed:

Coastal Development Minor Subdivision (CDMS 23-2008) issued to Aron Yasskin & Laviva Dakers and Colin Drake & Sasha Graham for the minor subdivision of an approximately 22.84-acre parcel to create two parcels of approximately 10.9 acres and 11.93 acres.

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

44401 Gordon Lane, Mendocino (Mendocino County) (APN 121-070-22)

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

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

EXHIBIT NO. 6
APPLICATION NO.
A-1-MEN-09-051
Yasskin, Dakers, Drake & Graham
APPEAL (1 of 15)

RECEIVED

DEC 21 2009

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-09-051DATE FILED: 12/21/09DISTRICT: 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: November 19, 2009

7. Local government's file number (if any): CDMS 23-2008

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:

Aron Yasskin & Laviva Dakers
P.O. Box 142, Mendocino, CA 95460

Colin Drake & Sasha Graham
44401 Gordon Lane, 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
703 North Main Street
Fort Bragg, CA 95437

(2)

(3)

(4)

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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

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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 Agent _____

Date: 12/21/09

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

Signed: _____

Date: _____

ATTACHMENT A

SECTION I. Appellant(s)

1. Sara J. Wan
22350 Carbon Mesa Road
Malibu, CA 90265

(415) 904-5200

2. Patrick Kruer
The Monarch Group
7727 Herschel Avenue
LaJolla, CA 92037

(858) 551-4390

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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 (1) the approved subdivision is a form of development not designated as the "principal permitted use" under the certified LCP, (2) the approved development is located within 100 feet of a wetland or stream; and (3) the approved development is located within a sensitive coastal resource area ("highly scenic area") pursuant to Section 30603(a)(3) of the Coastal Act.

REASONS FOR APPEAL:

The County of Mendocino approved Coastal Development Permit No. CDMS 23-2008 for a minor subdivision of an approximately 22.82-acre parcel to create two parcels of approximately 10.9 acres and 11.93 acres in size. The approved development is located within the coastal zone, approximately 1 mile northeast of Little River, on the south side of Gordon Lane, approximately 0.5-mile east of its intersection with State Highway One, at 44401 Gordon Lane (APN 121-070-22). The approval of CDMS 23-2008 by Mendocino County is inconsistent with the policies and standards of the certified Local Coastal Program (LCP) including, but not limited to, policies and standards regarding development within and adjacent to environmentally sensitive habitat areas (ESHA).

LCP Policies on Environmentally Sensitive Habitat Areas:

Environmentally Sensitive Habitat Areas (ESHA) are defined in **Section 3.1 of the Mendocino County Land Use Plan (LUP)** as follows:

Any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

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Coastal Zoning Code (CZC) Section 20.308.040 “Definitions (E)” defines ESHA as follows (emphasis added):

“Environmentally Sensitive Habitat Area” means any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. In Mendocino County, environmentally sensitive habitat areas include, but are not limited to: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation that contain species of rare or endangered plants, and habitats of rare and endangered plants and animals.

CZC Section 20.496.010 “Environmentally Sensitive Habitat and other Resource Areas—Purpose” states the following (emphasis added):

...Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals.

LUP Policy 3.1-7 states the following (emphasis added):

A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:

- 1. It shall be sited and designed to prevent impacts which would significantly degrade such areas;*
- 2. It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity; and*
- 3. Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*

LUP Policy 3.1-32 states the following (emphasis added):

Land divisions, including lot line adjustments which are located within Environmentally Sensitive Habitat Area boundaries (which are shown on the Land Use Maps, and subject to Policy 3.1-1), will not be permitted if: (1) any parcel being created is entirely within an Environmentally

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Sensitive Habitat Area; or (2) if any parcel being created does not have an adequate building site which would allow for the development of the building site consistent with Policy 3.1-7.

CZC Section 20.496.020 "Environmentally Sensitive Habitat and other Resource Areas—Development Criteria" states the following (emphasis added):

(A) Buffer Areas. A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.

(1) Width. The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.

Standards for determining the appropriate width of the buffer area are as follows:

(a) Biological Significance of Adjacent Lands. Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).

Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer shall be measured from the edge of the wetland, stream, or riparian habitat that is adjacent to the proposed development.

(b) Sensitivity of Species to Disturbance. The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a determination shall be based on the following after consultation with the Department of Fish and Game or others with similar expertise:

- (i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;
- (ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;
- (iii) An assessment of the impact and activity levels of the proposed development on the resource.

(c) Susceptibility of Parcel to Erosion. The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff

characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.

(d) Use of Natural Topographic Features to Locate Development. Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.

(e) Use of Existing Cultural Features to Locate Buffer Zones. Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA.

(f) Lot Configuration and Location of Existing Development. Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.

(g) Type and Scale of Development Proposed. The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area...

(2) Configuration. The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).

(3) Land Division. New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.

(4) Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:

(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.

(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.

(c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year

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flood without increased damage to the coastal zone natural environment or human systems.

(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.

(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.

(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.

(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.

(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.

(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.

(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.

(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats. (Ord. No. 3785 (part), adopted 1991)

Consistency Analysis:

Two rare plant species occur on the subject property: California sedge (*Carex californica*) and Mendocino cypress (*Hesperocyparis pygmaea*¹). Both species are included on lists of rare, threatened, and endangered species by the California Native Plant Society² and the Department

¹ Mendocino cypress, also commonly known as Pygmy cypress, is treated as *Hesperocyparis pygmaea* in the current taxonomic literature (e.g., http://ucjeps.berkeley.edu/about_ICPN.html). The species was formerly referred to as, and is synonymous with, both *Cupressus goveniana* ssp. *pygmaea* and *Callitropsis pygmaea*.

² California Native Plant Society (CNPS). 2009. *Inventory of Rare and Endangered Plants* (online edition, v7-09d). California Native Plant Society. Sacramento, CA. Accessed from <http://www.cnps.org/inventory>.

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of Fish and Game.³ California sedge has a CNPS listing of "2.3"⁴ and a state/global ranking of "S2?/G5."⁵ Mendocino cypress has a CNPS listing of "1B.2"⁴ and a CNDDDB state/global ranking of "S2/G2."⁵

The County findings, which summarize the results of a 2008 botanical study prepared by the applicants' botanical consultant, report approximately 100 California sedge plants on approved "Parcel 2" growing within the approved future building envelope and within the logging road/turnaround area that extends south of the approved building area. The findings further report approximately 60-70 Mendocino cypress trees along the logging road north of the approved future building envelope, within the building envelope, and south of the building envelope along the logging road and turnaround area. Although numerous Mendocino cypress trees are present on the property, the botanical consultant concludes that "based on personal observation" pygmy forest habitat is not present on the subject property.

The applicants' botanical consultant prepared an addendum to the botanical report (dated September 27, 2008), which presents a buffer analysis to address the buffer width [subsections (A)(1)(a)-(g)] and development [subsections (A)(4)(a)-(k)] requirements of CZC Section 20.496 cited above. The buffer analysis also includes several recommended mitigation measures "to protect the rare and endangered plants that are located on site within the proposed building envelope and along portions of the existing logging road." The recommended mitigation measures, which are incorporated into Special Condition No. 9 of the County's approved permit for the subdivision, include (among others) transplanting individual California sedge plants and Mendocino cypress trees "that are 2 feet or smaller" to be impacted by the future development of the new parcel to suitable habitat outside the approved building envelope and driveway alignment. According to the recommended mitigation measure, cypress trees that are larger than 2 feet "would not be suitable for transplanting and would therefore constitute a taking."

As cited in the policies above, CZC Section 20.496.010 defines environmentally sensitive habitat areas (ESHA) and includes habitats of rare and endangered plants. Therefore, as ESHA, rare plant habitat is subject to the ESHA buffer requirements of LUP Policy 3.1-7 and CZC Section 20.496.020. According to these policies, a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish and Game (CDFG) that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The policies state that in that event, the buffer shall not be less than 50 feet in width. CZC Section 20.496.020 states that the standards for

³ California Department of Fish and Game, Natural Diversity Database (NDDDB). October 2009. *Special Vascular Plants, Bryophytes, and Lichens List*. Quarterly publication. 71 pp.

⁴ CNPS List 1B plants = rare, threatened, or endangered in California and elsewhere. CNPS List 2 plants = rare, threatened, or endangered in California, but more common elsewhere. Threat code extensions: ".1" = seriously endangered in CA, ".2" = fairly endangered in CA, and ".3" = not very endangered in CA.

⁵ State rank 2 = Imperiled: Imperiled in the state because of rarity due to very restricted range, very few populations (often 20 or fewer), steep declines, or other factors making it very vulnerable to extirpation from the nation or state/province. [By adding a "?" to the rank, this represents more certainty than "S2S3" but less certainty than "S2."] Global rank 2 = Imperiled: At high risk of extinction due to very restricted range, very few populations (often 20 or fewer), steep declines, or other factors. Global rank 5 = Secure: Common; widespread and abundant.

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determining the appropriate width of the buffer area are the seven standards of subsections (a) through (g) of subsection (A)(1) of that section, including (a) the biological significance of adjacent lands, (b) sensitivity of species to disturbance, (c) susceptibility of parcel to erosion, (d) use of natural topographic features to locate development, (e) use of existing cultural features to locate buffer zones, (f) lot configuration and location of existing development, and (g) the type and scale of the development proposed. LUP Policy 3.1-7 and CZC Section 20.496.020(A)(4)(b) further require that development permitted within an ESHA buffer area shall generally be the same as those uses permitted in the adjacent ESHA, and that structures are allowable within the buffer area only if there is no other feasible site available on the parcel.

The approval of the subject minor subdivision is inconsistent with the ESHA policies of the certified LCP including, but not limited to, LUP Policies 3.1-7 and 3.1-32 and CZC Section 20.496.020, because (a) the subdivision will result in future residential development of the new parcel within and directly adjacent to rare plant ESHA without maintaining any buffer, (b) the County did not consider feasible alternative sites or configurations for the development that would avoid locating future development within the ESHA or ESHA buffer, and (c) the approved subdivision will result in a parcel that has not been demonstrated to have an adequate building site which would allow for the development of the building site consistent with LUP Policy 3.1-7.

The County's approval is based on a determination of the botanical impact analysis prepared for the project that the California sedge habitat and Mendocino cypress habitat on the project site do not constitute ESHA as defined in the LCP (cited above) because "the habitat [where the rare plants occur] was created artificially due to past logging practices and is currently dying out from the shade caused by natural revegetation in the area." The County findings conclude that "[g]iven the ESHA determination, the 100 foot buffer requirements would not apply in areas outside of the riparian habitat. However, due to the rare nature of the species identified, protective measures were recommended by both the project botanist and DFG staff which include efforts to relocate or replace healthy specimens which may be damaged by project related development."

ESHA, as defined in Section 30107.5 of the Coastal Act, Section 3.1 of the certified Mendocino County LUP, and CZC Section 20.308.040(F) is "*...any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities.*" Thus, Coastal Act Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F) set up a two part test for determining an ESHA. The first part is determining whether an area includes plants or animals or their habitats that are either: (a) rare; or (b) especially valuable because of their special nature or role in an ecosystem. If so, then the second part asks whether such plants, animals, or habitats could be easily disturbed or degraded by human activities. If so, then the area where such plants, animals, or habitats are located is deemed ESHA by Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F).

The first test for determining ESHA under Section 30107.5, LUP Section 3.1, and CZC Section 20.308.040(F) is whether an **area** including plants or animals or their habitats **is either (a) rare, or (b) especially valuable because of its special nature or role in an ecosystem.** As discussed

above, two rare plant species occur on the subject property: California sedge (*Carex californica*) and Mendocino cypress (*Hesperocyparis pygmaea*). Both species are included on lists of rare, threatened, and endangered species by the California Native Plant Society and the CDFG. California sedge has a CNPS listing of "2.3" and a state/global ranking of "S2?/G5" (see above footnotes for ranking definitions). Mendocino cypress has a CNPS listing of "1B.2" and a state/global ranking of "S2/G2." Because of their relative rarity at the state and global levels, California sedge and Mendocino cypress as species meet the rarity test for designation as ESHA under the above cited Coastal Act and LCP policies. However, because ESHA refers to an "area" rather than an individual species, one must consider whether or not the proposed driveway and building site of the new parcel to be created constitute "areas" on the property where California sedge and Mendocino cypress ESHA occur.

As discussed above, at least 100 California sedge plants and 60-70 Mendocino cypress trees were documented on the project site. These large concentrations of California sedge and Mendocino cypress do constitute rare plant habitat and therefore meet the first test for determining ESHA under Section 30107.5 of the Coastal Act, LUP Section 3.1, and CZC Section 20.308.040(F).

The second test for determining ESHA under Coastal Act Section 30107.5 (Section 3.1 of the certified LUP) is whether the habitat could be easily disturbed or degraded by human activities and developments. The large concentrations of California sedge and Mendocino cypress plants in the proposed driveway and building site of the new parcel to be created could be easily disturbed or degraded by human activities and developments such as those that would be necessary to develop them for the residential use that would be accommodated by the approved subdivision including grading, paving, building construction, foot trampling, etc. Such activities would fragment or otherwise demolish the presently intact habitat, reduce habitat size, and degrade and alter habitat quality and conditions that are integral to the "special nature" of the existing habitat area. Therefore, the large concentrations of California sedge and Mendocino cypress in the proposed building site and driveway meet the second test for determining ESHA under Section 30107.5 of the Coastal Act, LUP Section 3.1, and CZC Section 20.308.040(F).

The County's findings erroneously interpret the definition of ESHA to exclude areas that have been subject to past disturbance. Nothing in the ESHA definitions cited in LUP Section 3.1 or CZC Sections 20.308.040(F) and 20.496.010 state or imply that this is the case. In fact, CZC Sections 20.308.040(F) and 20.496.010 explicitly state that "...Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals" (emphasis added). This provision does not in any way exclude habitats of rare and endangered plants that occur in previously disturbed areas.

Thus, in its failure to recognize two rare plant species on the property as ESHA, the County fails to address the consistency of the project with the ESHA buffer requirements of LUP Policy 3.1-7 and CZC Section 20.496.020 including (1) why a buffer width less than 100 feet may be appropriate, (2) how a reduced buffer is allowable based on analysis of the seven criteria specified in CZC Section 20.496.020(A)(1) that must be applied in determining whether a

potential reduction of the ESHA buffer is warranted, and (3) how a buffer less than the minimum of 50 feet required by LUP Policy 3.1-7 and CZC Section 20.496.020(A)(1) is allowable at all under the LCP. Furthermore, the County's approval acknowledges that a portion of the future residential development of the newly created parcel would be located within the 50-foot rare plant buffer area proper and that an unspecified number of rare plant individuals would be directly impacted by the development.

LUP Policy 3.1-7 and CZC Section 20.496.020 (A)(1) allow for development to be permitted within a buffer area if the development is for a use that is the same as those uses permitted in the adjacent environmentally sensitive habitat area, and if the development complies with specified standards as described in subsections (1)-(3) of LUP Policy 3.1-7 and 4(a)-(k) of Section 20.496.020. The LCP sets forth uses permitted in wetland and riparian ESHAs, but is silent with regard to allowable uses within rare plant ESHA, and thus allowable uses within the rare plant buffer. Nonetheless, even if a residential development was considered an allowable use in a rare plant buffer, LUP Policy 3.1-7 and CZC Section 20.496.020(A)(4) require permitted development within an ESHA buffer to comply with several standards. These standards include that structures be allowed within a buffer area only if there is no other feasible site available on the parcel, and that the development be sited and designed to prevent impacts that would significantly degrade the ESHA. The County's findings do not analyze alternative sites or project designs or demonstrate that the project as approved was sited and designed on the 23-acre parcel in a manner that would best protect the rare plant ESHA.

Therefore, because ESHA buffers are not allowed to be reduced to less than 50 feet, and because development is allowed within a buffer area only if it is demonstrated that there is no other feasible site available on the parcel, the project as approved by the County is inconsistent with the ESHA protection provisions of the certified LCP including, but not limited to, LUP Policy 3.1-7 and CZC Section 20.496.020.

3. Conclusion:

The project, as approved by Mendocino County, is inconsistent with the policies of the certified LCP including, but not limited to, the following:

- LUP Policy 3.1-7 and CZC Section 20.496.020, which require that a buffer area of a minimum width of 50 feet be established around environmentally sensitive habitat areas, that development permitted within an ESHA buffer area shall generally be the same as those uses permitted in the adjacent ESHA, and that structures are allowable within the buffer area only if there is no other feasible site available on the parcel; and
- LUP Policy 3.1-32, which states that land divisions shall not be permitted if any parcel being created does not have an adequate building site which would allow for the development of the building site consistent with LUP Policy 3.1-7.



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
501 LOW GAP ROAD · ROOM 1440 · UKIAH · CALIFORNIA · 95482

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December 3, 2009

NOTICE OF FINAL ACTION

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

CASE#: CDMS 23-2008

DATE FILED: 11/14/2008

OWNER: COLIN DRAKE & SASHA GRAHAM AND ARON YASSKIN & LAVIVA DAKERS

APPLICANT: ARON YASSKIN & COLIN DRAKE

AGENT: AMY WYNN

REQUEST: Minor Subdivision of a 22.84+/- acre parcel to create 2 parcels of approximately 10.9 +/- acres and 11.93 +/- acres.

LOCATION: Within the Coastal Zone, 1+/- mile northeast of Little River, lying on the south side of Gordon Lane (CR# 404A), 0.5+/- miles east of its intersection with State Highway One, located at 44401 Gordon Lane; AP# 121-070-22.

PROJECT COORDINATOR: JOHN SPEKA

ACTION TAKEN:

The Planning Commission, on November 19, 2009, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was not appealed at the local level.

This 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.

Attachments

cc:

COASTAL COMMISSION
ASSESSOR

RECEIVED
DEC 07 2009
CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO. 7
APPLICATION NO.
A-1-MEN-09-051
Yasskin, Dakers, Drake & Graham
NOTICE OF FINAL LOCAL ACTION & FINDINGS FOR APPROVAL (1 of 19)



COUNTY OF MENDOCINO
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FINAL FINDINGS AND CONDITIONS OF APPROVAL
CASE # CDMS 23-2008 - COLIN DRAKE & SASHA GRAHAM
ARON YASSKIN & LAVIVA DAKERS
NOVEMBER 19, 2009

The Planning Commission approves Coastal Development Minor Subdivision # CDMS 23-2008 per the findings and conditions of approval contained in the staff report, further finding;

General Plan Consistency Finding: The proposed project is consistent with applicable goals and policies of the Coastal Element of the General Plan as subject to the conditions being recommended by staff.

Environmental Findings: The Planning Commission finds that no significant environmental impacts would result from the proposed project which can not be adequately mitigated through the conditions of approval; therefore, a Negative Declaration is adopted.

Coastal Development Permit Findings: The Planning Commission finds that the application and supporting documents and exhibits contain information and conditions sufficient to establish, as required by Section 20.532.095 of the Coastal Zoning Code, that:

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 zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code, and preserves the integrity of the zoning district; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan.

Coastal Land Division Findings: The Planning Commission finds that the project as proposed, and subject to the recommended conditions of approval, will satisfy the requirements of Section 20.532.100(C)(1) of the Coastal Zoning Code, in that:

1. The new lots created have or will have adequate water, sewage, including a long term arrangement for septage disposal, roadway and other necessary services to serve them; and

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2. The new lots created will not have, individually or cumulatively, a significant adverse environmental effect on environmentally sensitive habitat areas or on other coastal resources; and
3. The new lots created will not significantly adversely affect the long-term productivity of adjacent agricultural or timber lands; and
4. Other public services, including but not limited to, solid waste and public roadway capacity, have been considered and are adequate to serve the proposed parcels; and
4. The proposed land division meets the requirements of Chapter 20.524 and is consistent with all applicable policies of the Coastal Element.

Project Findings: The Planning Commission making the above findings, approves #CDMS 23-2008 subject to the conditions of approval recommended by staff.

CONDITIONS OF APPROVAL: For a Coastal Development Minor Subdivision which has been approved according to the Mendocino County Code, the following "Conditions of Approval" shall be completed prior to filing a Parcel Map.

- ** 1. The subdivider shall acknowledge in writing to the Department of Planning and Building Services that all grading activities and site preparation, at a minimum, shall adhere to the following Best Management Practices (BMPs). The applicant shall submit to the Department of Planning and Building Services an acknowledgement of these grading and site preparation standards:
 - a. That adequate drainage controls be constructed and maintained in such a manner as to prevent contamination of surface and/or ground water, and to prevent erosion.
 - b. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required to conduct the operation.
 - c. All concentrated water flows, shall be discharged into a functioning storm drain system or into a natural drainage area well away from the top of banks.
 - d. Temporary erosion control measures shall be in place at the end of each day's work, and shall be maintained until permanent protection is established.
 - e. Erosion control measures shall include but are not limited to: seeding and mulching exposed soil on hill slopes, strategic placement of hay bales below areas subject to sheet and rill erosion, and installation of bioengineering materials where necessary. Erosion control measures shall be in place prior to October 1st.
 - f. All earth-moving activities shall be conducted between July 15th and November 1st of any given calendar year, per recommendations from the California Department of Fish and Game (DFG).
 - g. Pursuant to the California Building Code and Mendocino County Building Regulations a grading permit will be required unless exempted by the Building Official or exempt by one of the following:
 1. An excavation that (1) is less than 2 feet (610 mm) in depth or (2) does not create a cut slope greater than 5 feet (1,524 mm) in height and steeper than 1 unit vertical in 1.5 units horizontal (66.7% slope).

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2. A fill less than 1 foot (305 mm) in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope), or less than 3 feet (914 mm) in depth, not intended to support structures, that does not exceed 50 cubic yards (38.3 m³) on any one lot and does not obstruct a drainage.
2. A notation shall be placed on the Unilateral Agreement stating that, "Future development of building site(s), access roads or driveways may be subject to the grading requirements and drainage control measures identified above.
- **3. To minimize take and other potential impacts to fish, frogs and other aquatic-based species, all work involving road construction, grading, excavation and other substantial ground disturbance shall be confined to the period July 15 through November 1. This work period will avoid sensitive life stages for red-legged frog including breeding and young adult migration seasons for this species.
- **4. Work to improve the existing logging road shall incorporate updated road design measures including an out-slope design, rocked rolling dips, critical dips at all culvert crossings and installation of road rock at areas where erosion and sediment delivery to watercourses are likely, or other alternatives acceptable to the Department of Planning and Building Services.
- **5. Work to improve the first water course crossing at the site known as the "spring area" will require a lake or streambed alteration agreement (LSAA) from the Department of Fish and Game (DFG). Fish and Game Code §1602 requires notification to DFG for an LSAA prior to any activity that substantially modifies the bed, bank, or channel or diverts or obstructs the natural flow of any river, stream, or lake. Information regarding LSAA's may be found at <http://www.dfg.ca.gov/habcon/1600/index.html>.
- **6. All roads shall be covered with an impermeable sealant or rocked at a bare minimum. Any rock material used for surfacing, including rock from onsite sources, must comply with regulations regarding asbestos content.
- **7. Any stationary onsite internal combustion engines over 50 horsepower (i.e. large power generator or pumps) may require a permit from the District, depending on fuel source and level of operation.
8. A note shall appear on the Unilateral Agreement that the access road, driveway and interior circulation routes be maintained in such a manner as to insure minimum dust generation subject to Air Quality Management District Regulation 1 Rule 430. All grading must comply with Air Quality Management District Regulations Rule 430. Any rock material, including natural rock from the property, used for surfacing must comply with Air quality Management District regulations regarding asbestos content.
- **9. All mitigation measures (i.e. Mitigation Measures 1a, 1b, 1c, 1d, 2a, 3a, 4a, 4b, 5a, 5b, 6a and 6b) provided in the addendum (dated September 27, 2008) to the original botanical report shall be conditions of this subdivision.
- **10. The first building site at the existing clearing is preferred to the alternate site that exists farther down the logging road. The remaining segment of the logging road leading to the alternate building site shall be abandoned. As an alternative to abandonment, the road shall be left its present condition and allowed to re-vegetate. Minor road maintenance may be permitted to facilitate light vehicle traffic by ATVs or other small vehicles.

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- **11. To address identified impacts to California sedge, a protection and relocation plan shall be developed. This plan shall include strategies for avoiding existing plants, specific methods for relocating those plants that cannot be avoided and a monitoring plan that tracks the success of relocated plants.
- **12. To assess the risk of this project on the property's existing populations of California sedge, a comprehensive survey shall be prepared to identify additional occurrences of this species on the property that will not be impacted by this project. If the number of impacted occurrences is small (less than 10 percent) relative to the total number of occurrences on the property, then a relocation plan may not be necessary provided that measures are developed to protect the newly identified occurrences.
- **13. To address identified impacts to Mendocino cypress, a survey shall be conducted that tallies the number of trees by diameter class that will be removed or damaged as a result of this project. A mitigation and monitoring plan shall be developed for purposes of replacing lost and damaged Mendocino cypress. This plan shall propose specific tree replacement ratios (at least 5:1 for every Mendocino cypress lost or damaged) and a monitoring plan (at least two years) that tracks planted trees and replaces those that are dead and dying.
- **14. Subdivider shall submit to the Department of Planning and Building Services, an Exhibit Map demonstrating a minimum 100-foot buffer from the identified sensitive habitat as recommended in the Botanical Survey prepared by Playalina Nelson, dated June 2008 (with an addendum dated September 27, 2008). A note shall be placed on the **Unilateral Agreement** that no development shall be allowed within this buffer area as delineated on the Exhibit Map on file with the Department of Planning and Building Services.
15. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2,043.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to December 4, 2009. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if project is approved) or returned to the payer (if project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. **The applicant has the sole responsibility to ensure timely compliance with this condition.**
- **16. There shall be provided an access easement of 30 feet in width (as per tentative map) from a publicly maintained road to each parcel being created. Documentation of access easement shall be provided to the Mendocino County Department of Transportation for their review prior to final approval.
- **17. There shall be dedicated by Parcel Map (or granted by Grant Deed if a Unilateral Agreement is filed) a 30 foot wide half-width right-of-way along the south side of Gordon Lane (CR #404A) to provide for the ultimate improvement of the County road. This width shall be measured from the centerline of the existing right-of-way of record, or where no record right-of-way exists, from the center of the physical road.
18. If a Parcel Map is filed, all easements of record shall be shown on the parcel map. All utility lines shall be shown as easements with widths as shown of record or a minimum of ten (10) feet, whichever is greater.
19. If approval of the tentative map is conditioned upon certain improvements being made by the subdivider, the subdivider shall notify the Mendocino County Department of Transportation when such improvements have been completed.

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- **20. Ten (10) foot wide all-weather driveway within the 30 foot wide access easement, including four (4) inch minimum rock base, fifty (50) foot minimum radius of horizontal curvature, grade not to exceed sixteen (16) percent, drainage culverts where necessary. The road grade may be increased to a maximum of twenty (20) percent, however, in a areas where road grade exceeds sixteen (16) percent, roadway shall be paved with a minimum of two (2) inches of asphalt concrete on four (4) inches of Class 2 aggregate base.
- **21. A standard private driveway approach shall be constructed to serve Parcel 2, minimum width of ten (10) feet, area to be improved fifteen (15) feet from the edge of the County road, to be surfaced with surfacing comparable to that on the County road.
- **22. Any proposed work within County rights-of-way requires obtaining an encroachment permit from the Mendocino County Department of Transportation.
- **23. If approved in writing by the applicable fire protection service provider(s), subdivider shall construct a "Hammerhead-T" turnaround within a forty (40) foot wide by eighty (80) foot long easement at the terminus of the access easement. Turnaround shall be constructed with four (4) inch minimum rock base, ten (10) feet wide and sixty (60) feet long, with twenty (20) foot radius surfacing returns.
- **24. The subdivider shall comply with those recommendations in the California Department of Forestry and Fire Protection (CDF) letter of September 22, 2008 (CDF #323-08) or other alternatives as acceptable to the Department of Forestry. Written verification shall be submitted from CDF to the Department of Planning and Building Services that this condition has been met to the satisfaction of the Department of Forestry and Fire Protection.
- The subdivider shall comply with those recommendations and regulations of the Mendocino Rural Fire District or other alternatives as acceptable to the Fire District. Written verification shall be submitted from the Fire District to the Department of Planning and Building Services that this condition has been met to the satisfaction of the Fire District.
- **25. The applicant shall submit to the Division of Environmental Health an acceptable site evaluation report (DEH FORM # 42.04) for Parcel 2 completed by a qualified individual demonstrating compliance with the North Coast Regional Water Quality Control Board's Basin Plan Policy for On-site Waste Treatment and Disposal and Mendocino County Division of Environmental Health's Land Division Requirements (DEH FORM # 26.09).
- **26. The applicant shall submit to the Division of Environmental Health an acceptable site evaluation report (DEH FORM # 42.04) for a replacement system for the existing structure(s) located on Parcel 1 completed by a qualified individual demonstrating compliance with the North Coast Regional Water Quality Control Board's Basin Plan Policy for On-site Waste Treatment and Disposal and Mendocino County Division of Environmental Health's Land Division Requirements (DEH FORM # 26.09).
- **27. The applicant shall submit to the Division of Environmental Health an acceptable standard mineral analysis performed by a certified public health laboratory from a source of water on the subdivision.
- **28. Any future development proposed within the area identified as a "Sensitive Resource Area" on Parcel 1 of the Tentative Map dated October 2008 shall require a specific study prepared by a qualified individual in the field to determine potential impacts to archaeological resources.
- **29. A note shall appear within the Unilateral Agreement that in the event that archaeological resources are encountered during development of the property, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.

30. The applicant is hereby notified that this proposed division lies within the Coastal Zone Boundary and additional action may be necessary. For information you should contact the California Coastal Commission at 45 Fremont Street, Suite 2000, San Francisco, California, 94105-2219.
31. When all conditions of approval have been satisfied, the applicant shall submit the completed Unilateral Agreement and the Recording Fees to the Planning and Building Services Department for review, approval and recordation.
32. A note shall appear on the Unilateral Agreement that "No toxic, hazardous or contaminated materials or waste shall be stored in a designated buffer area or clearly identified flood plain or flood way."
33. Pursuant to Government Code Section 66492 & 66493, prior to recordation of the Unilateral Agreement, the subdivider must: (1) Obtain a Certificate from the Mendocino County Tax Collector stating that all current taxes and any delinquent taxes have been paid and; (2) Pay a security deposit (or bond) for taxes that are a lien, but not yet due and payable.

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STAFF REPORT FOR COASTAL DEVELOPMENT MINOR SUBDIVISION

**#CDMS 23-2008
NOVEMBER 19, 2009
PAGE PC-1**

OWNER: ARON YASSKIN & LAVIVA DAKERS
P.O. BOX 142
MENDOCINO, CA 95460

COLIN DRAKE & SASHA GRAHAM
44401 GORDON LANE
MENDOCINO, CA 95460

AGENT: AMY WYNN
703 NORTH MAIN STREET
FORT BRAGG, CA 95437

REQUEST: Minor Subdivision of a 22.84± acre parcel to create 2 parcels of approximately 10.9+/- acres and 11.93+/- acres.

LOCATION: Within the Coastal Zone, 1± mile north of Little River, lying on the south side of Gordon Lane (CR# 404A), 0.5± mile east of its intersection with Highway 1, located at 44401 Gordon Lane; AP# 121-070-22.

TOTAL ACREAGE: 22.84± acres

GENERAL PLAN: Rural Residential- 10 acre minimum (RR10)

ZONING: Rural Residential- 10 acre minimum (RR10)

ADJACENT ZONING: North: Remote Residential- 20 acre minimum and Rural Residential- 5 acre minimum (RMR 20 & RR 5)
East: Remote Residential- 20 acre minimum (RMR 20)
South: Open Space (OS 0)
West: Rural Residential- 10 acre minimum (RR10)

EXISTING USES: Residential

SURROUNDING LAND USES: North: Residential
East: Residential
South: State Park
West: Residential

SURROUNDING LOT SIZES: North: 1.46 - 7± Acres
East: 20.23± Acres
South: 40± Acres
West: 5.35 - 10± Acres

SUPERVISORIAL DISTRICT: 5

OTHER RELATED APPLICATIONS ON SITE OR SURROUNDING AREA: On June 1, 1978, the tentative map for Minor Subdivision #MS 73-78 was approved by the Planning Commission. However, the map was never recorded within the allotted time frame and expired after March 21, 1982.

Pre-Application Conference #PAC 2-2008 was summarized in a letter from Planning staff to the project consultant, dated September 10, 2008, in which a number of questions were answered over the project's feasibility.

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PROJECT DESCRIPTION: The applicant proposes a Coastal Development Minor Subdivision of a 22.84± acre property to create two parcels of approximately 10.9 acres and 11.93 acres. The project site is located within the Coastal Zone, 1± mile north of Little River, lying on the south side of Gordon Lane (CR# 404A), 0.5± mile east of its intersection with Highway 1. Proposed Parcel 1 is currently improved with a 2,500 square foot single-family residence, barn (1,700 square foot), detached garage (680 square foot), shed (120 square foot), and a well, septic system and propane tank. An existing 10 foot wide gravel driveway also lies on the property leading to an abandoned logging road extending to the proposed southern parcel while crossing Beal Creek and a seasonal drainage. Parcel 2 remains largely undeveloped aside from the existing (abandoned) logging road and a cleared landing area along its southeast border intended to be used as the building site for the newly created parcel.

Proposed Parcel 1 is bisected by Beal Creek running northeast to southwest with the seasonal drainage running parallel approximately 150 feet to the south. A further watercourse, or "spring area," is located to the north of Beal Creek. A moderate 3% slope characterizes much of the northern and southern ends of the property increasing to a steeper 13% to 25% grade approaching the creek and seasonal drainage areas. Vegetation on the property consists of riparian vegetation and mixed conifer forest with Van Damme State Park located at its southern border. Low density residential uses are located to the north and east, surrounded by predominantly wooded terrain.

ENVIRONMENTAL REVIEW: The following issues have been identified in the Initial Study Environmental Checklist:

Earth and Water (Items 1A, 1B, 1C, 1E and 1F, 3A, 3B, 3D, 3E, 3F and 3G): Approval of the proposed subdivision would allow for one additional dwelling unit on the newly created parcel and the potential for accessory structures with related improvements such as grading and driveway construction. Access to Parcel 2 is proposed over an abandoned logging road which, when eventually improved, would contribute to the displacement of soil within the project area. The driveway would cross Beal Creek as well as a second seasonal drainage running parallel to the south. Another watercourse was identified as a "spring area" located north of the creek. In addition, the access would include steeper sections between 13 and 25 percent through relatively heavy riparian vegetation. As a result of project related developments, there exists a potential for significant erosion and creek sedimentation.

A site view was conducted on the property on February 25, 2009, which included Planning staff, an agent from the California Department of Fish and Game (DFG) and project consultants. Comments were subsequently received from DFG making several recommendations to ensure that potential impacts were kept to a minimum with respect to sensitive habitat on the property. Among these were requirements for grading and/or substantial ground disturbance activities to be confined to the dry period from July 15 through November 1, the incorporation of erosion control measures in areas where sediment delivery was likely, and a streambed alteration agreement (1602 permit) for one of the three watercourse crossings. Staff will recommend that these and other construction related erosion control measures be implemented during this eventual phase of the project (see Condition Number 1 through 5). Adherence to the proposed mitigation measures are expected to hold impacts to a less than significant level.

Air (Item 2A): Upon referral, the County Air Quality Management District (AQMD) provided general comments related to particulate matter generated from unpaved roads, woodstove installation, onsite combustion engines, and grading activities. According to the County GIS maps, the project area does not lie within a region which may contain Naturally Occurring Asbestos. Substantial air emissions or a deterioration of ambient air quality is not expected to rise to a level of significance as a result of the project. Staff will recommend that standard conditions regarding rocky roads, compliance with AQMD regulations for stationary onsite internal combustion engines and grading activity be required. Conditions Number 6 through 8 are offered to ensure that impacts to air quality are held to a less than significant level.

Plant and Animal Life (Items 4A, 4B, and 4C, 5A, 5B, 5C and 5D): The California Natural Diversity Database Rarefind did not reveal the immediate project area as potentially including habitat for rare or endangered species. Nonetheless, given the property's proximity to known habitat regions, a botanical survey was prepared by local consultant Playalina Nelson (dated June 2008), including an addendum (dated September 27, 2008).

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Botanical surveys were conducted on the property on May 12, June 20, October 7 and July 7, 2007 and January 15, and March 4, 2008, in which distinct regions of the parcel were identified as potential Environmentally Sensitive Habitat Areas (ESHAs). Section 20.308.040(F) of the County Coastal Zoning Code defines this type of habitat, stating:

"Environmentally Sensitive Habitat Area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities or developments. In Mendocino County, environmentally sensitive habitat areas include, but are not limited to: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation that contain species of rare or endangered plants, and habitats of rare and endangered plants and animals.

According to the June 2008 survey:

The extent of the riparian habitat associated with Beal Creek- in addition to the spring within the gulch and the seasonal drainage that is out of the gulch- meet the definition of an [Environmentally Sensitive Habitat Area] ESHA...The riparian habitat is well established and is dominated primarily with native plant species. The spring supports hydrophytic vegetation and is located within the gulch. The seasonal drainage is located out of the gulch, and supports marginal riparian habitat; however, it is associated with natural hydrology and directs water towards Beal Creek.

As described above, access to proposed Parcel 2 would take place over an existing logging road that was abandoned some years in the past. The access currently crosses Beal Creek, the "spring area" drainage located within the same gulch, and the seasonal drainage to the south, located outside of the gulch. Because improvement of the road and associated crossings would be required to meet County standards for driveway accesses, ESHA protection standards within the Coastal Zoning Code would apply.

Section 20.496.020 states, in part, the following:

A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas...

The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.

While development within riparian corridors or other riparian resource areas would not normally be allowed per Section 20.496.035, staff believes that the preexisting nature of the abandoned logging road could be seen as an exception in that any major disturbance of the habitat has already occurred. Widening of the existing road (currently 10 feet wide) is not proposed except in areas located outside of the 100 foot buffer. Further, conversion of the logging road into a driveway would include additional protections per subsection (B) of the noted section which states that:

Requirements for development in riparian habitat areas are as follows:

- (1) The development shall not significantly disrupt the habitat area and shall minimize potential development impacts or changes to natural stream flow such as increased runoff, sedimentation,*

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biochemical degradation, increased stream temperatures and loss of shade created by development;

- (2) *No other feasible, less environmentally sensitive alternative exists;*
- (3) *Mitigation measures have been incorporated into the project to minimize adverse impacts upon the habitat;*
- (4) *Where development activities caused the disruption or removal of riparian vegetation, replanting with appropriate native plants shall be required at a minimum ratio of one to one (1:1) and replaced if the survival rate is less than seventy-five (75) percent.*

Mitigation measures were recommended within the September 27, 2008 addendum to the botanical survey which address the provisions of the zoning code in this area. Also included within the addendum was a "Buffer Analysis" which is additionally required per Section 20.496.020 for development within the 100 foot setback from identified ESHA. Department of Fish and Game (DFG) staff reviewed both the survey and addendum prior to a site view of the property, concurring with the reduced setback assessment while recommending conditions within an email dated March 19, 2009 which would require similar mitigation measures to protect riparian habitat. Staff will recommend that all such measures suggested by the botanist and DFG staff be incorporated into the final conditions for the subdivision listed at the end of this report.

Outside of the noted riparian corridors, the botanical survey also found sensitive resources to occur along the former logging road and landing which is proposed as the residential building envelope on Parcel 2. The June 2008 study describes the species identified as follows:

California sedge (*Carex californica*): Approximately 30-50 plants were located growing within the proposed building envelope on proposed parcel 2. Approximately 50 plants were located growing within the logging road that extends farther south. All individuals were located within previously cleared areas that are associated with the logging road.

Mendocino Cypress (*Cupressus goveniana* ssp. *Pigmaea*): Approximately 10-15 mature and mostly dying trees were located along the logging road north of the proposed building envelope; 10-15 trees were located within the proposed building envelope; and approximately 40 trees were located south of the proposed building envelope along the logging road and turnaround.

Mendocino cypress and California sedge are both growing within the disturbed areas of the property that have been previously cleared. Generally, Mendocino cypress occurs as a key species associated with Pygmy habitat. Pygmy habitat is not present on the subject parcel. Pygmy habitat is present approximately 0.5 mile north, along Gordon Lane. Based on personal observation, isolated cypress trees generally occur within transitional areas between pygmy habitat and other plant communities, such as redwood forest, Bishop-pine forest or associated with disturbed areas within forested plant communities. Disturbed areas may include areas where the vegetation was cleared but is partially revegetating, or where there is infrequent clearing such as old driveways or adjacent to existing development.

On the property, the cypress trees and *Carex* are present within the disturbed areas and where the soil is more characteristic of slow-draining podzol soil. Cypress trees in particular are shade intolerant and require full sun (which is evident by the dead and dying trees that have become shaded out along the logging road). *Carex California* is more adaptive and is generally associated with openings in forests, or where understory vegetation is less dense. *Carex* is often found within disturbed areas where taller grasses or shrubs are more scattered or less dominant and where there is good light.

Based on the above text, the project's botanist suggested that the noted occurrences did not constitute ESHA as defined within the Coastal Zoning Code (Section 20.308.040(F), see above). Staff concurs with this interpretation as the definition of an ESHA appears to be based on two separate but necessary criteria. The first component, "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem..." would seem to qualify the noted resource under the

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circumstances. However, the second part, "...and which could easily be disturbed or degraded by human activities or developments...", implies that any sensitive area in question exists prior to any past disturbances caused by human activities. In the case of this project, the habitat was created artificially due to past logging practices and is currently dying out from the shade caused by natural revegetation in the area. Indeed, this interpretation would be consistent with a similar determination made in a report prepared by California Coastal Commission staff (A-1-MEN-07-044, Page 7) in which a rare plant was not believed to be rare habitat because it was "such an altered environment that it no longer [fit] the definition of its historical habitat type."

Given the ESHA determination, the 100 foot buffer requirements would not apply in areas outside of the riparian habitat. However, due to the rare nature of the species identified, protective measures were recommended by both the project botanist and DFG staff which include efforts to relocate or replace healthy specimens which may be damaged by project related development. Overall, staff recommends Conditions Number 9 through 15 to implement mitigations provided within the botanical survey (and addendum) as well as those further recommended by DFG staff with respect to potential impacts resulting from approval of the project. Adherence to these conditions is expected to hold impacts to plant and/or animal habitat to a less than significant level.

Noise (Item 6A): Although an increase in noise levels will most likely result from the grading and housing construction phases of the development, overall, staff does not believe the project would cause significant impacts beyond the minor inconvenience endured during this period. No mitigation is required.

Light and Glare (Item 7A): No exterior lighting is currently proposed as part of the project. Any future development which may include lighting will require a Coastal Development Permit (CDP) and potential impacts will be assessed at that time. Significant impacts are not expected to result from approval of the subdivision. No mitigation is required.

Land Use (Item 8A): The property is subject to the buildout criteria specified in Coastal Element Policy 3.9-2 requiring that at least 50 percent of the existing usable parcels within the market area be developed prior to approval of any divisions. The property lies within Market Area 3, which has a buildout of 71.88 percent according to the latest data available. Therefore, the proposed subdivision is consistent with Coastal Element Policy 3.9-2. No other land use impacts are anticipated and no mitigation is required.

Transportation/Circulation (Item 13A, 13C and 13F): Access to each of the proposed parcels has already been discussed above with respect to potential impacts to sensitive habitat areas. The existing logging road accessing Parcel 2 was recommended by the County Department of Transportation (DOT) to be improved to a 10 foot all-weather driveway located within a 30 foot access easement. A minimum four inch rock base will be required to meet DOT design standards except in segments where the road grade may exceed 16 percent, in which case the roadway will need to be paved to DOT standards. Further comments received from DOT recommend standard conditions regarding right-of-way dedications for parcels fronting County maintained roads, turnarounds, and encroachment permit procedures. With respect to the applicant's request for a "Waiver of a Parcel Map," the project meets the requirements found in the Division of Land Regulations which was confirmed by DOT staff through email correspondence dated October 9, 2009. Staff recommends Conditions Number 16 through 23 which are expected to hold project related traffic impacts to a less than significant level.

Public Services (Item 13A): The property is located within a High Fire Hazard area in a responsibility area of the California Department of Forestry and Fire Protection (CalFire). It also lies within a response area of the Mendocino Rural Fire District. Comments were not received from CalFire with respect to the project, although preliminary materials provided with the subdivision application cover minimum standards required by CalFire with regards to road width and driveways. Comments were not received from Mendocino Rural Fire District. Staff recommends compliance with Condition Number 24 to mitigate potential impacts relating to fire safe conditions resulting from the project. Other types of public services are not expected to be significantly affected by the project.

Utilities (Item 15A): Comments received from the County Division of Environmental Health (EH) state that "[b]oth parcels are greater than or equal to 10 acres," and are "located in a Sufficient Water Resources area." As such, proof of water testing would not be required, although standard mineral analysis was recommended to

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be performed for one of the parcels. With respect to septic requirements, correspondence with EH staff noted that primary and secondary designs for Parcel 2 (as well as a secondary design for Parcel 1) were approved through that office on August 11, 2009. Conditions Number 25 through 27 are recommended to ensure that overall project impacts are held to less than significant levels with respect to utility services.

Aesthetics (Item 17A): County maps identify the property as lying within an Highly Scenic Area (HSA)-(Conditional) region of the Coastal Zone. Development criteria are listed in Section 20.504.015(C) of the County Coastal Zoning Code, which states, in part, that:

- (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.*
- (4) All proposed divisions of land and boundary line adjustments within highly scenic areas shall be analyzed for consistency of potential future development with the regulations of this Chapter, and no division of land or boundary line adjustment shall be approved if development of resulting parcel(s) would be inconsistent with this Chapter.*

Staff conducted a site view of the property which verified that public views of any development resulting from the proposed project (e.g. residential or other accessory uses upon the newly created parcel) would be shielded by the coniferous forest making up a large majority of the property. Aesthetic impacts related to access roads are expected to be less than significant given the fact that the existing logging road/driveway will be utilized solely for access purposes. Comments were not received from the California Department of Parks and Recreation (State Parks) with respect to public views of the property. However, the primary trail system through Van Damme State Park (Fern Canyon Scenic Trail) runs east/west following Little River well past the project site and any future development would be shielded from public vantage points by over a thousand feet of heavily forested terrain. Thus, visual impacts are not expected to be significant as a result of project approval.

As a final note, potential lighting impacts have been addressed under the Light and Glare heading of this report. Section 20.504.035 addresses lighting within an HSA, although as discussed earlier, any future development would require Coastal Development Permits which would more appropriately address specific lighting proposals at that time.

Overall, given the highly shielded nature of the project site, and despite the HSA designation of the property, aesthetic impacts are not expected to reach a level of significance in the area. No mitigation is required.

Recreation (Item 18A): The subject property is located adjacent to the northern boundary of Van Damme State Park. While comments were not received from the California Department of Parks and Recreation (State Parks) with respect to the project, staff does not believe approval would result in significant impacts on recreation opportunities in the area given the discrete nature of the development. No mitigation is required.

Cultural Resources (Item 19A): Comments were received from Sonoma State University's California Historical Resources Information System (CHRIS), dated January 9, 2009, recommending that an archaeological study be prepared for the project and the County Archaeological Commission concurred with these findings at its meeting of February 11, 2009, requiring the survey. A survey was subsequently prepared by Thad Van Buren dated March 30, 2009, which was reviewed by the commission during a May meeting. Recommendations were made at that hearing for additional information in the form of an exhibit map delineating a sensitive area identified within the study. The requested map illustrating a "Sensitive Resource Area" was submitted and reviewed on June 10, 2009. The survey was thus accepted by the Commission with a condition recommending that future development in the noted area of Parcel 1 require a specific study. Staff will recommend Condition Number 28 to address the concerns of the Archaeological Commission in this area. In addition, staff will recommend that the "Discovery Clause" be invoked in the event that further discoveries are made in the process of developing other portions of the property (See Condition Number 29). Adherence to the recommended conditions are expected to hold project related impacts to a less than significant level with respect to cultural resources.

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GENERAL PLAN CONSISTENCY RECOMMENDATION: Subject to the recommended conditions of approval, the proposed project is consistent with applicable goals and policies of the General Plan and those of the Local Coastal Program.

RECOMMENDED MOTION:

General Plan Consistency Finding: The proposed project is consistent with applicable goals and policies of the Coastal Element of the General Plan as subject to the conditions being recommended by staff.

Environmental Findings: The Planning Commission finds that no significant environmental impacts would result from the proposed project which can not be adequately mitigated through the conditions of approval; therefore, a Negative Declaration is adopted.

Coastal Development Permit Findings: The Planning Commission finds that the application and supporting documents and exhibits contain information and conditions sufficient to establish, as required by Section 20.532.095 of the Coastal Zoning Code, that:

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 zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code, and preserves the integrity of the zoning district; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan.

Coastal Land Division Findings: The Planning Commission finds that the project as proposed, and subject to the recommended conditions of approval, will satisfy the requirements of Section 20.532.100(C)(1) of the Coastal Zoning Code, in that:

1. The new lots created have or will have adequate water, sewage, including a long term arrangement for septage disposal, roadway and other necessary services to serve them; and
2. The new lots created will not have, individually or cumulatively, a significant adverse environmental effect on environmentally sensitive habitat areas or on other coastal resources; and
3. The new lots created will not significantly adversely affect the long-term productivity of adjacent agricultural or timber lands; and

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4. Other public services, including but not limited to, solid waste and public roadway capacity, have been considered and are adequate to serve the proposed parcels; and
5. The proposed land division meets the requirements of Chapter 20.524 and is consistent with all applicable policies of the Coastal Element.

Project Findings: The Planning Commission making the above findings, approves #CDMS 23-2008 subject to the conditions of approval recommended by staff.

RECOMMENDED CONDITIONS OF APPROVAL: For a Coastal Development Minor Subdivision which has been approved according to the Mendocino County Code, the following "Conditions of Approval" shall be completed prior to filing a Parcel Map.

- ** 1. The subdivider shall acknowledge in writing to the Department of Planning and Building Services that all grading activities and site preparation, at a minimum, shall adhere to the following Best Management Practices (BMPs). The applicant shall submit to the Department of Planning and Building Services an acknowledgement of these grading and site preparation standards:
 - a. That adequate drainage controls be constructed and maintained in such a manner as to prevent contamination of surface and/or ground water, and to prevent erosion.
 - b. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required to conduct the operation.
 - c. All concentrated water flows, shall be discharged into a functioning storm drain system or into a natural drainage area well away from the top of banks.
 - d. Temporary erosion control measures shall be in place at the end of each day's work, and shall be maintained until permanent protection is established.
 - e. Erosion control measures shall include but are not limited to: seeding and mulching exposed soil on hill slopes, strategic placement of hay bales below areas subject to sheet and rill erosion, and installation of bioengineering materials where necessary. Erosion control measures shall be in place prior to October 1st.
 - f. All earth-moving activities shall be conducted between July 15th and November 1st of any given calendar year, per recommendations from the California Department of Fish and Game (DFG).
 - g. Pursuant to the California Building Code and Mendocino County Building Regulations a grading permit will be required unless exempted by the Building Official or exempt by one of the following:
 1. An excavation that (1) is less than 2 feet (610 mm) in depth or (2) does not create a cut slope greater than 5 feet (1,524 mm) in height and steeper than 1 unit vertical in 1.5 units horizontal (66.7% slope).
 2. A fill less than 1 foot (305 mm) in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope), or less than 3 feet (914 mm) in depth, not intended to support structures, that does not exceed 50 cubic yards (38.3 m³) on any one lot and does not obstruct a drainage.
2. A notation shall be placed on the Unilateral Agreement stating that, "Future development of building site(s), access roads or driveways may be subject to the grading requirements and drainage control measures identified above.

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- **3. To minimize take and other potential impacts to fish, frogs and other aquatic-based species, all work involving road construction, grading, excavation and other substantial ground disturbance shall be confined to the period July 15 through November 1. This work period will avoid sensitive life stages for red-legged frog including breeding and young adult migration seasons for this species.
- **4. Work to improve the existing logging road shall incorporate updated road design measures including an out-slope design, rocked rolling dips, critical dips at all culvert crossings and installation of road rock at areas where erosion and sediment delivery to watercourses are likely.
- **5. Work to improve the first water course crossing at the site known as the "spring area" will require a lake or streambed alteration agreement (LSAA) from the Department of Fish and Game (DFG). Fish and Game Code §1602 requires notification to DFG for an LSAA prior to any activity that substantially modifies the bed, bank, or channel or diverts or obstructs the natural flow of any river, stream, or lake. Information regarding LSAA's may be found at <http://www.dfg.ca.gov/habcon/1600/index.html>.
- **6. All roads shall be covered with an impermeable sealant or rocked at a bare minimum. Any rock material used for surfacing, including rock from onsite sources, must comply with regulations regarding asbestos content.
- **7. Any stationary onsite internal combustion engines over 50 horsepower (i.e. large power generator or pumps) may require a permit from the District, depending on fuel source and level of operation.
8. A note shall appear on the Unilateral Agreement that the access road, driveway and interior circulation routes be maintained in such a manner as to insure minimum dust generation subject to Air Quality Management District Regulation 1 Rule 430. All grading must comply with Air Quality Management District Regulations Rule 430. Any rock material, including natural rock from the property, used for surfacing must comply with Air quality Management District regulations regarding asbestos content.
- **9. All mitigation measures (i.e. Mitigation Measures 1a, 1b, 1c, 1d, 2a, 3a, 4a, 4b, 5a, 5b, 6a and 6b) provided in the addendum (dated September 27, 2008) to the original botanical report shall be conditions of this subdivision.
- **10. The first building site at the existing clearing is preferred to the alternate site that exists farther down the logging road. The remaining segment of the logging road leading to the alternate building site shall be abandoned. As an alternative to abandonment, the road shall be left its present condition and allowed to re-vegetate. Minor road maintenance may be permitted to facilitate light vehicle traffic by ATVs or other small vehicles.
- **11. To address identified impacts to California sedge, a protection and relocation plan shall be developed. This plan shall included strategies for avoiding existing plants, specific methods for relocating those plants that cannot be avoided and a monitoring plan that tracks the success of relocated plants.
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- **14. Subdivider shall submit to the Department of Planning and Building Services, an Exhibit Map demonstrating a minimum 100-foot buffer from the identified sensitive habitat as recommended in the

16 of 19

Botanical Survey prepared by Playalina Nelson, dated June 2008 (with an addendum dated September 27, 2008). A note shall be placed on the **Unilateral Agreement** that no development shall be allowed within this buffer area as delineated on the Exhibit Map on file with the Department of Planning and Building Services.

15. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2,043.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to December 4, 2009. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending the outcome of the appeal, the payment will either be filed with the County Clerk (if project is approved) or returned to the payer (if project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. **The applicant has the sole responsibility to ensure timely compliance with this condition.**
- ** 16. There shall be provided an access easement of 30 feet in width (as per tentative map) from a publicly maintained road to each parcel being created. Documentation of access easement shall be provided to the Mendocino County Department of Transportation for their review prior to final approval.
- ** 17. There shall be dedicated by Parcel Map (or granted by Grant Deed if a Unilateral Agreement is filed) a 30 foot wide half-width right-of-way along the south side of Gordon Lane (CR #404A) to provide for the ultimate improvement of the County road. This width shall be measured from the centerline of the existing right-of-way of record, or where no record right-of-way exists, from the center of the physical road.
18. If a Parcel Map is filed, all easements of record shall be shown on the parcel map. All utility lines shall be shown as easements with widths as shown of record or a minimum of ten (10) feet, whichever is greater.
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- ** 23. If approved in writing by the applicable fire protection service provider(s), subdivider shall construct a "Hammerhead-T" turnaround within a forty (40) foot wide by eighty (80) foot long easement at the terminus of the access easement. Turnaround shall be constructed with four (4) inch minimum rock base, ten (10) feet wide and sixty (60) feet long, with twenty (20) foot radius surfacing returns.
- ** 24. The subdivider shall comply with those recommendations in the California Department of Forestry and Fire Protection (CDF) letter of September 22, 2008 (CDF #323-08) or other alternatives as acceptable to the Department of Forestry. Written verification shall be submitted from CDF to the Department of

17919

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- **25. The applicant shall submit to the Division of Environmental Health an acceptable site evaluation report (DEH FORM # 42.04) for Parcel 2 completed by a qualified individual demonstrating compliance with the North Coast Regional Water Quality Control Board's Basin Plan Policy for On-site Waste Treatment and Disposal and Mendocino County Division of Environmental Health's Land Division Requirements (DEH FORM # 26.09).
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- **29. A note shall appear within the Unilateral Agreement that in the event that archaeological resources are encountered during development of the property, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
- 30. The applicant is hereby notified that this proposed division lies within the Coastal Zone Boundary and additional action may be necessary. For information you should contact the California Coastal Commission at 45 Fremont Street, Suite 2000, San Francisco, California, 94105-2219.
- 31. When all conditions of approval have been satisfied, the applicant shall submit the completed Unilateral Agreement and the Recording Fees to the Planning and Building Services Department for review, approval and recordation.
- 32. A note shall appear on the Unilateral Agreement that "No toxic, hazardous or contaminated materials or waste shall be stored in a designated buffer area or clearly identified flood plain or flood way."
- 33. Pursuant to Government Code Section 66492 & 66493, prior to recordation of the Unilateral Agreement, the subdivider must: (1) Obtain a Certificate from the Mendocino County Tax Collector stating that all current taxes and any delinquent taxes have been paid and; (2) Pay a security deposit (or bond) for taxes that are a lien, but not yet due and payable.

10/14/09
DATE


JOHN SPEKA
PLANNER II

JS/at
October 14, 2009

18 of 19

Negative Declaration
Appeal Fee - \$1,365.00
Appeal Period - 10 days

** Indicates conditions relating to Environmental Considerations - deletion of these conditions may affect the issuance of a Negative Declaration.

REFERRAL AGENCIES	REFERRAL NOT RETURNED	REFERRAL RECEIVED "NO COMMENT"	COMMENTS RECEIVED
Planning- FB	X		
Department of Transportation			X
Environmental Health			X
Building Inspection- FB		X	
Assessor	X		
Air Quality Management			X
County Water Agency	X		
Archaeological Commission			X
Sonoma State University			X
Native Plant Society	X		
Caltrans	X		
CalFire	X		
Department of Fish and Game			X
Coastal Commission	X		
Department of Parks and Rec	X		
Mendocino Rural FD	X		
Mendocino Unified SD	X		

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Playalina Nelson, Botanical Consultant
P.O Box 5765, Santa Rosa, CA. 95402
(707) 357-1134
playalina@gmail.com

July 10, 2010

California Coastal Commission
Attention: Melissa B. Kraemer
North Coast District Office
710 East E St. Suit 200
Eureka, CA. 95501

RECEIVED
JUL 29 2010
CALIFORNIA
COASTAL COMMISSION

RE: Letter addressing the proposed alternative building areas for the Yasskin Property located at 44401 Gordon Lane, Mendocino, Mendocino County APN 121-070-22

Dear Ms. Kraemer,

Based on feedback from the Coastal Commission, a preliminary map has been completed to develop an alternative building envelope and driveway entrance on the Yasskin property. This follow up letter is based on this revised map prepared by Dick Seale. The alternative building areas depicted on the map are at least 100' from all identified ESHAs and particularly the California sedge (*Carex californica*) and Mendocino Cypress (*Callitropsis pygmaea*) areas that are mostly associated with the existing logging road and semi cleared areas.

The new proposed driveway route utilizes the exiting logging road to the edge of the dead and dying Mendocino cypress trees that are not considered an ESHA. At this point, the driveway route extends off of the existing logging road towards the southwest through the forest. The proposed driveway would extend essentially parallel to the existing logging road for approximately 150-200' to the proposed building site. The proposed building site is approximately 7000 sf. This site would accommodate the future development of a single family residence. The proposed area is semi cleared with less large trees and is mostly level.

As much as possible, the driveway was designed to minimize tree removal and land disturbance through the forest. It is anticipated that the alternative driveway and building envelope within the forest would remove approximately 6-10 hemlock, 12-20 redwood and 4-6 Douglas-fir trees ranging in DBH (Diameter at Breast Height).

A botanical survey and report was completed on the property dated June 2008 and a Buffer Analysis was completed dated September 27, 2008, based on the original proposed development. To address the alternative building site, a protocol botanical survey was conducted during the 2010 bloom windows for areas that were not surveyed during the previously completed study.

EXHIBIT NO. 8

APPLICATION NO.

A-1-MEN-09-051

YASSKIN, DAKERS, DRAKE &
GRAHAM

CORRESPONDENCE FROM
APPLICANTS (1 of 33)

As a part of these additional surveys all resources that may meet the definition of an ESHA based on the Mendocino County Local Coastal Plan were assessed in particular the potential presence of sensitive and rare plants and plant communities, wetlands and riparian areas. Additional surveys were done to address the proposed driveway and house location.

As described in the previous botanical report the majority of the property is composed of Mixed conifer forest and is dominated with an overstory of Bishop pine trees (*Pinus muricata*), Douglas-fir (*Pseudotsuga menziesii* var. *menziesii*), redwood (*Sequoia sempervirens*) and Western hemlock (*Tsuga heterophylla*). The shrub and herbaceous layer is composed of evergreen huckleberry (*Vaccinium ovatum*), salal (*Gaultheria shallon*), wax myrtle (*Myrica californica*), rhododendron (*Rhododendron macrophyllum*), western bracken fern (*Pteridium aquilinum* var. *pubescens*), Douglas iris, (*Iris douglasiana*), and California blackberry (*Rubus ursinus*).

Based on the surveys conducted no ESHAs were located within the areas surveyed that pertain to the proposed alternative building areas. All ESHAs located are at least 100' feet from the alternative building site and driveway. These ESHAs include the previously identified water courses, California sedge and Mendocino cypress. The proposed development would extend within the forest away from these areas.

For any further information regarding the additional surveys conducted or the proposed alternative driveway route and residence site, please feel free to contact me. Thank you for your coordination and communication with regards to this project.

Sincerely,

Playalina Nelson

Owners: Colin Drake & Sasha Graham
 44401 Gordon Lane
 Mendocino, Ca 95460

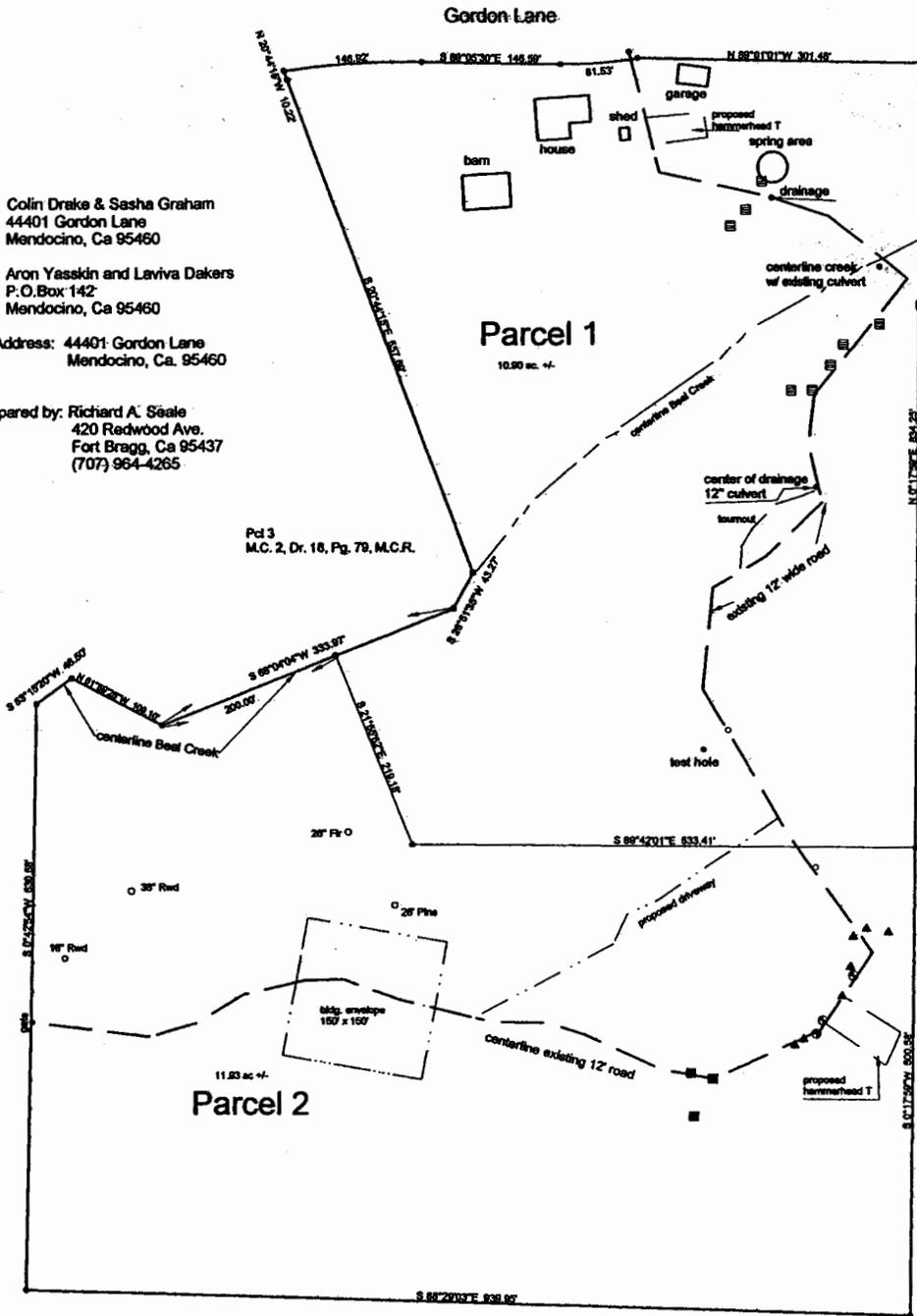
Aron Yasskin and Laviva Dakers
 P.O.Box 142
 Mendocino, Ca 95460

Project Address: 44401 Gordon Lane
 Mendocino, Ca. 95460

Map prepared by: Richard A. Seale
 420 Redwood Ave.
 Fort Bragg, Ca 95437
 (707) 964-4265

Pd 2
 M.C. 2, Dr. 18, Pg. 79, M.C.R.

Pd 3
 M.C. 2, Dr. 18, Pg. 79, M.C.R.



1" = 200'

LEGEND

- scattered dying MC
- traverse points unless noted on map, or exterior boundary
- ⊙ CC
- ▲ MC
- scattered MC & CC
- approx. centerline along old road 12' wide
- ▣ riparian area

revised

TENTATIVE MAP

Proposed Minor Subdivision of A.P. # 121-070-22, being Parcel 1 of that Parcel Map filed in Map Case 2, Drawer 18, Page 79, Mendocino County Records and being a portion of Section 5, Township 16 North, Range 17 West, Mount Diablo Base and Meridian.

Mendocino County
 Scale 1" = 200'

California
 October, 2008

Sheet one of one July, 2010 revised

Hi Melissa,

Here are some of the answers to your last questions:

First; the septic has been located on the map we sent in with our request to the coastal commission for our subdivision. It has been approved by Carl Rittamen and associates, local certified soil scientist. There are no other Eshas on this property - Playalina, our botanist states that clearly in her botanical report then again in her buffered analysts. The septic is west, roughly 400 to 600 feet of the outlined Esha on the map I provided you. It is 200 to 400 feet north west of our new purposed building site.

Second; I am inclosing some ideas that we started with for our drive way. The majority of the grading has already been done from when the loggers punched in their road. Our botanist states that she wants us to work with an engineer to develop a secure drive way that responsibly deals with any erosion or sediment. We are also held responsible by the county standards for a drive way, I have enclosed what some of those requirements are. What we have is a beginning to create this drive way. In the opinions I have received (fish and game, Playalina, & Lee welty the civil engineer) the heavy grading has been done and the one area by the spring is very fixable. We will also be removing the duff on the existing road and doing some light grading,. Then the road will have to be rocked. In all, I believe the standards that we our going to be held to will address the concerns that you have stated i.e., any widening of the drive way, riparian accesses and so on. I also understand that we cannot subdivide until the drive way is approved and installed. So that leaves the LCP having to approve our design.

Lastly, I feel that we have been thorough and maintained a commitment to this process and the land. It has been a learning experience for myself and my land partner and a painful financial loss for our families. However, we grew up here, and went to mendocino high school together and we are committed to staying here. We are hard working and have integrity in our vision for raising our families in this community and on this land. The local government (Theresa Spade, Rick Mencita of fish and game John Speaka of county planning) have been to this site, walked it, and they have all agreed that what are asking to do is reasonable. I understand the concerns of the Coastal Commission and feel that we have addressed everything that has been presented to us as thouroughly and cooperatively as we are able - and believe this project deserves your support. I have also inclosed our 1600 permit.

I know that time is needed in this process and your staff has many cases. Unfortunately for us this process is becoming a simple matter of whether we can financially outlast the complexity of all the parts - we are playing a rich person's game with a limited budget. Please look carefully at all the information that has been provided, our local professionals have all agreed that this is a reasonable project, 22.3 acres cut in half, one new single family house site, all efforts made to protect sensitive habitat. At this point we need to go forward or will have the inability to financially hold out. Thank you again for your time and careful consideration.

Sincerely,

Aron Yasskin,
LaViva Dakers,
Colin Drake,
Sasha Graham

RECEIVED
SEP 29 2010
CALIFORNIA
COASTAL COMMISSION

YASSKIN/DRAKE PHOTOS.



Logging road to be converted to driveway



Logging road to be converted to driveway



Example of outsloped roadway.

ANR Publication 8262



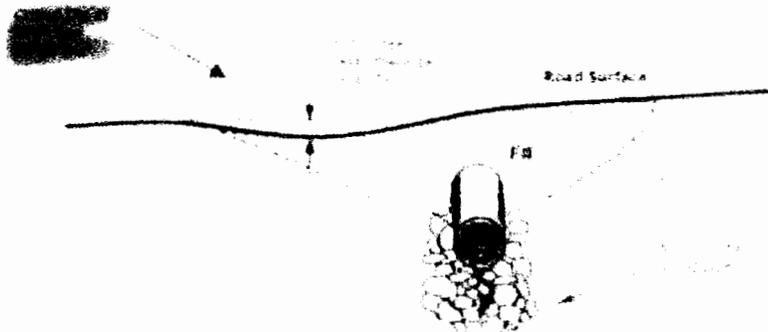
Example of rolling dip.

ANR Publication 8262



Figure 13A. Rolling dip on an out-sloped road. Proportions are exaggerated for clarity. (In practice, rolling dips can be subtle and still be effective.) Source: Kelber and Shear 2003.

Example of rolling dip on outsloped road (exaggerated proportions).



Example of critical dip at culvert.

GENERAL PLAN CONSISTENCY RECOMMENDATION: Subject to the recommended conditions of approval, the proposed project is consistent with applicable goals and policies of the General Plan and those of the Local Coastal Program.

RECOMMENDED MOTION:

General Plan Consistency Finding: The proposed project is consistent with applicable goals and policies of the Coastal Element of the General Plan as subject to the conditions being recommended by staff.

Environmental Findings: The Planning Commission finds that no significant environmental impacts would result from the proposed project which can not be adequately mitigated through the conditions of approval; therefore, a Negative Declaration is adopted.

Coastal Development Permit Findings: The Planning Commission finds that the application and supporting documents and exhibits contain information and conditions sufficient to establish, as required by Section 20.532.095 of the Coastal Zoning Code, that:

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 zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code, and preserves the integrity of the zoning district; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan.

Coastal Land Division Findings: The Planning Commission finds that the project as proposed, and subject to the recommended conditions of approval, will satisfy the requirements of Section 20.532.100(C)(1) of the Coastal Zoning Code, in that:

1. The new lots created have or will have adequate water, sewage, including a long term arrangement for septage disposal, roadway and other necessary services to serve them; and
2. The new lots created will not have, individually or cumulatively, a significant adverse environmental effect on environmentally sensitive habitat areas or on other coastal resources; and
3. The new lots created will not significantly adversely affect the long-term productivity of adjacent agricultural or timber lands; and

4. Other public services, including but not limited to, solid waste and public roadway capacity, have been considered and are adequate to serve the proposed parcels; and
5. The proposed land division meets the requirements of Chapter 20.524 and is consistent with all applicable policies of the Coastal Element.

Project Findings: The Planning Commission making the above findings, approves #CDMS 23-2008 subject to the conditions of approval recommended by staff.

RECOMMENDED CONDITIONS OF APPROVAL: For a Coastal Development Minor Subdivision which has been approved according to the Mendocino County Code, the following "Conditions of Approval" shall be completed prior to filing a Parcel Map.

- ** 1. The subdivider shall acknowledge in writing to the Department of Planning and Building Services that all grading activities and site preparation, at a minimum, shall adhere to the following Best Management Practices (BMPs). The applicant shall submit to the Department of Planning and Building Services an acknowledgement of these grading and site preparation standards:
- a. That adequate drainage controls be constructed and maintained in such a manner as to prevent contamination of surface and/or ground water, and to prevent erosion.
 - b. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required to conduct the operation.
 - c. All concentrated water flows, shall be discharged into a functioning storm drain system or into a natural drainage area well away from the top of banks.
 - d. Temporary erosion control measures shall be in place at the end of each day's work, and shall be maintained until permanent protection is established.
 - e. Erosion control measures shall include but are not limited to: seeding and mulching exposed soil on hill slopes, strategic placement of hay bales below areas subject to sheet and rill erosion, and installation of bioengineering materials where necessary. Erosion control measures shall be in place prior to October 1st.
 - f. All earth-moving activities shall be conducted between July 15th and November 1st of any given calendar year, per recommendations from the California Department of Fish and Game (DFG).
 - g. Pursuant to the California Building Code and Mendocino County Building Regulations a grading permit will be required unless exempted by the Building Official or exempt by one of the following:
 1. An excavation that (1) is less than 2 feet (610 mm) in depth or (2) does not create a cut slope greater than 5 feet (1,524 mm) in height and steeper than 1 unit vertical in 1.5 units horizontal (66.7% slope).
 2. A fill less than 1 foot (305 mm) in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope), or less than 3 feet (914 mm) in depth, not intended to support structures, that does not exceed 50 cubic yards (38.3 m³) on any one lot and does not obstruct a drainage.
2. A notation shall be placed on the Unilateral Agreement stating that, "Future development of building site(s), access roads or driveways may be subject to the grading requirements and drainage control measures identified above.

- 1600
PERMIT
INCLUDED
IN PACKET →
- **3. To minimize take and other potential impacts to fish, frogs and other aquatic-based species, all work involving road construction, grading, excavation and other substantial ground disturbance shall be confined to the period July 15 through November 1. This work period will avoid sensitive life stages for red-legged frog including breeding and young adult migration seasons for this species.
- **4. Work to improve the existing logging road shall incorporate updated road design measures including an out-slope design, rocked rolling dips, critical dips at all culvert crossings and installation of road rock at areas where erosion and sediment delivery to watercourses are likely.
- **5. Work to improve the first water course crossing at the site known as the "spring area" will require a lake or streambed alteration agreement (LSAA) from the Department of Fish and Game (DFG). Fish and Game Code §1602 requires notification to DFG for an LSAA prior to any activity that substantially modifies the bed, bank, or channel or diverts or obstructs the natural flow of any river, stream, or lake. Information regarding LSAA's may be found at <http://www.dfg.ca.gov/habcon/1600/index.html>.
- **6. All roads shall be covered with an impermeable sealant or rocked at a bare minimum. Any rock material used for surfacing, including rock from onsite sources, must comply with regulations regarding asbestos content.
- **7. Any stationary onsite internal combustion engines over 50 horsepower (i.e. large power generator or pumps) may require a permit from the District, depending on fuel source and level of operation.
8. A note shall appear on the Unilateral Agreement that the access road, driveway and interior circulation routes be maintained in such a manner as to insure minimum dust generation subject to Air Quality Management District Regulation 1 Rule 430. All grading must comply with Air Quality Management District Regulations Rule 430. Any rock material, including natural rock from the property, used for surfacing must comply with Air quality Management District regulations regarding asbestos content.
- **9. All mitigation measures (i.e. Mitigation Measures 1a, 1b, 1c, 1d, 2a, 3a, 4a, 4b, 5a, 5b, 6a and 6b) provided in the addendum (dated September 27, 2008) to the original botanical report shall be conditions of this subdivision.
- **10. The first building site at the existing clearing is preferred to the alternate site that exists farther down the logging road. The remaining segment of the logging road leading to the alternate building site shall be abandoned. As an alternative to abandonment, the road shall be left its present condition and allowed to re-vegetate. Minor road maintenance may be permitted to facilitate light vehicle traffic by ATVs or other small vehicles.
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2/10/08

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- **28. Any future development proposed within the area identified as a "Sensitive Resource Area" on Parcel 1 of the Tentative Map dated October 2008 shall require a specific study prepared by a qualified individual in the field to determine potential impacts to archaeological resources.
- **29. A note shall appear within the Unilateral Agreement that in the event that archaeological resources are encountered during development of the property, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
30. The applicant is hereby notified that this proposed division lies within the Coastal Zone Boundary and additional action may be necessary. For information you should contact the California Coastal Commission at 45 Fremont Street, Suite 2000, San Francisco, California, 94105-2219.
31. When all conditions of approval have been satisfied, the applicant shall submit the completed Unilateral Agreement and the Recording Fees to the Planning and Building Services Department for review, approval and recordation.
32. A note shall appear on the Unilateral Agreement that "No toxic, hazardous or contaminated materials or waste shall be stored in a designated buffer area or clearly identified flood plain or flood way."
33. Pursuant to Government Code Section 66492 & 66493, prior to recordation of the Unilateral Agreement, the subdivider must: (1) Obtain a Certificate from the Mendocino County Tax Collector stating that all current taxes and any delinquent taxes have been paid and; (2) Pay a security deposit (or bond) for taxes that are a lien, but not yet due and payable.

10/14/09
DATE


JOHN SPEKA
PLANNER II

JS/at
October 14, 2009

Negative Declaration
Appeal Fee - \$1,365.00
Appeal Period - 10 days

** Indicates conditions relating to Environmental Considerations - deletion of these conditions may affect the issuance of a Negative Declaration.

REFERRAL AGENCIES	REFERRAL NOT RETURNED	REFERRAL RECEIVED "NO COMMENT"	COMMENTS RECEIVED
Planning- FB	X		
Department of Transportation			X
Environmental Health			X
Building Inspection- FB Assessor	X	X	
Air Quality Management			X
County Water Agency	X		
Archaeological Commission			X
Sonoma State University			X
Native Plant Society	X		
Caltrans	X		
CalFire	X		
Department of Fish and Game			X
Coastal Commission	X		
Department of Parks and Rec	X		
Mendocino Rural FD	X		
Mendocino Unified SD	X		

Playalina Nelson, Botanical Consultant
P.O Box 5765
Santa Rosa, CA. 95402
(707) 357-1134
playalina@gmail.com

September 27, 2008

Teresa Spade
Mendocino County Dept. of Planning & Building Services
Coastal Planning Division
790 South Franklin Street
Fort Bragg, CA. 95437

RE: An addendum to the completed botanical report dated June 2008 for the Yasskin property located at 44401 Gordon Lane, Mendocino, Mendocino County APN 121-070-22.

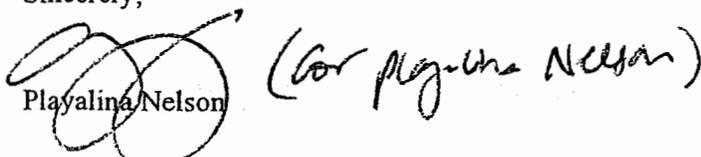
Dear Teresa,

Attached, please find a Buffer Analysis as part of the Coastal Zoning Code section 20.496.020, subparts (A)(1)(a) - (g) and (A)(4)(a) - (k), which is required to address the proposed Minor Subdivision on this parcel. This Minor Subdivision would result in making improvements to the existing logging road (conversion to a driveway) that extends through riparian habitat associated with Beal Creek. This riparian habitat meets the definition of an ESHA according to the Mendocino County LCP, and therefore necessitates being addressed with a Buffer Analysis.

In addition – though not as part of the Buffer Analysis, mitigation measures are being recommended in order to protect the rare and endangered plants that are located on site within the proposed building envelope and along portions of the existing logging road. Based on interpretation of the Mendocino County LCP and feedback from the County, the plants located on site may not meet the definition of an ESHA though they may warrant protections based on CEQA and DFG guidelines.

I believe that the following Buffer Analysis and recommended mitigation measures are sufficient to address guidelines based on the California Coastal Commission, the Mendocino County's Local Coastal Plan, the Department of Fish & Game and. Please let me know if any further analysis is required.

Sincerely,


Playalina Nelson

Botanical Consultant
PO Box 5765
Santa Rosa, Ca. 95402

Mitigation measures to reduce adverse impacts that the proposed improvements to the existing logging road (conversion to a driveway) may have on the riparian habitat associated with Beal Creek, the wetland/spring and the seasonal drainage that flows into Beal Creek based on the Coastal Zoning Code section 20.496.020, subparts (A)(1)(a) through (g) and (A)(4)(a) through (k):

1. *The proposed improvements to the existing logging road (conversion to a driveway) may cause the delivery of sediment to enter Beal Creek through erosion and run-off:* The conversion of the existing logging road into a driveway will require that it be graveled; however, it is possible that converting the portion of the logging road into a driveway that is just north of the riparian habitat will require that it be paved due to the steepness of its slope in this area.

This conversion will not require that the logging road be widened more than its current 10' width within the riparian habitat or within its buffer. South of the riparian habitat, and beyond its buffer area, a portion of the logging road would need to be widened in order to accommodate a required driveway turnout. There is scattered vegetation within the logging road that has re-vegetated since logging operations have ceased and the road has been under-utilized. Currently, the logging road is 10' wide and does not need to be widened in order to convert it into a driveway; however, according to CalFire requirements, there would be one turnout and two hammer-head Ts. The hammer-head T north of Beal Creek would be located close to Gordon Lane, where a small barn is currently located; the turnout would be located south of Beal Creek and the seasonal drainage that flows into it; the second hammer-head T would be located at the proposed building envelope. The hammer-head Ts and turnout would be at least 100' from the riparian habitat; therefore, outside of the ESHA and its buffer.

Mitigation measure 1a: The conversion of the logging road into a driveway should be designed by a civil engineer based on Best Management Practices (BMPs) in order to minimize sediment delivery into Beal Creek. Specifically, an erosion control plan should be written to include: seasonal restrictions for grading and graveling, the placement of wattles along the slope of the driveway, and the placement of a temporary construction fence along the creek. The construction fence should be placed prior to any development activity that would occur along the edge of the bank.

The driveway conversion should be designed utilizing out-sloping so that stormwater sheets off the road and follows the overall natural topography rather than being directed into ditches, which is currently why there are alders and other hydrophytic vegetation established along the driveway. By having stormwater sheet off of the driveway following the overall natural topography, erosion will be highly reduced and run-off will be more dispersed into the vegetation and the soil.

Mitigation measure 1b: No excess soil as the result of this conversion activity shall be placed down the riparian slope; any excess soil should be taken off site or regraded into the driveway. No gravel, cement or excess soil from grading or other materials should be placed down the riparian slope. A qualified botanist should make a site visit following any future grading, graveling or paving. The purpose of this site visit would be to determine that disturbance to the riparian habitat has not occurred. Particularly, the botanist should inspect for any placement of gravel, cement or other materials down the riparian slope; the

botanist should also inspect for any potential vegetation removal along the existing logging road.

Mitigation measure 1c: Several (3-5) photos points should be established and photos taken from within the gulch in order to monitor potential erosion and any degradation that may occur along the gulch. These photo points should be assessed every 2 years for a period of 4 years. Should erosion be evident, then the driveway should be evaluated for improvements and re-vegetation or other restoration work should be performed.

Mitigation measure 1d: Every two years for a period of 4 years, in conjunction with assessing the photo points, the driveway should be surveyed to ensure that water is not flowing through or along the driveway or causing unnatural drainage patterns. This should be conducted by a qualified professional who can determine what improvements the driveway will need in order to maintain natural hydrology patterns as much as possible and to prevent directing unnatural water into the gulch.

2. The proposed road improvements may cause the removal or disturbance of riparian habitat that is adjacent to the driveway based on the minimal grading that will occur: As previously stated, the driveway will maintain approximately the current width of the logging road, which is 10'; however, it is anticipated that some widening in spots would need to occur that may remove riparian habitat. Also, the driveway will need some grading, which may move soil towards the riparian habitat.

Mitigation measure 2a: A re-vegetation plan should be written based on vegetation that is removed or disturbed as a result of the proposed driveway conversion. Any habitat that is ~~disturbed should be~~ cleaned and restored. Based on the LCP "Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area."

Vegetation that would be removed due to the driveway conversion should be salvaged – potted if necessary – and then transplanted along the slope when the driveway conversion is complete. The most suitable species that is currently growing along the slope is sword fern (*Polystichum munitum*), because it is dominant and can be transplanted. A minimum of 50% of sword fern that is removed shall be salvaged and replanted. This should be overseen by a botanist or qualified restoration biologist as part of a re-vegetation plan; monitoring should be performed in order to ensure that re-vegetation efforts have been successfully implemented and carried out. Prior to driveway conversion, areas that would be impacted should be outlined and plants should be transplanted. Another site visit should be conducted following the conversion in order to determine if further transplanting or restoration is required to replace any riparian habitat that may have been disturbed.

3. A portion of the spring/wetland that is within the riparian area and feeds water into Beal Creek would be partially removed as a result of driveway conversion: Water from the spring feeds into Beal Creek. Currently, there is a ditch across the existing logging road that directs water from the spring to Beal Creek; there is currently a footbridge over this ditch. This ditch and footbridge would need to be replaced with a culvert in order to direct water under the driveway.

Mitigation measure 3a. Measures should be implemented to replace riparian habitat that may be lost through the conversion of the driveway and the installation of the culvert. Based on the LCP "Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area." Based on any feedback from DFG, a larger area of may need to be restored to meet CEQA guidelines.

Efforts should be made to minimize habitat disturbance to the greatest extent possible, avoiding disturbance when possible. A minimum of 50% of the plants that would be impacted shall be salvaged and transplanted in the general vicinity of the disturbance. Most of the plants associated with the spring are suitable for transplanting. Transplanting efforts shall be assessed prior to any driveway conversion activity. Transplanting efforts shall be overseen by a qualified professional and carried out in conjunction with other relevant mitigation measures.

4. Invasive plants may become established as a result of the driveway conversion and associated land disturbance:

Mitigation measure 4a: A site visit should be performed one year following the conversion of the driveway in order to determine if invasive plants have become established as a result of conversion activities. Should invasive plants become established, removal efforts should be conducted in accordance with an invasive plant removal plan.

Mitigation measure 4b: Several invasive species were located on site that include: ivy (*Hedera canariensis*, *Delairea-odorata* or *Hedera-helix*) and ~~cotoneaster (*Cotoneaster pannosus*)~~. Fox glove (*Digitalis purpurea*) was also found, which is less aggressive; nevertheless, it should be removed. These plants are not wide spread, though they are scattered throughout the project area. These invasive plants are manageable and should be removed as soon as possible.

Basic monitoring should be conducted in conjunction with other relevant mitigation measures in order to determine the scope of the removal efforts. It is expected that if the invasive plants are removed at least once a year for 4 years, their populations will be highly reduced. A basic invasive plant removal plan may need to be written that would include outlining removal objectives, methods for removal and a timeline. This may need to be done in conjunction with *Mitigation measure 4a.*

Mitigation measures recommended in order to reduce adverse impacts that the development may have on the Mendocino cypress and California sedge plants based on the California Environmental Quality Act (CEQA):

5. The proposed development would impact the California sedge (*Carex californica*). Approximately 30-50 plants were located growing within the proposed building envelope on Proposed parcel 2 and would be impacted by future development: Approximately 50 individuals were located growing within the logging road as it extends farther south, below Beal Creek. Additional individuals were located beyond the proposed building area within and along

the logging road. There is highly suitable habitat for transplanting the Carex beyond the proposed building envelope.

Mitigation measure 5a: Prior to any construction activity that would impact the California sedge, all individuals should be flagged, dug up and relocated (i.e., transplanted). All transplanting should be done as part of a transplanting and monitoring plan that should be completed by a qualified professional. Basic components of this plan should include:

A. Transplanting shall occur prior to any development activity that may impact the plants and after the first rains of the year when the ground is sufficiently wet, which is usually by October or November, though sometimes later in the year. If necessary, plants shall be watered after they are planted and until they are established.

B. Transplanted individuals shall be counted and documented in order to create an accurate assessment of their survival rates and to document any natural recruitment. The site shall be evaluated in spring and summer during the flowering period, and the numbers of individuals shall be counted annually in the spring and/or summer for three successive years.

C. Evaluation of the site shall continue for the life of the identified objectives. Threats to the viability of the transplanted plants (i.e., exotic weeds, lack of water, etc.) shall be addressed and documented.

D. Basic Objectives may include:

-One year following re-planting of California sedge, 75% or greater of the individual plants introduced to the restoration sites shall have survived.

-Within 3 years of replanting, the species shall be re-established to a minimum of 90% of its pre-restoration occurrence, as determined through creation of the pre-restoration baseline.

-Within 4 years, or during the life restoration plan, whichever is greater, all exotic weeds identified for eradication shall be removed from the restoration area and shall not be a threat to any of the transplanted individuals.

Mitigation measure 5b: Construction materials and vehicles shall not use occupied California sedge habitat for storage or staging areas. Fluid materials such as concrete rinse water, fuels, and lubricants should not be disposed of onsite and should be stored or confined as necessary to prevent spillage into natural habitats, including the California sedge habitat and the adjacent areas.

As outlined in a recommended transplanting and monitoring plan, all necessary long-term monitoring shall be carried out and the necessary periodic updates shall be provided to either Department of Fish and Game or the County of Mendocino's Planning Department in order to ensure long-term protection of the California sedge and to prevent a net loss of individuals.

6. *The proposed development would impact the Mendocino Cypress (Cupressus goveniana ssp. pigmaea) located within the proposed building envelope and along the existing logging road:* Approximately 10-15 mature and mostly dying individuals were located along the logging road, north of the proposed building envelope, 10-15 individuals were located within the proposed building envelope, and approximately 40 individuals were located south of the proposed building envelope along the logging road and turnaround. Generally, Mendocino cypress occurs as a key species associated with Pygmy habitat. Pygmy habitat is not present on the subject parcel. Pygmy habitat is present approximately 0.5 miles north, along Gordon Lane. Based on personal observation, isolated cypress trees generally occur within transitional areas between pygmy habitat and other plant communities, such as redwood forest, Bishop-pine forest or associated with disturbed areas within forested plant communities.

Mitigation measure 6a: Cypress trees that are 2 feet or smaller should be transplanted as part of a Transplanting Plan described and outlined as part of *Mitigation measure 5a*. It is expected that trees that are larger than 2 feet would not be suitable for transplanting and would therefore constitute a taking.

Mitigation measure 6b: Seedlings may be able to found at a local nursery for the purposes of planting on the property; however, based on the unnatural conditions and the lack of pygmy habitat, this may not be the best measure to offset the loss of cypress trees. It may be more beneficial and therefore appropriate to complete off-site mitigation measures that may include removing invasive plants that are within pygmy habitat on private property or State Property.



California Natural Resources Agency
 DEPARTMENT OF FISH AND GAME
 Northern Region
 601 Locust Street
 Redding, California 96001
 (530) 225-2367
www.dfg.ca.gov

ARNOLD SCHWARZENEGGER, Governor
 DONALD KOCH, Director



RECEIVED

NOV 02 2009

NOTIFICATION NO. R1-09-0330
 Culvert On Beal Creek Tributary
 (1 encroachment)

Page 1 of 6

D. F. G. – EUREKA

AGREEMENT REGARDING PROPOSED LAKE OR STREAMBED ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called DFG, and **Mr. Elias Steinbuck representing Colin Drake, Sasha Graham, Aron Yasskin and Laviva Dakers**, hereinafter jointly and severally called the Entity (Responsible Party), is as follows:

WHEREAS, pursuant to Division 2, Chapter 6 of the California Fish and Game Code (Code), the Responsible Party, on **September 21, 2009**, notified DFG of the intention to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed of, the following water: **Unnamed Tributary to Beal Creek, tributary to Little River, thence the Pacific Ocean**, in the County of **Mendocino**. These waters are located in **Section 5, T16N, R17W; Mount Diablo Base and Meridian**, in the **Mendocino USGS 7.5-minute quadrangle**; and

WHEREAS, DFG has determined that without implementation of the conditions contained within this Agreement, such operations may substantially adversely affect existing fish and wildlife resources including, but not limited to: **northern red-legged frog (*Rana aurora*), downstream populations of coho salmon (*Oncorhynchus kisutch*), steelhead (*O. mykiss*), amphibians, reptiles, and other aquatic and riparian species.**

THEREFORE, DFG hereby proposes measures to protect fish and wildlife resources during the Responsible Party's work. The Responsible Party hereby agrees to accept and conduct all activities in accordance with the following:

ADMINISTRATIVE PROVISIONS:

- 1) If the Responsible Party's work changes from that stated in the notification specified above, this Agreement is no longer valid and a new notification shall be submitted to DFG. Failure to comply with the provisions of this Agreement and with other pertinent Code sections, including but not limited to Sections 5650, 5652, 5901, 5937, and 5948, may result in prosecution.
- 2) Additional projects may be added to this Agreement by amendment with approval by DFG.
- 3) DFG reserves the right to authorize minor language revisions to this Agreement provided both DFG and the Responsible Party concur with minor language changes and both initial and date changes on the respective documents belonging to both the Responsible Party and DFG.
- 4) Nothing in this Agreement authorizes the Responsible Party to trespass on any land or property, nor does it relieve the Responsible Party of responsibility for compliance with applicable federal, state, or local laws or ordinances. A consummated Agreement does not constitute DFG endorsement of the proposed operation, or assure DFG's concurrence with permits required from other agencies.

- 5) The provisions contained in this Agreement constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the Responsible Party is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by this Agreement shall be subject to separate notification pursuant to Code Section 1600 *et seq.*
- 6) In accordance with Code Section 1605, the Responsible Party may request one extension of this Agreement, provided that the request is made in writing prior to the expiration of its original term. DFG shall grant the extension if the appropriate extension fee is paid unless it determines that the Agreement requires modification because the measures contained in the Agreement no longer protect the fish and wildlife resources that the activity may substantially adversely affect. If the Responsible Party fails to request the extension prior to the Agreement's termination then the Responsible Party shall submit a new notification with fees and required information to DFG. Any activity conducted under an expired Agreement is a violation of Code Section 1600 *et seq.*
- 7) The Responsible Party shall provide a copy of this Agreement to all contractors, subcontractors, and the Responsible Party's project supervisors. Copies of the Agreement and any amendment thereto shall be readily available at work sites at all times during periods of active work and must be presented to any DFG personnel, or personnel from another agency upon demand.
- 8) The Responsible Party agrees to allow DFG employees access to any property it owns and/or manages for the purpose of inspecting and/or monitoring the activities covered by this Agreement, provided DFG: a) provides 24 hours advance notice; and b) allows the Responsible Party or representatives to participate in the inspection and/or monitoring. This condition does not apply to DFG enforcement personnel.
- 9) All provisions of this Agreement remain in force throughout the term of the Agreement. Any provisions of the Agreement may be amended or the Agreement may be terminated at any time provided such amendment and/or termination are agreed to in writing by both parties. Mutually-approved amendments become part of the original Agreement and are subject to all previously negotiated provisions.
- 10) It is understood DFG will enter into this Agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of the Responsible Party. It is further agreed all liability and/or incurred cost related to or arising out of the Responsible Party's project and the fish and wildlife protective measures of this Agreement, remain the sole responsibility of the Responsible Party. The Responsible Party agrees to hold harmless the State of California and DFG against any related claim made by any party or parties for personal injury or any other damages.
- 11) This Agreement is not intended as an approval of a project or of specific project features by DFG. Independent review and recommendations will be provided by DFG as appropriate on those projects where local, state, or federal permits or other environmental reports are required.
- 12) Suspension and Cancellation. DFG may suspend or cancel this Agreement if DFG determines that circumstances warrant suspension or cancellation. The circumstances that might warrant suspension or cancellation include, but are not limited to, the following:

- a) Failure by the Responsible Party, or his/her employees, agents, representatives, contractors, and/or subcontractors, to comply with any of the terms and measures of this Agreement.
- b) DFG determines that the information the Responsible Party provided to DFG to develop this Agreement, or the information contained in a notification, is incomplete or inaccurate.
- c) DFG obtains new information that shows the work authorized by this Agreement could substantially adversely affect fish and wildlife resources, notwithstanding Responsible Party's compliance with the Agreement.
- d) DFG determines that measures to protect fish and wildlife resources different from those included in this Agreement are necessary to protect those resources.
- e) There is a substantial change in conditions. For purposes of this Agreement, "substantial change in conditions" shall mean one or more of the following: 1) the work described in this Agreement is substantially changed; 2) conditions affecting fish and wildlife resources substantially change; and/or 3) the work conducted under this Agreement have adversely affected, or will adversely affect, fish and wildlife resources, notwithstanding that Responsible Party has complied, or will comply with, the terms and measures of this Agreement.

Scope of Suspension. At the discretion of DFG, any action to suspend this Agreement may be limited in scope to address the specific problem or problems resulting in the suspension. Hence, DFG may limit the suspension to specified work or specified areas. DFG shall notify Responsible Party of any suspension of the Agreement, or any part thereof, in writing. Any suspension shall take effect immediately upon receipt of such notice by Responsible Party, or in accordance with the instructions contained in the notice. Such notice will identify the reason or reasons for the suspension, the actions necessary to correct the problem, and the scope of the suspension.

Reinstatement Following Suspension. DFG may lift any suspension when it has determined that Responsible Party has adequately addressed the problem or problems resulting in the suspension and that reinstatement of the Agreement will not cause harm to fish and wildlife resources.

OPERATIONAL

NOTIFICATION MATERIALS AND PROJECT DESCRIPTION:

13) Except where otherwise stipulated in this Agreement, all work shall be in accordance with the project description, work plans, photos and, submitted with Notification No. R1-09-0330 as modified or amended as of September 21, 2009.

14) This Agreement pertains to one encroachment; *install a new 18-inch culvert crossing and complete associated streambank stabilization on an Unnamed Tributary to Beal Creek at 44401 Gordon Lane, Mendocino.*

PROJECT TIMING AND COORDINATION:

15) All work within the bed, bank and channel shall be confined to the period June 15 through October 15 of each year. Work may be conducted in or near the stream during the late season work period October 15 through November 1, provided adherence to all conditions in this Agreement and a) – d) below.

- a) The Responsible Party shall complete any unfinished encroachment work, including erosion control measures, within 24 hours of DFG directing the Responsible Party to do so.
- b) Prior to any work at a site, the Responsible Party shall stock-pile erosion control materials at the site. All bare mineral soil exposed in conjunction with crossing construction, deconstruction, maintenance or repair or removal shall be treated for erosion immediately upon completion of work on the crossing, and prior to the onset of precipitation capable of generating runoff.
- c) Road construction leading directly into or out of a proposed stream crossing shall only be performed when soils are sufficiently dry so that sediment is not discharged into streams.
- d) When a 7-day National Weather Service forecast of rain includes a minimum of 5 consecutive days with any chance of precipitation, 3 consecutive days with a 30% or greater chance of precipitation, or 2 consecutive days of 50% or greater chance of precipitation, the Responsible Party shall finish work underway at encroachment and refrain from starting any new work at encroachment prior to the rain event.

16) The Responsible Party shall contact DFG by phone at (707) 441-2075 or fax (707) 441-2021 within the 7-day period preceding the beginning of work permitted by this Agreement. Information to be disclosed shall include Agreement number and the anticipated start date. The Responsible Party shall contact DFG by phone at (707) 441-2075 or fax (707) 441-2021 within thirty days of completion of the work permitted by this Agreement.

GENERAL CONDITIONS FOR ALL ENCROACHMENTS

17) No disturbance or removal of mature trees or shall occur under this agreement.

18) Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the ordinary high water mark before such flows occur or the end of the yearly work period, whichever comes first.

19) Refueling of equipment and vehicles and storing, adding or draining lubricants, coolants or hydraulic fluids shall not take place within or near streambeds, banks or channels. All such fluids and containers shall be disposed of properly. Heavy equipment parked within or near streambeds, banks or channels shall use drip pans or other devices (i.e., absorbent blankets, sheet barriers or other materials) as needed to prevent soil and water contamination.

20) No debris, soil, silt, sand, bark, chemicals, herbicides, pesticides, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any agricultural practice, or associated activity of whatever nature shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into Waters of the State.

21) If a sediment delivery potential exists, bare mineral soil exposed in conjunction with crossing construction, deconstruction, maintenance or repair, shall be treated for erosion prior to the onset of precipitation capable of generating run-off or the end of the yearly work period, whichever comes first. Restoration shall include the use of native vegetation or other treatments including jute netting, straw wattles, and geotextiles to protect and stabilize soils. If seeding and mulching are used, at least 2 to 4 inches of certified weed-free straw mulch and 100 lbs/acre equivalent barley seed are required. No annual (Italian) ryegrass (*Lolium multiflorum*) shall be used.

SITE-SPECIFIC CONDITIONS

22) All crossing sites shall accommodate the estimated 100-year flow including sediment load and debris.

23) Installation of bridges, culverts or other structures shall be such that water flow is not impaired and upstream or downstream passage of all aquatic life-forms is assured at all times.

24) Culverts shall extend lengthwise completely beyond the toe of fill.

25) Permanent culverts and their outfall structures shall be aligned with the stream channel and as wide as or wider than the channel width.

26) Permanent culverts shall be placed with the bottom set at or slightly below the natural streambed elevation to the maximum extent feasible. If permanent culverts cannot or will not be set to grade, they shall have downspouts and/or energy dissipators below the outfall as needed to effectively control erosion. If half-round downspouts (flumes) are used, they shall be placed in line with the culvert, sized larger than the culvert and of sufficient size to accommodate entire anticipated stream flow. Downspouts shall be securely attached to the culvert and staked or otherwise anchored to the fill slope.

27) No heavy equipment shall enter the live flow of the channel under this agreement.

28) The Responsible Party shall notify the Department, in writing, at least five (5) days prior to initiation of construction (project) activities and at least five (5) days prior to completion of construction (project) activities. Notification shall be faxed to the Department at (707) 441-2021, Attn: Rick Macedo, Staff Environmental Scientist, or via e-mail at rmacedo@dfg.ca.gov

This Agreement becomes effective on the date of DFG's signature and terminates December 31, 2014.

CONCURRENCE

RESPONSIBLE PARTY

CALIFORNIA DEPARTMENT OF FISH AND GAME

Signature on File

Signature on File *km*
_____ *km*
K. Moore
Habitat Conservation Program Manager
Northern Region

Elias Steinbock

(Print Name)

11/2/09

(Date)

Agent

(Title/Organization)

10/23/2009

(Date)

Prepared by: Staff Environmental Scientist Rick Macedo, October 19, 2009

CONDITIONS OF APPROVAL

CDF File Number	323-08	Date	9/22/2008		
Owner's Last Name	YASSKIN / DRAKE	Owner's First Name	ARON / COLIN		
Owner's Phone Number	(707) 937-0788				
Owner's Mailing Address	P.O. BOX 142 MENDOCINO, CA 95460	Agent/Phone #	AMY WYNN / 964-2531		
Finaled <input type="checkbox"/>					
Project Street #	44401	Project Street Name	GORDON LN	Type of Project	Minor Subdivision
Project City/Community	Mendocino	Battalion	6 Fort Bragg		

With reference to the above case number, the California Department of Forestry and Fire Protection requires the following MINIMUM standards as set forth in Title 14, "Natural Resources; Div. 1.5, be adhered to in order to gain a "Final Clearance" and "Approval for occupancy" from this Department. Local agencies may have additional requirements that may be more restrictive.

Address Standard California Code of Regulations, Title 14, Section 1274.01

Address must be posted at the beginning of construction and maintained thereafter. It shall be posted on BOTH sides of a mailbox or post at driveway entrance so it is visible from BOTH directions of travel. Minimum 3 inch letter height, 3/8 inch stroke. Reflectorized, contrasting with background color. Sequential numbering issued by Mendocino County will be utilized. Multiple Addresses will be on a single post.

Driveway Standard California Code of Regulations, Title 14, Section 1273.10

Driveway will be minimum 10 feet wide, all weather surface. It shall be a maximum of 16 % grade, minimum 50 feet inside radius on turns, and have a minimum 15 feet vertical clearance. Driveways longer than 150 feet, but less than 800 feet require a turnout near the midpoint. Driveways longer than 800 feet require turnouts every 400 feet. Turnouts shall be a minimum 10 feet wide and 30 feet long with a 25 foot taper at each end. A 40 foot radius turnaround or 60 foot hammerhead "T" is required for driveways longer than 300 feet and must be within 50 feet of the building. Gates will be 2 feet wider than the traffic lane and located at least 30 feet in from the road.

Road Standard California Code of Regulations, Title 14, Section 1273

Roads will have two-9 foot traffic lanes (18 ft. wide road surface), Minimum 40,000 lb. load capacity, and have an all weather surface. Roads will have a maximum grade of 16%, a minimum curve radius of 50 foot, and a minimum of 15 foot vertical clearance. Dead end roads shall not exceed: 800 ft for parcels 1 acre or less - 1320 ft. for parcels 1 to 4.99 acres - 2640 ft. for parcels 5 to 19.99 acres - 5280 ft. for parcels 20 acres or larger. Dead end roads are also required to have turnarounds every 1320 ft. and at terminus. Turnarounds shall be a minimum 40 ft. radius or 60 ft. hammerhead "T". Roads shall be officially recognized by Mendocino County with approved signs at each intersection and visible for 100 feet from both directions. The sign shall be minimum 3 inch letter height, 3/8 inch stroke, reflectorized and contrasting with background color. One Way Road Standards (if approved) are available from this office.

Jackson Law Offices

245 East Laurel Street
Fort Bragg, CA 95437

E-mail: jackson@mcn.org

Telephone: (707) 962-0222

Facsimile: (707) 962-0269

James A. Jackson

October 12, 2011

California Coastal Commission
North Coast District Office
710 E Street, Suite 200
Eureka, CA 95501-1865

ATTN: Tamara L. Gedik, Coastal Program Analyst

Re: Appeal # A-1-MEN-09-051
(Yasskin et al. CDMS-23-2008)
44401 Gordon Lane, Mendocino Co.

RECEIVED
OCT 17 2011
CALIFORNIA
COASTAL COMMISSION

Dear Ms. Gedik:

Aron Yasskin and his partners have asked me to correspond with you regarding the captioned matter. This application involves a minor subdivision of a 23 acre property near Mendocino County. The Mendocino County Planning Commission approved coastal development permit CDMS 23-2008 for a minor subdivision to create two parcels of approximately 11 and 12 acres in size respectively. A timely appeal of this Planning Commission decision was filed with your Commission on December 21, 2009. The stated reason for the appeal claimed that the approval of CDMS 23-2008 was inconsistent with the policies and standards of the Mendocino County local coastal program including but not limited to policies and standard regarding development within and adjacent to environmentally sensitive habitat areas. In a staff report dated December 23, 2009, three specific areas of concern were identified:

1. The configuration of the parcels resulting from the approved minor subdivision would result in the encroachment of the approved building footprint of future residential development on Parcel 2 within a rare plant ESHA and within the minimum 50 foot ESHA buffer area required by the County's certified land use plan and coastal zoning code;
2. No alternative sites or project designs were considered in the County's findings for approval to demonstrate that the approved project was sited and designed in a manner that would best protect the rare plant ESHA; and
3. The County's approval results in a new parcel being created that has not been demonstrated to have an adequate building site which would allow for the development of the building site consistent with protecting the rare plant ESHA.

The rare plant ESHA at issue involves California Sedge and Mendocino Cypress trees on the property. In order to address the concerns raised by the Commission staff, the applicant has retained the services of consultants to develop a building site location which will have no impact on the rare plant ESHA.

Tamara L. Gedik
California Coastal Commission
October 12, 2011
Page 2

retained the services of consultants to develop a building site location which will have no impact on the rare plant ESHA.

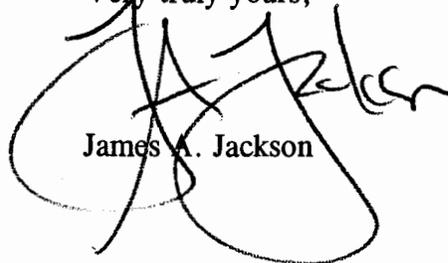
I enclose with this letter copies of plans developed by Civil Engineer Lee Welty. Sheet 2 sets forth a site plan for an alternative building site on Parcel 2 which provides at least a 100 foot buffer area around all identified locations containing Mendocino Cypress or California Sedge. In order to accommodate this new building site, the applicant is proposing the construction of an additional driveway that avoids the rare plant ESHA by providing more than the legally required buffer area. As you will see, the civil engineer has also developed a detailed plan for improving the driveway through the "spring" area so as to best mitigate any damage from the development of these improvements as well as prevent ongoing erosion of the existing road structure. The map also includes details of the buffer analysis prepared by a licensed botanist showing the locations of rare plants and pygmy vegetation. The protection of the rare plant ESHA by the reconfigured building site is discussed in a report from botanical consultant Playalina Nelson dated July 10, 2010 which is also enclosed with this letter.

I have also included with this letter a forensic history of the existing driveway prepared by a state licensed geologist. In this report, the geologist details how long the road has been in service, its overall condition, the basis for his opinion that the road has never been decommissioned, and his opinion that the improvement and maintenance of this road will benefit the overall ecology of the riparian habitat it traverses. It has been the opinion of all of the experts who have worked on this project that the existing road to the proposed subdivision is the best available option in that new road construction would have a greater environmental impact.

I believe that the enclosed information adequately responds to any legitimate concerns regarding this minor subdivision. The applicants request that you review this information and confirm that it adequately addresses the concerns of the California Coastal Commission. If so, we respectfully request that the Commission staff recommend that there is no remaining significant issue affecting this minor subdivision, and that the appeal may accordingly be dismissed.

Please do not hesitate to contact the applicants directly if you have any questions or concerns regarding this matter.

Very truly yours,



James A. Jackson

JAJ:sr
cc: A. Yasskin

ELIAS J. STEINBUCK, PG
GEOLOGY, WATERSHED HYDROLOGY & ENVIRONMENTAL CONSULTING

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December 20, 2010

Mr. Colin Drake
44401 Gordon Lane
Mendocino, CA 95460

**RE: HISTORIC ROAD CONSTRUCTION AND USE ASSESSMENT
DRAKE/GRAHAM & YASSKIN/DAKERS PROPERTY
44401 GORDON LANE, MENDOCINO, CA
BEAL CREEK, LITTLE RIVER WATERSHED**

This letter report presents the results of an assessment of an existing seasonal logging road proposed to be converted into a residential driveway on the above referenced property, hereafter referred to as the "subject property", as partial compliance of a minor land subdivision that is in-review to subdivide one 22.84 +/- acre parcel into two 10.90+/- and 11.93+/- acre parcels. This assessment has been conducted at the request of the landowner in light of California Coastal Commission (CC) concerns that arose during the coastal development review process about the historic use and existing condition of the road, hereafter referred to as the "project road". The landowners revealed that during a recent field visit CC staff were unsure if the project road was "decommissioned" through a lack of maintenance, erosion, and ongoing revegetation. During the field visit the CC staff recommended to the landowners that they provide additional information on the historic use and condition of the road for review during the coastal development permit appeal process.

The purposes of this assessment were to investigate the history of road construction and use on the subject property, document the existing condition of the project road, and provide pertinent information from current literature on the typical site conditions associated with road decommissioning. The methods of this investigation included discussions and field review with the property owners, review of available aerial photos, maps, and literature, field review of the subject property, and preparation of this report.

This assessment is not intended to present the specific grading measures needed to bring the project road alignment into compliance with current residential driveway standards; that work will typically require the services of a Professional Engineer (PE) and Land Surveyor (PLS) to establish adequate grades, turnouts, surfacing, run-off management, etc... Compliance with the provisions of a minor subdivision may require the landowners to acquire the services of a PE and PLS to develop a more formal grading plan.

OBSERVATIONS AND DISCUSSION

Current Road Conditions

The project road begins at Gordon Lane, a paved County of Mendocino road, passes an existing carport and garage, turns to the east and descends rather steeply at 14-18% grade down towards Beal Creek, a perennial watercourse that flows east-west through the subject property. The road crosses Beal Creek turns back toward the southwest and climbs at a rather constant 8-12% across 35-55% slopes up onto the adjacent broad low-gradient ridge to access the back portion of the parcel.

The road bed varies from 14-18 feet wide along a majority of its length and was observed to be in relatively good condition. Existing 8-10' tall cutslopes expose massive sandstone bedrock that appears relatively stable in its existing near-vertical configuration. Fillslopes are generally densely vegetated with brush, small pole sized conifer, and hardwood species. Pertinent botanical observations and mitigations are presented elsewhere by the project botanist. No significant slope instabilities (e.g. landslides originating in the cutslope or fillslope, scarps or tension cracks) were noted along the alignment. In one discrete location poor run-off management design during the original road construction resulted in erosion of the road bed, this site is described in detail below.

At **Site R1** the road crosses over a spring/wet area that emerges from the axis of a subtle swale along the inside edge of the road. Run-off is predominately generated through subsurface processes (e.g. no watercourse channel was present within the axis of the swale above the road), but daylighted into a small channel below the existing road. It appears that no drainage structure (e.g. culvert) was installed in the fill that was pushed into the swale during road construction; subsequent subsurface flow emerging and piping through the fill material has caused a few collapse features (e.g. small sinkholes) that have rendered the road impassable to vehicle traffic. It appears that when the road was constructed, the intended design was to have any run-off generated from the swale to be routed ~150' down the inside ditch of the road to Beal Creek.

Discussions with CA Department of Fish and Game (CDFG) and the landowners revealed this spring/wet area would need a streambed alteration permit (1600 permit) to minimize adverse environmental impacts while reconstructing the road through this site. The application was approved and the permit was obtained on October 19, 2009 (Lake or Streambed Notification No. R1-09-0330). The permit outlines specific provisions for installing a new culvert at the site, stabilizing fill material, managing road run-off, and revegetating the area following recommendations by the project botanist. Additionally, the permit proposes mitigation of a chronic sediment delivery source immediately downslope of this site where a skid trail was constructed across the same swale, burying whatever channel may have existed, and subsequently delivering sediment to the stream system. This is reachable by equipment from the existing road and is proposed to be stabilized by sloping back the remaining fill and mulching and seeding the bare soils.

At **Site R2** the road crosses Beal Creek, this site is characterized by a properly functioning 6' diameter corrugated metal pipe (CMP) set deep in the fill material and

near channel grade. An estimated 250 yds³ of apparently stable (e.g. no cracks observed) fill material buries the CMP in the valley bottom to make the road grade across Beal Creek. This fill material is potentially deliverable to the stream system should the culvert plug, and should be regularly inspected during large storm events to ensure the culvert is cleared of debris and properly functioning. Culvert inspections, and removal of inevitable debris, are a fundamental aspect of road maintenance.

Historic Aerial Photo Review

Historical aerial photographs chronicle the past 60+ years of use on the subject property. A review of the aerial photos is summarized below.

Table 1: Aerial Photo Review

Year	Observations
1947	A couple structures are evident on the property along Gordon Lane in the present day location of the main residence and garage. No evidence of road construction down the hillslope south of the structures, or across Beal Creek, was noted.
1963	No apparent changes were observed on the subject property. No evidence of road construction down the hillslope south of the structures, or across Beal Creek, was noted.
1980	The existing project road is evident in its present day alignment and appears to have been used somewhat recently based on the presence of bare surface soils. Timber harvesting appears to have been conducted in conjunction with the road construction, and is characterized by a light selective harvest across portions of the subject property on the south side of Beal Creek.
1988	The project road is visible but becoming less distinguishable on the air photos as the surrounding canopy has closed in considerably. No additional harvesting appears to have been conducted since the previous photo period.
1996	Timber harvesting has occurred on a ~2 acre area below the structures extending down to Beal Creek. The project road appears to have been graded open down to the crossing at Beal Creek to access the timber harvest area. Grading work near the garage at the beginning of the road is evident and is characterized by a flat area where fill was used to level the ground for an apparent horse corral; this fill encroaches slightly onto the project road. The project road is still visible on the south side of Beal Creek as well, but becoming much less distinguishable on the air photos as the surrounding canopy continues to close in.
2000	No apparent changes were observed on the subject property. The forest canopy across the subject property has closed in considerably since harvesting, the project road is barely distinguishable beneath the dense forest canopy.

No evidence of road construction or timber harvesting planning was found in the public files, indicating the road may have been constructed prior to the advent of the 1973 forest practice rules. The first appearance of the project road on the 1980 aerial photos also suggests that original construction was likely in the late 1960's - early 1970's time period. The early 1990's harvesting, which included grading open and using the project road from Gordon Lane down to Beal Creek, appears to have been conducted for sun improvement as the harvest was limited to a relatively small area immediately below the residence. Additionally, grading of fill material to level an area for a horse corral near the garage along Gordon Lane was evident in the early 1990's. This area is characterized by ~ 8 feet of fill (as estimated perpendicular to the ground on the outboard edge) that encroaches onto the project road. Some of this fill material may need to be sloped back and stabilized to make a suitable turning radius for a driveway.

Road Condition Classification

Significant research has been published on the construction, maintenance, and abandonment of forest roads and their potential impacts on erosion and sediment delivery. In light of the potential habitat impairments from excess sediment delivery, CDFG has been a leader in funding research into best management practices for forest roads. Terminology regarding the classification of forest roads is summarized by Weaver, et. al. (2006) in the CDFG Habitat Restoration Manual, and offered below as part of this discussion.

Abandoned Road - A road no longer maintained. An abandoned road may be still driveable although overgrown with vegetation.

Decommission - To remove those elements of a road that unnaturally reroute hillslope drainage or present slope stability hazards. The process of proactively abandoning a road by eliminating all significant risks of sediment delivery until the road is needed in future years. Decommissioning may be permanent or temporary (the road will be used again), but the treatments do not markedly differ. Decommissioning involves completely removing stream crossing fills and associated drainage structures and eliminating the risk for sediment delivery from unstable road and landing fills, and providing for permanent surface drainage.

Road Maintenance - Upkeep of a roads cutbanks, road surface, fillslopes, and all drainage structures, intending to prevent erosion and deterioration. Road maintenance activities include; grading, ditch cleaning, brushing, and culvert cleaning.

Field reconnaissance on the project road during this assessment appears consistent with the aerial photo observations that seem to indicate the road has not been maintained, or used for any vehicle traffic, for approximately 20+/- years. It appears that based on the definitions presented above, the proper classification of the road would be a “poorly maintained road” or an “abandoned road”. However, based on observed site conditions the project road does not appear to require a significant amount of maintenance work to be reclassified as a “well maintained road”.

SUMMARY

In summary, the project road appears to have been constructed in the early 1970's, used again in the early 1990's, and generally not maintained since that time. One discrete area was discovered (Site R1) where previous poor road design caused erosion of the road surface, delivering sediment to the stream system and rendering the road impassable. Mitigation of this common forest road condition (installing a drainage structure where none had originally been placed) was approved under CDFG permit No. R1-09-0330. No significant grading would be needed to reopen the project road to vehicle traffic, as no instabilities in the cutslopes or fillslopes along the road were observed. Additional maintenance work to bring the road up to current standards may include clearing of vegetation for vehicle access, cleaning of ditches, and improving road drainage.

REFERENCES

Aerial Photographs

- 2000, Flight WAC-00, Frames 10-87 and 88, black-and-white, 1:20,000
- 1996, Flight WAC-MENDOCINO-96, Frames 12-183 through 185, black-and-white, 1:12,000
- 1988, Flight WAC-88-CA, Frames 27-175 and 176, black-and-white, 1:24,000
- 1980, Flight CDF-ALL-UK, Frames 7-6 and 7, black-and-white, 1:24,000
- 1963, Flight MEN, Frames 6-24 through 26, black-and-white, 1:20,000
- 1947, Flight CDFI, Frames 1-4 and 5, black-and-white, 1:20,000

Published Literature

Pacific Watershed Associates, 1994. Handbook for Forest and Ranch Roads. Prepared for the Mendocino County Resource Conservation District (MCRCD) in cooperation with the California Department of Forestry and the U.S. Soil Conservation Service. MCRCD, Ukiah, California, 163 p.

Weaver, W.E., Hagans, D.K., Weppner, E., 2006. *in* Flosie, G., et al., eds., California Salmonid Stream Habitat Restoration Manual, 3rd ed., Part X, Upslope Erosion Inventory and Sediment Control Guidance. California Department of Fish and Game, 207 p.

LIMITATIONS

This investigation has been conducted in an objective manner and in accord with generally accepted professional practices for this type of work. Subsurface geotechnical exploration was beyond the scope of this report, therefore the conclusions are limited in that regard. Additionally, identification of landslide and erosion features can be obscured by dense vegetation and/or prolonged weathering, therefore, older features may exist that were not observed on the aerial photographs or identified during the field reconnaissance.

Please give me a call at 707-357-0520 if you have any questions.

Elias Steinbuck

Elias Steinbuck
Professional Geologist #7538



List of Attachments

Figure 1: Project and Site Location Map

